REQUEST FOR PROPOSALS

TO DESIGN AND CONSTRUCT

THE STATEWIDE ITS DMS DEPLOYMENT DESIGN-BUILD PROJECT

CHATHAM, CHEROKEE, AND COBB COUNTIES

THROUGH A

DESIGN-BUILD AGREEMENT

PROJECT NUMBER
P.I. No. 0017389

INSTRUCTIONS TO PROPOSERS

GEORGIA DEPARTMENT OF TRANSPORTATION

RFP Issued: October 2, 2020

Proposals Due: December 10, 2020 at 11:00 AM

Georgia Department of Transportation
One Georgia Center
600 West Peachtree Street, NW
Atlanta, Georgia 30308

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SECTION 1.0 INTRODUCTION AND GENERAL PROVISIONS

1.1 Introduction

The Georgia Department of Transportation (GDOT), an agency of the State of Georgia (State), issued a Request for Proposals (RFP), dated October 2, 2020.

The RFP solicits competitive Proposals (as described in more detail in Section 1.5.1 from Proposers to develop the Project by means of a Design-Build Agreement (the "Agreement") between the successful Proposer and GDOT. Under such Agreement, the Design-Build Team will be required to design and construct the Project during the Contract Time.

Following the release of the RFP, GDOT may opt to engage in a series of confidential meetings and discussions with the Proposers, all in accordance with the procedures set forth in the RFP. In response to feedback and input received from the Proposers and other stakeholders, GDOT may opt to issue Amendments to the Instructions to Proposers (ITP) and/or RFP. If GDOT issues an Amendment to the RFP, the Amendment will supplement or replace the RFP in part or in whole.

This ITP provides instructions to be followed by Proposers in their responses to the RFP.

This RFP is issued in accordance with the provisions of Section 32-2-81 of the Official Code of Georgia Annotated (Code), Chapter 672-18 of the Rules of the State Department of Transportation, Governing the Design-Build Procedures (Rules), and other applicable laws and guidelines. Proposals must comply with ITP requirements.

Refer to Exhibit 1 of the Agreement for the meaning of various capitalized terms and acronyms used but which are not defined herein. Unless otherwise specified, references to Sections, Exhibits, and Forms within this ITP shall mean Sections of the ITP and Exhibits and Forms attached to the ITP..

1.2 RFP Documents

The RFP consists of the items listed below, and any other documents that may be issued by Amendment, as such documents may be amended and supplemented:

(a) ITP (including the attached Exhibits and Forms); and

(b) Design-Build (DB) Documents.

Refer to Article 1.2 of the Agreement for a list of the DB Documents and their order of precedence. The Reference Information Documents (RIDs) are listed in Exhibit G hereto.

The ITP and the RIDs are not contract documents and will not form a part of the DB Documents. GDOT does not make any representation or guarantee as to the accuracy, completeness, or fitness of the RIDs. GDOT does not take any responsibility for the RIDs, and Proposers are responsible for any conclusions they may draw from the RIDs. GDOT is making the RIDs available to Proposers for the sole purpose of providing information in the possession of GDOT, regardless of whether such information is accurate, complete, pertinent, or of any value.

1.3 General Project Description

The Project will provide design and construction services necessary to install a total of five Dynamic Messaging Signs (DMS) in Georgia (also known as the "Work"). Three of the DMS will be placed in Cobb and Cherokee Counties around the I-75 and I-575 Express Lanes, and two of

the DMS will be placed in Chatham County near Port Wentworth. A more detailed description of the Project can be found within the DB Documents and, for reference, in the RIDs.

The Design-Build Team (DB Team) will be responsible for the design and construction of the Project during the Contract Time.

1.4 Procurement Schedule

The procurement schedule is as follows:

	Activity	Date	Time
1.	GDOT issues Public Notice Advertisement (PNA)	08/14/2020	-----
2.	Industry Forum – virtual presentation	09/10/2020	8:00 AM
3.	Industry one-on-one meetings – virtual meetings	09/11/2020	8:00 AM- 5:00 PM
4.	Issue RFP	10/02/2020	---------
5.	Deadline for Proposers to submit questions regarding RFP	11/04/2020	5:00 PM
6.	Deadline for e-Builder Access Request (Form W)	11/19/2020	5:00 PM
7.	**Proposal Due Date**	**12/10/2020**	**11:00 AM**
8.	Letting (Selection of Apparent Successful Proposer) – virtual meeting	12/18/2020	11:00 AM

All dates set forth above and in the RFP are subject to change in GDOT's sole discretion. All times indicated are prevailing times in Atlanta, Georgia. To the extent such dates are changed, GDOT will formally notify each Proposer through the Sharepoint site described in Section 2.2 below.

1.5 General Provisions Regarding Proposals

1.5.1 Proposal Contents

As used in this procurement, the term “Proposal” means a Proposer's complete response to the RFP, including but not limited to the Proposer's:

(a) Administrative Information Submittals;

(b) Technical Proposal for the Project; and

(c) Price Proposal for the Project.

Detailed instructions regarding the Administrative Information Submittals, the Technical Proposal, and the Price Proposal are provided in Exhibit B, Exhibit C, and Exhibit D, respectively. Forms required for inclusion in the Proposals are attached to this ITP. Each Proposal component shall be clearly titled and identified, and shall be submitted without reservations, qualifications, conditions, or assumptions. Any failure to provide all the information and all completed Forms in the format specified by the ITP may result in GDOT's rejection of the Proposal, as determined by GDOT at its sole discretion. All blank spaces in the

Proposal forms must be filled in as noted. No substantive change(s) should be made to the original text or structure of the Proposal Forms.

1.5.2 Inclusion of Proposal in DB Documents

Portions of the successful Proposer's Proposal will become part of the DB Documents, as applicable and to the extent specified in the Agreement. All other information is for evaluation purposes only and will not become part of the DB Documents.

1.5.3 Commitments in the Proposal

GDOT will give no consideration to tentative or qualified commitments in the Proposals. For example, GDOT will give no consideration to phrases such as "we may," "are considering," "will endeavor to," or phrases of a similar nature in the evaluation process because they do not indicate a firm commitment.

1.5.4 Property of GDOT

All documents included in the Proposals submitted by Proposers in response to the RFP shall become the property of GDOT and will not be returned to the Proposer.

1.6 Improper Conduct

1.6.1 Prohibited Activities

If the Proposer, or anyone representing the Proposer, offers, gives, solicits, accepts, or receives, directly or indirectly, any advantage, gift, gratuity, discount, bribe, or loan of any sort to or from GDOT, the State Transportation Board, or officers, administrators, staff or consultants of GDOT, including agents or anyone representing the foregoing at any time during the Project procurement process: (1) GDOT shall immediately disqualify the Proposer; (2) the Proposer shall forfeit its Proposal Bond; and (3) GDOT may sue the Proposer for damages.

1.6.2 Non-Collusion

The Proposer shall not undertake any of the prohibited activities identified in the Non-Collusion Affidavit (Form B). Note that multiple parties are required to execute copies of Form B.

To report bid rigging activities, call the US DOT toll-free "hotline" (1-800-424-9071) Monday through Friday, 8:00 AM to 5:00 PM, Eastern time. All information will be treated confidentially, and caller anonymity will be respected.

1.6.3 Organizational Conflicts of Interest

Proposers are advised that the Conflicts of Interest Policy as referred to in **GDOT's Design-Build Manual**, and the organizational conflict of interest rules found in 23 Code of Federal Regulations (CFR) Part 636, Subpart A, including 23 CFR § 636.116, apply to this procurement.

Each Proposer must include in its Proposal a full disclosure of all potential organizational conflicts of interest within its team (Form C). Note that multiple parties are required to execute copies of Form C.

The Proposer is prohibited from receiving any advice or discussing any aspect of the Project or the procurement of the Project with any person or entity with an organizational conflict of interest, including, but not limited to, the entities and individuals listed in Exhibit F (List of GDOT

Project Team); and any parent, affiliate, or subsidiary of any of the foregoing entities, or an entity that is under common ownership, control or management with any of the foregoing entities.

By submitting its Proposal, each Proposer agrees that, if an organizational conflict of interest is thereafter discovered, the Proposer must make an immediate and full written disclosure to GDOT that includes a description of the action that Proposer has taken or proposes to take to avoid or mitigate such conflicts. If the Apparent Successful Proposer was aware of an organizational conflict of interest prior to award of the Agreement and did not disclose the conflict to GDOT, GDOT may terminate the Proposal for default and may award the Agreement to the responsive Proposer with the next lowest-Price Proposal.

1.6.4 Restrictions on Participation

Proposers are advised that the following entities and individuals are precluded from submitting a Proposal and from participating on a Proposer team as a Participating Member, Major Non-Participating Member, Contractor, Subcontractor or subconsultant:

(a) any entity or individual listed in Exhibit F (List of GDOT Project Team). GDOT has contracted with these entities or individuals, as the case may be, to aid in the development of the RFP, estimates or scope of services for the Project, or to participate in the Proposal evaluation process;

(b) any entity that is a parent, affiliate, or subsidiary of any of the entities listed in Exhibit F, or that is under common ownership, control or management with any of the foregoing entities; and

(c) any contractor who is currently suspended, debarred or voluntarily excluded under 49 CFR Part 29 or is otherwise determined to be ineligible to participate in the federal-aid highway program.

1.6.5 No Participation on More Than One Proposer Team

To ensure a fair procurement process, Participating Members and Major Non-Participating Members of Proposer teams are prohibited from participating, as a Participating Member or Major Non-Participating Member, on another Proposer team on this Project during the course of the Project procurement (i.e. until execution of the Agreement by GDOT). The foregoing prohibition extends to affiliated entities of Participating Members and Major Non-Participating Members. GDOT reserves the right to disqualify any Proposer that fails to comply with this prohibition. If a Proposer has any question as to whether or not its proposed team would be in compliance with the terms of this Section 1.6.5, such Proposer may submit the issue to GDOT in writing, describing in reasonable detail the proposed structure, and seeking clarification.

1.7 SVDBE Participation

The purpose of this section is to establish criteria for acceptability of Small, Veteran, and Disadvantaged Business Enterprise (SVDBE) firms for Work performed on this contract. The intent is to ensure all participation counted toward fulfillment of the SVDBE goals is (1) real and substantial, (2) actually performed by viable, independent, SVDBE owned firms; and (3) in accordance with the spirit of applicable laws and regulations.

The policy of GDOT is to ensure compliance with Title VI of the Civil Rights Act of 1964 and related statutes and regulations in all program activities.

GDOT does not discriminate and shall take all necessary and reasonable steps to ensure nondiscrimination on the basis of race, color, religion, sex, national origin, age, marital status, or disability in the award, administration and performance of any GDOT assisted contract or in the administration of its SVDBE Program.

All Proposers shall submit a completed "Construction Contractors Bid Opportunity List" (Form E) to GDOT in accordance with ITP Exhibit B, Section B.2.1.5 as a matter of Proposer responsibility.

SVDBE payments and commitments shall be separate and distinct and cannot be transferred or combined in any manner.

The SVDBE Goal specified in the Agreement will be a percentage representing the SVDBE participation.

The SVDBE Goal for this project is identified in Form I. The Proposer is encouraged to meet this goal throughout the Term of Agreement and will report monthly on the goal attainment status throughout the Term of Agreement. If the Project goal has not been achieved at the time of annual reporting, the Proposer shall demonstrate that Good Faith Efforts aimed at achievement have been made as described in Volume 1, Article 10.9 (Small, Veteran, and Disadvantaged Business Enterprise). Further, the Proposer is expected to work toward goal attainment in all areas of the Work, to include pre-construction and design Elements as well as the Construction Work portion of the Project.

For further information regarding GDOT's DBE Program and the DB Team's SVDBE obligations, Proposers may contact GDOT's EEO Office during regular business hours at (404) 631-1972 or **dbework@dot.ga.gov**.

1.8 Reserved

1.9 Status of Environmental Documents

The Environmental Documents are being pursued for the Project by GDOT in coordination with the concept design efforts. An Environmental Screening Memorandum was approved by GDOT on August 13, 2020. A re-evaluation of the Environmental Screening Memorandum was completed on August 18, 2020.

GDOT has provided Proposers with anticipated environmental parameters in the form of an Environmental Screening Memo provided in Volume 2, Attachment 4-1 (Environmental Screening Memo).

The DB Agreement addresses the possibility that the Environmental Documents Approvals process might diverge from those parameters.

Proposers are advised that the Environmental Documents Approvals process could result in a no-build alternative for the Project. Nothing contained in this RFP or the DB Documents commits GDOT or a Proposer to the construction of the Project or any Project alternative unless the Environmental Approvals are obtained (and then only to the extent set forth in the Environmental Documents).

1.10 Qualification of Construction and Design Firms

Proposers shall ensure that the entities identified in Sections 1.10.1 and 1.10.2 have satisfied the pre-qualification requirements set forth in this Section 1.10.

In addition, before commencing performance of any Work, all firms must be registered to do business in the State of Georgia. This can be accomplished by contacting the Georgia Secretary of State Corporations Division Office at (404) 656-2817 or visiting **http://www.sos.ga.gov/corporations**.

1.10.1 Required Pre-Qualification for Contractors

The Lead Contractor shall be prequalified with GDOT prior to the Proposal Due Date. If any portion of the Work is not performed by the prequalified Lead Contractor, the entity performing the Work shall also be prequalified prior to initiating any Work. Any proposed changes to the team must be approved by GDOT.

The pre-qualification process involves, but is not limited to, submitting (a) a completed contractor qualification form and (b) financial statements to GDOT. For further information regarding the pre-qualification process, please see:

http://www.dot.ga.gov/PS/Business/Prequalification

1.10.2 Required Pre-Qualification for Engineers

As part of the qualifications package identified in Exhibit B Section B.2.19, the Proposer shall only use entities prequalified in their respective disciplines (engineering, design, traffic analysis, geotechnical, NEPA, construction, etc.). All Work must be performed by entities that are prequalified by GDOT.

The Lead Design Consultant MUST be prequalified by GDOT in the area class listed below:

Number	Area Class
3.09	Traffic Control Systems Analysis, Design and Implementation

The Design Team (Lead Design Consultant and/or one or more of its subconsultant team members) MUST be prequalified by GDOT in the area classes listed below:

Number	Area Class
1.06(e)	Ecology
3.05	Urban Interstate Highway Design
3.10	Utility Coordination
5.02	Engineering Surveying
9.03	Field Inspections for Compliance of Erosion and Sedimentation Control Device Installations

If the Proposer's design for the Project includes Design Work outside the scope of the area classes set forth in this RFP, at least one team member shall be prequalified with GDOT in the appropriate area class.

For further information regarding the pre-qualification of engineers, please see:

http://www.dot.ga.gov/PS/Business/Prequalification

1.10.3 Pre-Qualification Assistance

Information regarding GDOT's pre-qualification requirements and process may be found under the pre-qualification links:

(a) general information at: **www.dot.ga.gov/PS**

(b) for Contractors at:
http://www.dot.ga.gov/PS/Business/Prequalification/PrequalContractors

(c) for Engineers at:
http://www.dot.ga.gov/PS/Business/Prequalification/PrequalConsultants

1.11 Establishment of Single Purpose Entity(ies)

If the Apparent Successful Proposer contemplates the creation of one or more single purpose entities as the parties that will execute the DB Documents, the Apparent Successful Proposer is required to establish each such single purpose entity and submit executed copies of the articles of incorporation and any other corporate formation documents for the single purpose entity to GDOT in accordance with Section 6.2.1. Proposers anticipating the creation of any such single purpose entity must include pro forma corporate formation documents in the Proposal, as described in Exhibit B. Failure to meet the requirements in this Section 1.11 will result in forfeiture of the Apparent Successful Proposer's Proposal Bond.

SECTION 2.0 PROCUREMENT PROCESS

2.1 Method of Procurement

GDOT is issuing the RFP in accordance with the provisions of Sections 32-2-81 of the Code, Chapter 672-18 of the Rules, and other applicable laws and guidelines. GDOT intends to award the DB Documents to the Proposer that submits the lowest price responsive Proposal. Subject to Section 8.1, GDOT will base the evaluation of Proposals on information submitted in the Proposals, and will involve both pass/fail evaluation factors and an evaluation of administrative, technical, and price criteria, as further detailed in Section 5 and in the Exhibits to this ITP.

2.2 Communications between GDOT and Proposers

The RFP will be issued to Proposers in electronic format on the GDOT SharePoint site for the Project (the "SharePoint site"). The SharePoint site website address will be provided through the Public Notice of Advertisement posted to the Georgia Procurement Registry. Each Proposer is required check the SharePoint site regularly for Amendments to the RFP and for other procurement-related information.

GDOT will provide each Proposer the use of a third-party-hosted secure online site called e-Builder™ (the "e-Builder site") for the purpose of receiving certain information pertaining to the Project, and for Proposers to upload and submit their Proposals. Refer to Section 1.4 and Form W for information regarding access to the e-Builder site.

2.2.1 Designated Point of Contact

The Contracting Officer for the Project is Chip Meeks and can be contacted at:

Georgia Department of Transportation
Attention: Chip Meeks
Office of Innovative Delivery
One Georgia Center
600 West Peachtree Street, NW
Atlanta, Georgia 30308
E-mail**: ITSDMS@dot.ga.gov**

From time to time during the procurement or during the Term of the Agreement, GDOT may designate another point of contact to carry out some or all of the obligations pertaining to the Project.

2.2.2 Rules of Contact

Unless specifically authorized elsewhere in this ITP, the Contracting Officer, as may be changed in writing by GDOT, is the single contact and single source of information for this procurement.

The rules of contact set forth in this Section 2.2.2 shall apply during the Project procurement, commencing with the issuance of this RFP. These rules are designed to promote a fair, unbiased, and legally defensible procurement process. Contact, as used herein, includes face-to-face, telephone, electronic-mail (e-mail), text or any other form of informal and formal written communication.

The specific rules of contact are as follows:

(a) Neither a Proposer nor any of its team members may communicate with another Proposer or members of another Proposer's team with regard to the RFP or either team's Proposal. This prohibition does not apply to (1) Proposer communication with a contractor that is on both its team and another Proposer's team, provided that the contractor shall not act as a conduit of information between the two Proposers; and (2) public discussion regarding the RFP at GDOT-sponsored informational meetings.

(b) Unless otherwise specifically noted in this ITP or authorized by the Contracting Officer, all Proposer communication with GDOT will be between Proposer's identified representatives and the Contracting Officer. All such communication must be in writing (by mail or e-mail).

(c) Under normal circumstances, the Contracting Officer will contact a Proposer in writing through Proposer's designated representative.

(d) Continuing until the earliest of (1) execution and delivery of the DB Documents, (2) GDOT's rejection of all Proposals or (3) cancellation of the Project procurement, neither a Proposer nor its agents may have ex parte communications with GDOT employees, members of the Technical Review Committee, the Bid Review Committee, the State Transportation Board, any other person who will evaluate Proposals, or any person identified in Section 1.6.4 regarding the Project, except for communications expressly permitted in this ITP or through the process identified above. The foregoing restriction shall not, however, preclude or restrict communications regarding matters unrelated to the Project or from participating in public meetings or any public or Proposer workshop related to the Project. GDOT may, in its sole discretion, disqualify any Proposer engaging in such prohibited communications.

(e) Any contact by a Proposer determined by GDOT to be improper may result in disqualification of that Proposer.

(f) GDOT will not be responsible for or bound by (1) any oral communication, or (2) any other information or contact that occurs outside the official communication process specified herein, unless confirmed in writing by the Contracting Officer.

2.2.3 Language and United States Dollar Requirements

All correspondence regarding the RFP, the Proposal, the DB Documents and all other matters pertaining to this procurement is to be in the English language. If any original documents required for the Proposal are in any other language, the Proposer shall provide a certified English translation, which shall take precedence in the event of conflict with the original language. The Proposer shall exclusively use United States dollars in its Proposal, except in pre-printed or reference materials. Unless otherwise specified, all references to monetary values shall be in United States dollars. In the evaluation of Proposals, GDOT may choose to disregard any financial figures provided by the Proposer in denominations other than United States dollars.

2.3 Questions and Responses Regarding the RFP

Proposers shall be responsible for reviewing the RFP and any Amendments issued by GDOT prior to the Proposal Due Date, and for requesting clarification or interpretation through written questions of any perceived discrepancy, deficiency, ambiguity, error, or omission contained therein; or of any provision which the Proposer fails to understand. Proposers shall submit, and

GDOT will respond to written questions in accordance with this Section 2.3. Any responses by GDOT will not be considered part of the DB Documents.

2.3.1 Form of Requests

Proposers shall deliver written questions to the Contracting Officer via e-mail or certified U.S. mail. GDOT will only consider written requests made by Proposers' designated representatives and will not consider telephone or other oral requests. Proposers are responsible for ensuring that written questions clearly indicate on the first page or in the subject line, as applicable, that the material relates to the Project. Written questions must include the requestor's name, address, telephone, and email address; and the Proposer they represent.

No confidential questions will be allowed.

Proposers will be limited to 50 comments or questions (combined) with respect to the RFP.

If a question has more than one subpart, each subpart will be considered a separate question. Corrections of typographical errors, incorrect cross references, or inconsistencies within or among the RFP documents will be excluded from the above numerical limitations.

2.3.2 Timing of Requests

Proposers must submit any requests under this Section 2.3 prior to the deadline for such requests in Section 1.4. GDOT is not required to answer any questions submitted by Proposers after this deadline.

2.3.3 Responses

GDOT's responses to questions submitted pursuant to this Section 2.3 will be in writing and GDOT will post responses on the SharePoint site to all Proposers. GDOT may rephrase or consolidate questions as it deems appropriate.

2.4 Amendments

GDOT reserves the right, in its sole discretion, to revise, modify or change the RFP and/or procurement process at any time before the Proposal Due Date. Any such revisions will be implemented through issuance of Amendments to the RFP. Amendments will be posted on the SharePoint site, and Proposers will be notified of the issuance of such Amendments. If any Amendment significantly impacts the RFP, as determined in GDOT's sole discretion, GDOT may change the RFP schedule, including the Proposal Due Date. The announcement of such schedule modification will be included in the Amendment. In addition, the Amendment will indicate the latest date for submittal of any clarification requests concerning the Amendment.

GDOT will not be bound by, and the Proposer shall not rely on, any oral communication or representation regarding the RFP documents, or any written communication except to the extent that it is contained in the RFP or in an Amendment to the RFP and is not superseded by a later Amendment to the RFP.

2.5 Reserved

2.6 Examination of the Request for Proposals Package and Project Site

GDOT will permit Proposers to access the Existing Right of Way to perform limited investigations prior to the Proposal Due Date. Prior to accessing any Existing Right of Way,

Proposers must: (i) notify the District Engineer with the details, timing and personnel accessing the Site; and (ii) receive prior written consent from the District Engineer. Proposers must follow all applicable State laws including erosion control, traffic control, and any other impositions, constraints, or requirements that GDOT, in its capacity as an agency of the State, may impose. Proposers are expected to carefully examine the Existing Right of Way before submitting a Proposal.

Each Proposer may contact applicable property and Utility Owners to seek any additional access to permit investigations, solely at the Proposer's cost and risk.

Each Proposer, solely at its own expense and risk, is responsible for conducting a reasonable investigation of the condition of existing facilities and site conditions, including hazardous substances and materials, sub-surface conditions, wetlands, temporary and permanent utility facilities, area populations and demographics, land use, and development and development-related infrastructure and traffic patterns.

Each Proposer shall, by submission of a Proposal, be deemed to have made such examination and to have satisfied itself as to the conditions to be encountered in performing the Work under the DB Documents. Failure of a Proposer to so examine and inform itself shall be at its sole risk, and GDOT will provide no relief for any error or omission.

2.7 Reserved

SECTION 3.0 RESERVED

SECTION 4.0 PROPOSAL CONTENT AND SUBMITTAL REQUIREMENTS

4.1 Format

To facilitate the evaluation of Administrative Information Submittals, Technical Proposals, and Price Proposals and to help protect the confidentiality of proprietary information, the Proposal submittal described in Sections 4.2 and 4.3 shall be submitted in three separate electronic packages to the e-Builder site.

Unless otherwise specified in this ITP, all written submittals must be prepared on 8-1/2- by 11-inch white paper. All written submittals, regardless of paper size, must be prepared on white paper. Each section within each volume shall have sequentially numbered pages, shall be separated by a dividing sheet, and shall be prepared using no smaller than 11-point font size, except for tables, which may be prepared using no smaller than 10-point font size. .

4.2 Contents and Organization

Proposers shall clearly index their Administrative Information Submittals, Technical Proposal, and Price Proposal (subject to the limitations on dividing sheets as identified in Exhibits B, C, and/or D) and organize them in the order set forth in this Section 4.2. The proposal submittal shall contain separate Administrative Information Submittals, Technical Proposal, and the Price Proposal, including the information described in this section. Proposers may subdivide each Administrative Information Submittal plus Technical Proposal, and Price Proposal further as needed. The electronic submittals shall use a searchable format with appropriate bookmarks.

If the Proposer has any items that it deems confidential, trade secret or proprietary information, the first page of the Administrative Information Submittals must be a page executed by the Proposer that sets forth the specific items the Proposer deems confidential, trade secret or proprietary information protected from public disclosure under the Open Government Laws. The Proposer shall list the specific statute within the Open Government Laws that the Proposer has reasonably determined is exempt from disclosure under Section 50-18-72 of the Code or any other applicable law.

In this case and in accordance with Section 50-18-72 (a) (34) of the Code, the Proposer shall submit and attach to the records an affidavit affirmatively declaring that specific information in the records constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10. If such Proposer attaches such an affidavit, before producing such records in response to a request under this article, GDOT shall notify the Proposer of its intention to produce such records as set forth in this paragraph. If GDOT makes a determination that the specifically identified information does not in fact constitute a trade secret, it shall notify the Proposer submitting the affidavit of its intent to disclose the information within 10 days unless prohibited from doing so by an appropriate court order. In the event the Proposer wishes to prevent disclosure of the requested records, the Proposer may file an action in superior court to obtain an order that the requested records are trade secrets exempt from disclosure. The Proposer filing such action shall serve the requestor with a copy of its court filing. If GDOT makes a determination that the specifically identified information does constitute a trade secret, GDOT shall withhold the records, and the requester may file an action in superior court to obtain an order that the requested records are not trade secrets and are subject to disclosure.

The list required under this Section 4.2 and in Exhibit B is intended to provide input to GDOT as to the confidential nature of a Proposer's Proposal, but in no event shall such list be binding on GDOT or determinative of any issue relating to confidentiality. Blanket designations that do not

identify the specific information or the applicable statute(s) shall not be acceptable and may be cause for GDOT to treat the entire Proposal as public information. In no event shall the State, GDOT or any of their respective agents, representatives, consultants, directors, officers or employees be liable to a Proposer or Proposer team member for the disclosure of all or a portion of a Proposal submitted under this RFP. Additionally, the Proposer shall add a "confidential" watermark to each page that it deems confidential under this paragraph.

If GDOT receives a request for public disclosure of all or any portion of the materials identified as confidential and included in any part of a Proposal, GDOT will promptly notify the applicable Proposer of the request. The Proposer may seek a protective order or other appropriate remedy at such Proposer's sole cost and expense. If GDOT determines in good faith that the materials identified as "confidential" are not exempt from the Open Government Laws, GDOT will release the requested information. GDOT shall make the final determination regarding whether the requested information is to be disclosed or withheld.

Nothing contained in this provision shall modify or amend requirements and obligations imposed on GDOT by the Open Government Laws or other applicable law, and the provisions of the Open Government Laws or other laws shall control in the event of a conflict between the procedures described above and the applicable law.

Please see Exhibit B, Exhibit C, and Exhibit D for special instructions regarding submission of information relating to the Price Proposal.

4.2.1 Administrative Information Submittals

The Administrative Information Submittals shall contain the components described in Exhibit B, separated and labeled appropriately and organized; and included as a separate electronic package.

4.2.2 Technical Proposal

The Technical Proposal shall contain the components described in Exhibit C, separated and labeled appropriately and organized; and included as a separate electronic package.

The Technical Proposal shall be consistent with the requirements in the DB Documents. In drafting the Technical Proposal, Proposers shall use the versions of any manuals, guidelines or specifications, including but not limited to those identified in the Technical Provisions, that are in effect at the date of the RFP advertisement, unless expressly provided otherwise.

4.2.3 Price Proposal

The Price Proposal shall contain the components described in Exhibit D, separated and labeled appropriately and organized; and included as a separate electronic package.

Any financial statements or updates to financial statements, as required for Proposers acting as a Joint Venture or Partnership, shall be submitted electronically to the extent possible, including links to SEC filings.

If a Proposer is not a Joint Venture or Single Purpose Entity, the Price Proposal should only consist of an electronic submittal containing the required components described in Exhibit D.

4.3 Submission of Proposals

Proposers shall submit three separate packages to GDOT containing the contents described below:

(a) Administrative Information Submittals – Package 1

a. One electronic copy of the Administrative Information Submittals.

Submit the Administrative Information Submittals package to the e-Builder site in the following folder location: Documents \ 20 [Proposer] \ A Administrative Proposal.

(b) Technical Proposal – Package 2

a. One electronic copy of the Technical Proposal.

b. One electronic copy of the Proposal Schedule in "PDF" as described in Exhibit C.

Submit the Technical Proposal package to the e-Builder site in the following folder location: Documents \ 20 [Proposer] \ B Technical Proposal.

(c) Price Proposal – Package 3

a. One electronic copy of the Price Proposal (Financial Information Only) in both PDF and original/native file format(s) including the associated electronic files used to develop the proposal.

Submit the Price Proposal package to the e-Builder site in the following folder location: Documents \ 20 [Proposer] \ C Price Proposal. The Price Proposal package will remain locked down and unopened by GDOT until the Letting date specified in Section 1.4. A document showing the access history of the Price Proposal package prior to Letting will be added to the Procurement records.

Proposers shall submit and individually name all components making up its Proposal as follows:

[Name of Proposer]_Statewide ITS DMS Project_[Proposal Type]

Proposal Type = Administrative Information Submittals, Technical Proposal, or Price Proposal, as appropriate.

Proposers shall name all files using only standard English alphabet characters, Arabic numerals, underscore, or period. File names shall not exceed 100 characters, including spaces. Proposers shall shorten or abbreviate the Proposer's name, as may be required, to keep to the 100-character limit for all submissions where the file name is prescribed under this ITP.

Proposals shall be uploaded to the relevant folder location on the e-Builder site no later than the Proposal Due Date (as specified in Section 1.4).

When the Proposal has been uploaded to the e-Builder site, the Proposer shall notify the Contracting Officer via email. Acknowledgment of receipt of Proposals will be evidenced by the issuance of a receipt by the Contracting Officer via email. GDOT will not accept Proposals submitted via facsimile or e-mail.

GDOT will not accept any Proposals submitted after the Proposal Due Date and time as specified in Section 1.4. Any Proposals received after the specified time on the Proposal Due Date will be rejected and not considered. Proposers are solely responsible for ensuring that GDOT receives their Proposals by the specified time on the Proposal Due Date. GDOT shall not be responsible for delays in delivery caused by weather, technical difficulties, and other occurrences beyond the control of GDOT.

4.4 Disclosure of Proposals

No Proposal shall be made public until the procurement phase of the Project, including any evaluation, negotiations, award and execution of the DB Documents, has been completed.

It is GDOT's intent to post to the GDOT Design-Build webpage all Technical Proposals, upon the execution of the DB Documents and issuance of Notice to Proceed (NTP) 1.

4.5 Validity of Proposals

Proposals submitted and not withdrawn as of the Proposal Due Date shall be valid for a period of 120 days commencing on the Proposal Due Date. No Proposer shall withdraw its Proposal within the 120 day period, unless notified by GDOT that (i) the DB Documents for the Project will not be awarded by GDOT pursuant to the RFP or (ii) GDOT has awarded the DB Documents to another Proposer, has received the executed DB Documents and other required documents, and does not intend to award the DB Documents to the Proposer that is requesting the withdrawal of the submitted Proposal.

Any Proposer may elect, in its sole discretion, to extend the validity of its Proposal beyond the time periods set forth above.

4.6 Proposal Bond

Each Proposer shall submit a Proposal Bond, as described in Exhibit D and in the form provided in Form D.

4.7 Forfeiture of Proposal Bond

Each Proposer understands and agrees that if it has submitted and not withdrawn its Proposal as of the Proposal Due Date and (i) withdraws any part or all of its Proposal (without the written consent of GDOT) while the Proposal is valid or (ii) if it is selected as the Apparent Successful Proposer pursuant to Section 6.2 or Section 6.2.2 should refuse or be unable to furnish any commitments made in its Proposal, GDOT shall be entitled to draw on the Proposal Bond in its entirety.

The Proposer acknowledges that the forfeiture of the Proposal Bond constitutes liquidated damages and is not a penalty, and the amount forfeited is fair and reasonable. Such payment represents a reasonable estimate of fair compensation to GDOT for the work required to re-procure the Project and the reputational losses which may accrue.

Subject to Section 6.2.1, GDOT will retain the Proposal Bond for all Proposers until the DB Documents have been fully executed, GDOT has canceled the RFP or the conclusion of the validity period described in Section 4.5; after which GDOT will return the Proposal Bond for each unsuccessful Proposer, except any Proposal Bond drawn upon by GDOT. Further, GDOT shall return the Proposal Bond to the Apparent Successful Proposer within two Business Days of GDOT's receipt of the Payment and Performance (P&P) Bonds, in accordance with Section 5.6.

The Proposer understands that any material alteration, as determined by GDOT in its sole discretion, of documents specified in this Section 4 including the Form of Proposal Bond (Form D), will render the Proposal non-responsive and non-compliant, unless such alteration was authorized by GDOT in writing prior to the Proposal Due Date.

4.8 Cost of Preparing Proposal

The cost of preparing the Proposal and any costs incurred at any time before or during the Proposal process shall be borne by the Proposer.

4.9 Non-Compliant Proposal

The Proposer shall submit a Proposal that provides all the information required by the ITP. If the Proposal does not fully comply with these requirements, GDOT may deem the Proposal non-responsive in which case the Proposer shall be disqualified. In addition, GDOT may consider Proposals non-responsive and the Proposer disqualified for the following reasons:

(a) If the Proposal is not submitted in the format specified in this ITP, is illegible or is incomplete;

(b) If the Proposal contains multiple, conditional or alternate Proposals or contains any omission, erasures, alterations, unauthorized additions or other irregularities of any kind; or

(c) If the Proposer is in arrears in the payment of any obligation due and owing the State, including the payment of taxes and employee benefits.

4.10 Insurance Requirements

Proposers are cautioned to carefully review the minimum insurance requirements set forth in the DB Documents and to take these minimum requirements into account in putting together their Technical Proposal and Price Proposal.

SECTION 5.0 EVALUATION PROCESS AND CRITERIA

Upon GDOT's receipt of the Proposals, GDOT will proceed to review the Proposals using the pass/fail factors set forth in Section 5.1. As set forth in Section 5.4, the evaluation process may, at GDOT's sole discretion, include a request for revised Proposals. GDOT will determine which Proposal is the Apparent Successful Proposer in accordance with the selection process set forth in this Section 5.

GDOT may, in its sole discretion, reject all Proposals or advertise for new Proposals, if, in the judgment of GDOT, the best interests of the public will be promoted by doing so.

5.1 Pass/Fail and Responsiveness Evaluation

Each Proposal will be reviewed for responsiveness based on the pass/fail criteria set forth in this Section 5.1. Each Proposer must satisfy each pass/fail requirement set forth in Sections 5.1.2 through 5.1.4 and be deemed to have submitted a responsive Proposal pursuant to Section 5.1.1 in order for GDOT to consider the Proposal responsive. Proposers are advised that failure to achieve a "pass" rating on any "pass/fail" factor will result in GDOT declaring the Proposal non-responsive and the Proposer being disqualified. Prior to making such determination, GDOT may, in its sole discretion, request clarifications of the information submitted in the Proposal (see Section 5.3).

5.1.1 Responsiveness

Proposers that GDOT determines are non-responsive as set forth in Section 5.1 may be excluded from further consideration. Proposers will be advised regarding a determination of non-responsiveness.

5.1.2 Administrative Information Submittals Pass/Fail Requirements

The Administrative Information Submittals will be reviewed on a pass/fail basis to determine if it meets the requirements of Exhibit B.

5.1.3 Technical Proposal Pass/Fail Requirements

The Technical Proposal will be reviewed on a pass/fail basis to determine if it meets the requirements of Exhibit C.

5.1.4 Price Proposal Pass/Fail Requirements

The Price Proposal will be reviewed on a pass/fail basis to determine if it meets the requirements of Exhibit D.

5.2 Proposal Evaluation

The Proposer submitting the lowest-price responsive Proposal will be identified as the Apparent Successful Proposer.

5.3 Requests for Clarification

GDOT may at any time issue one or more requests for clarification to the individual Proposers, requesting additional information or clarification from a Proposer, or may request a Proposer to

verify or certify certain aspects of its Proposal. Any requests for clarification shall be in writing to the Proposer's designated representative and posted to the e-Builder site in the following folder location: Documents \ 20 [Proposer] \ D Request for Clarification. Proposers shall respond to any such requests within two Business Days (or such other time as is specified by GDOT) from receipt of the request. The scope, length and topics to be addressed in clarifications shall be prescribed by, and subject to the discretion of GDOT. Any responses to GDOT shall be uploaded by the e-Builder site to the above folder location. When the response to the Request for Clarification has been uploaded to the e-Builder site, the Proposer shall notify the Contracting Officer via email.

Upon receipt of requested clarifications and additional information as described above, if any, the Proposals may be re-evaluated to factor in the clarifications and additional information.

5.4 Request for Proposal Revisions

GDOT may, at any time after receipt of Proposals and prior to opening of the Price Proposal, determine that it is appropriate to request changes to the Proposals ("Proposal Revisions"). If Proposal Revisions are requested, GDOT will follow the requirements described in 23 CFR Part 636. GDOT may request Proposal Revisions with or without discussions as described therein. The request for Proposal Revisions will identify any revisions to the RFP and will specify terms and conditions applicable to the Proposal Revisions, including identifying a time and date for upload to the e-Builder site. In the event that Proposal Revisions are requested, the term "Proposal," as used in the RFP, shall mean the original Proposal, as modified by the Proposal Revisions.

5.5 Proposal Re-evaluation following Revisions

Upon receipt of Proposal Revisions pursuant to Section 5.4 above, GDOT will re-evaluate the Proposals as revised in accordance with the methodology described in Section 5.2.

5.6 Payment and Performance (P&P) Bonding Requirements

The Apparent Successful Proposer shall deliver to GDOT P&P Bonds in compliance with GDOT Special Provision 103.05 and Form O; and within the timeframe specified in Section 6.2.1.

SECTION 6.0 AGREEMENT AWARD AND EXECUTION

6.1 No Obligation to Award

GDOT shall be under no obligation to award the Project to any Proposer or to award the Project.

6.2 Award and Execution

Unless GDOT rejects all Proposals or cancels this procurement, GDOT shall select as the Apparent Successful Proposer the Proposer submitting the lowest-price responsive Proposal, taking into consideration the evaluation criteria and procedures set forth in Section 5. GDOT's selection of Apparent Successful Proposer with respect to the Project shall be deemed to have occurred upon public notification of such selection.

Following such selection of Apparent Successful Proposer, GDOT and the Apparent Successful Proposer shall finalize the executable versions of the DB Documents, filling in blanks and inserting information that the forms of the DB Documents indicate is required from the Proposal. By submitting its Proposal, each Proposer commits to enter into the form of DB Documents included in the RFP, without variation, except as provided in this paragraph.

6.2.1 Delivery of Drafts, Execution of DB Documents

(a) Within three Business Days following Letting, all Proposers, including the Apparent Successful Proposer, shall provide a hardcopy of the following:

i. the Construction Contractors Bid Opportunity List – Form E in accordance with ITP Exhibit B, Section B.2.1.5.

ii. Proposal Bond – Form D in accordance with ITP Exhibit D, Section D.3.3.

(b) Within three Business Days following Letting, the Apparent Successful Proposer shall provide a portable flash drive of the Financial Statements and Financial Capacity Information, if applicable, in accordance with the ITP Exhibit D, Section D.2.

(c) Within 10 days following the posting of the Notice of Award on the Georgia Procurement Registry, the Apparent Successful Proposer shall provide the following:

i. Specimens of the Insurance Policies required under the Agreement for GDOT's review and approval;

ii. Notification to GDOT in writing of the:

a. name and e-mail address of the officer of the company who will sign the contract;

b. company E-Verify number;

c. name of Proposer's surety company (if more than one surety, submit all names and identify which is the controlling surety); and

d. name, e-mail address and telephone number of Proposer's Bonding Agent who will execute as Attorney In Fact on behalf of the surety company.

iii. List of SVDBE participants that at a minimum meet the established SVDBE goal, per Volume 1, Article 10.9.3 (Proposal Submittals).

iv. If the Apparent Successful Proposer is a Joint Venture, Partnership, or single purpose entity; notify GDOT in writing of the name and address of the attorney that will provide the legal opinions set forth on Form S. Such opinion letter may be rendered by in-house or outside counsel, provided that (i) the organization/authorization/execution opinion shall be provided by an attorney licensed in the state of the formation/organization of the entity for which the opinion is rendered (i.e., DB Team, joint venture member, etc.), (ii) the qualification to do business in Georgia and the enforceability opinion shall be provided by an attorney licensed in the state of Georgia, provided, however, that the organization, authorization, or execution opinion for an entity formed or organized under the laws of the state of Delaware may be issued by an in-house or outside counsel duly licensed elsewhere; and

v. If the Apparent Successful Proposer is a Joint Venture, Partnership, or single purpose entity; provide draft legal opinions (consistent with Form S) to GDOT for GDOT's review and approval, not to be unreasonably withheld.

(d) Within 45 days following the posting of the Notice of Award on the Georgia Procurement Registry, such Apparent Successful Proposer shall provide the following:

i. Notification to GDOT in writing of the Proposer's Federal Internal Revenue Service Employer Identification Number.

ii. Notification to GDOT in writing of the name and address of its Georgia registered agent for service of legal process. The Proposer shall not change this authorized agent without prior written notice to GDOT.

iii. Evidence of insurance required to be provided by the DB Team under the DB Documents.

iv. If the Apparent Successful Proposer is a Joint Venture, Partnership, or single purpose entity; then deliver concurrently with the DB Team's execution of the DB Documents the final opinion letter. Prior to GDOT's execution of the DB Documents, the DB Team will provide to GDOT the legal opinion in the form, and from the counsel, previously approved by GDOT.

v. If applicable, complete the establishment of the single purpose entity for the Project and submit certified copies of the single purpose entity-related documents to GDOT as described in Section 1.11.

Should the Apparent Successful Proposer fail to comply with any of the requirements in this Section 6.2.1, GDOT may, in its sole discretion, call upon the Apparent Successful Proposer Proposal Bond in its entirety, provided that Proposer's time period to satisfy the requirements of this Section 6.2.1 shall be extended by the period of delay in the Proposer's ability to execute the Agreement solely and directly caused by the issuance of a temporary restraining order or other form of injunction by a court with jurisdiction that prohibits prosecution of any portion of the Project.

The Proposer acknowledges that the forfeiture of the Proposal Bond constitutes liquidated damages and is not a penalty, and the amount forfeited is fair and reasonable and such payment represents a reasonable estimate of fair compensation to GDOT for the work required to procure the Project and the reputational losses which may accrue.

If any hardcopies will be delivered to GDOT via overnight express service (e.g., FedEx, UPS, etc.), Proposer must notify the Contracting Officer with tracking information at the Project email listed in Section 2.2.1 the day the submittal is sent.

It is contemplated that GDOT will execute the DB Documents no later than 90 days after selection of the Apparent Successful Proposer, subject to such Apparent Successful Proposer's compliance with the terms of this Section 6.2.1.

GDOT will route the DB Documents including the P&P Bonds to the Apparent Successful Proposer for execution via DocuSign®. The Apparent Successful Proposer shall provide GDOT the Surety's Power of Attorney upon executing the DB Documents in DocuSign® with a hardcopy to follow within five Business Days.

6.2.2 Initial Successful Proposer's Failure to Comply

If the initial Apparent Successful Proposer fails to comply with the requirements of Section 6.2.1, GDOT may (in its sole discretion) award the DB Documents to the Proposer whose Proposal was the next lowest priced, responsive proposal; cancel the procurement, re-advertise and complete the work under a different contract; cancel the Project; or pursue any other option it chooses.

6.3 Reserved

6.4 Debriefing of Unsuccessful Proposers

GDOT shall debrief unsuccessful Proposers upon their written request that must be submitted to the Contracting Officer within 30 calendar days of GDOT's posting of the Notice of Award to the Georgia Procurement Registry. Email requests are considered acceptable.

GDOT will prepare a summary of the requesting Proposer's relevant evaluation information and GDOT will provide the information in writing to the requesting Proposer within 30 calendar days after GDOT's issuance of the Project's NTP 1.

After receipt of the written debriefing information, an unsuccessful Proposer may request a debriefing meeting in accordance with GDOT's Design-Build Manual.

6.5 Bid Protest Procedures

Each DB Team, by submitting its Proposal, expressly recognizes the limitation on its rights to protest contained herein, expressly waives all other rights and remedies, and agrees that the decision on any protest, as provided herein, will be final and conclusive. These provisions are included in the RFP expressly in consideration for such waiver and agreement by the DB Team. If a DB Team disregards, disputes, or does not follow the exclusive protest remedies set forth in the RFP, it shall indemnify, defend, and hold harmless GDOT and its respective directors, officers, officials, employees, agents, representatives, advisors and consultants from and against all liabilities, expenses, costs (including attorneys' fees and costs), fees, and damages incurred or suffered as a result of such DB Team's actions. The submission of a Proposal by the DB Team shall be deemed DB Team's irrevocable and unconditional agreement with such indemnification obligation.

Notwithstanding the existence of a protest, GDOT may, in its sole discretion, continue the procurement process or any portion thereof.

If a DB Team elects to protest the bid for this project, as permitted, the DB Team shall submit to the GDOT in writing, signed by a company officer authorized to sign contracts on behalf of the DB Team within the filing period.

At a minimum, the protest must include the following:

(a) the name and address of the Proposer submitting the bid protest;

(b) a statement of grounds for the protest and its factual basis;

(c) supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time (in which case the DB Team must proceed to file the protest within the filing period, but state the expected availability of the material supporting its claim); and

(d) the desired remedy.

The DB Team is required to identify all grounds for protest during the protest filing period. GDOT, at its discretion, may deem issues not raised in the protest filing period as voluntarily relinquished by the protesting DB Team. After the protest filing period expires, any grounds for protest voluntarily relinquished by the protesting DB Team may not be introduced by the protesting DB Team at any time during the protest process or any subsequent litigation.

The DB Team shall label all packages comprising its bid protest as follows:

Statewide ITS DMS Deployment Design-Build Project

Bid Protests shall be delivered no later than 30 calendar days from Project letting to:

Georgia Department of Transportation
Attention: Chip Meeks
Office of Innovative Delivery / P3 Division
One Georgia Center
600 West Peachtree Street, NW
Atlanta, Georgia 30308

GDOT shall issue a written decision on the protest within 30 days of the submittal of the protest, and the decision shall be final, conclusive and non-appealable.

SECTION 7.0 NON-RESPONSIVE TECHNICAL PROPOSAL PROCEDURES

7.1 GDOT's Responsibilities

In the event GDOT deems a Proposer's Technical Proposal non-responsive, GDOT shall, within two Business Days of such determination, provide each non-responsive Proposer a written explanation as to the reason(s) that their Technical Proposal was deemed non-responsive. An email is considered a proper written notification.

7.2 Proposer's Responsibilities

Upon receipt of GDOT's written explanation, the Proposer shall have five Business Days to request GDOT reconsider the non-responsiveness determination. The Proposer's request shall be in writing to the Contracting Officer; shall clearly state the reasons the Proposer believes that GDOT's determination is in error; and shall include supporting documentation as the Proposer deems appropriate.

7.3 Technical Proposal Resolution

Upon GDOT's receipt of a Proposer's written request for reconsideration of the non-responsiveness determination, GDOT will respond in writing within three Business Days with a final determination or an estimate of when a final determination will be made.

7.4 Time Frames

The time frames included are approximate and may be modified by GDOT.

7.5 Costs and Damages

All costs for requests for GDOT to reconsider the non-responsiveness determination shall be the responsibility of the Proposer and shall be undertaken at the Proposer's expense.

SECTION 8.0 GDOT'S RIGHTS AND DISCLAIMERS

8.1 GDOT's Rights

In connection with this procurement, GDOT reserves to itself all rights (which rights shall be exercisable by GDOT in its sole discretion) available to it under applicable law, including without limitation, with or without cause, and with or without notice, the right to:

(a) Develop the Project in any manner that it, in its sole discretion, deems necessary. If GDOT does not execute the Agreement with the Proposer that submitted the Apparent Successful Proposal, GDOT may proceed to the next lowest Price Proposal, terminate this procurement and pursue other development or solicitations relating to the Project, or exercise such other rights under the provisions of State law as it deems appropriate;

(b) Investigate the qualifications of any Proposer under consideration, require confirmation of information furnished by a Proposer, require additional information concerning a Proposer's Proposal, require additional evidence of qualifications to perform the Work, and seek or obtain data from any source that has the potential to improve the understanding and evaluation of the Proposals;

(c) Reject all Proposals;

(d) Reject any Proposals received for non-responsiveness to or non-compliance with the RFP requirements;

(e) Issue a new RFP;

(f) Cancel, modify, or withdraw the RFP in whole or in part at any time prior to the execution of the DB Documents, including adding or deleting Proposer responsibilities contained in the RFP;

(g) Modify all dates set or projected in the RFP, including this ITP;

(h) Issue Amendments;

(i) Review Proposals for adequate SVDBE participation to include review and analysis of the Proposers SVDBE Plan to ensure that appropriate goal attainment and Good Faith Effort considerations are contained within the Proposal and that those considerations contemplate the utilization of SVDBE firms throughout the life of the Project in both the preconstruction and construction phases;

(j) Appoint evaluation committees to review Proposals and seek the assistance of outside technical experts and consultants in evaluating the Proposals;

(k) Accept and review non-conforming Proposals or seek and receive clarifications or supplements to a Proposal;

(l) Waive minor irregularities in Proposals. Minor irregularities are defined as those that will not have an adverse effect on GDOT's interest and will not give a Proposer an advantage or benefit not enjoyed by other Proposers;

(m) Suspend and terminate the procurement at any time; and/or

(n) Exercise any other right reserved or afforded to GDOT under this ITP and applicable law.

8.2 Disclaimers

The RFP does not commit GDOT to enter into an Agreement, nor does it obligate GDOT to pay for any costs incurred in preparation and submission of Proposal(s) or in anticipation of the DB Documents. By submitting a Proposal, a Proposer disclaims any right to be paid for such costs.

In no event shall GDOT be bound by, or be liable for, any obligations regarding the Work or the Project until such time (if at all) as the DB Documents have been executed, authorized and delivered. In submitting a Proposal in response to the RFP, the Proposer is specifically acknowledging these disclaimers.

EXHIBIT A

ACRONYMS AND DEFINITIONS

Refer to Volume 1, Exhibit 1 of the RFP.

EXHIBIT B

ADMINISTRATIVE INFORMATION SUBMITTALS REQUIREMENTS

B.1 General Instructions

This Exhibit B describes the required information and submission format regarding Administrative Information Submittals. Proposers shall submit the administrative information required by this Exhibit B, separated and labeled appropriately.

B.2 Contents of the Administrative Information Submittals

Proposers are to provide all information set out in this Exhibit B. Note that Form E is to be submitted separately within three Business Days following Letting.

The Administrative Information Submittals shall consist of the following major elements: Proposer information, certifications, and documents (including required forms), submitted in the sequence below.

B.2.1. Proposer Information, Certifications and Documents

B.2.1.1 List of Confidential, Trade Secret or Proprietary Information (if Applicable)

If deemed applicable by the Proposer, the Proposal shall include a page executed by the Proposer that sets forth the specific items the Proposer deems confidential, trade secret, or proprietary information protected from public disclosure under the Open Government Laws, in accordance with Section 4.2 of the ITP.

B.2.1.2 Proposal Letter – Form A

The Proposal shall include the Proposal Letter (Form A). The Proposer shall attach to the Proposal Letter evidence of authorization to execute and deliver the Proposal and the DBA, shall identify its authorized representative(s) and shall include all necessary authorization documents (as requested in the Proposal Letter – Form A). Note that additional requirements applicable to single purpose entities and joint ventures are included in Form A.

B.2.1.3 Non-Collusion Affidavit – Form B

The Proposal shall include Form B, certifying that the Proposal is not the result of and has not been influenced by collusion. Note that multiple parties are required to execute copies of Form B.

B.2.1.4 Conflict of Interest Disclosure Statement – Form C

Pursuant to Section 1.5.3, the Proposal shall include a certification on Form C describing potential organizational conflicts of interest, including disclosure of all relevant facts concerning any past, present, or currently planned interest that may present an organizational conflict of interest. Note that multiple parties are required to execute copies of Form C.

B.2.1.5 Construction Contractors Bid Opportunity List – Form E

The Proposer shall submit a completed Construction Contractors Bid Opportunity List as specified in Form E detailing a listing of all firms participating or attempting to participate, on this Project, within three Business Days following Letting.

B.2.1.6 Participating Members, Contractors and Key Personnel Commitment – Form G

The Proposal shall include a completed Form G confirming the identity, current availability and commitment to the Project of the Participating Members, Major Non-Participating Members and Key Personnel.

B.2.1.7 Reserved

B.2.1.8 Reserved

B.2.1.9 Reserved

B.2.1.10 Debarment and Suspension Certification – Form L

The Proposal shall include an executed copy of Form L, regarding debarment and suspension of contractors.

B.2.1.11 Reserved

B.2.1.12 Georgia Security and Immigration Compliance Act Affidavit – Form R

The Proposal shall include an executed copy of Form R, regarding participation in the Employment Eligibility Verification Program for the Lead Contractor.

B.2.1.13 Drug Free Workplace – Form T

The Proposal shall include an executed copy of Form T, regarding Drug Free Workplace. Note that multiple parties are required to execute copies of Form T.

B.2.1.14 Certification of Compliance with the State of Georgia's Sexual Harassment Prevention Policy – Form U

The Proposal shall include an executed copy of Form U, regarding compliance with sexual harassment prevention.

B.2.1.15 Certification Form – Form V

The Proposal shall include a completed and notarized copy of the Certification Form (Form V) for the Lead Contractor and Lead Design Consultant for each team.

B.2.1.16 Reserved

B.2.1.17 Draft Single Purpose Entity Corporate Formation Documents

If Proposer contemplates the creation of one or more single purpose entities as the party to execute the DB Documents, the Proposal shall include a statement acknowledging that the organizational documents for the single purpose entity(ies) will be provided in accordance with Section 6.2.1 of the ITP and the Proposal shall include applicable draft documents for such entity.

B.2.1.18 Executed Copy of Partnering/Consortium Agreement

If the Proposer is a consortium, partnership or any other form of joint venture, the Proposal shall contain an executed teaming agreement or, if the entities making up the Proposer have not executed a teaming agreement, a summary of the key terms of the anticipated agreement.

B.2.1.19 Qualifications Package

The qualifications package shall include:

(a) A matrix showing the required Area Class(es) listed in ITP Section 1.10.2 held, by firm, for the Lead Contractor and Lead Design Consultant(s) and subconsultants**.**

(b) A copy of the "Notice to Professional Consultant Qualifications" for each firm that meets one or more of the required area classes. The Notice must be current by the Proposal Due Date stated in ITP Section 1.4.

(c) an organization chart (on one 11X17-inch sheet) of the Proposer's project management organization, including the design, construction, maintenance during construction, and quality organization. Identify at a minimum all Key Personnel listed on Form G.

(d) A copy of the Lead Contractor's GDOT Certificate(s) of Qualification. A Lead Contractor may be joint bidders as permitted by Rule 672-5-.13, or a joint venture (JV)**,** all subject to the submittal requirements identified in this RFP. Such Certificate(s) must be current by the Proposal Due Date stated in ITP Section 1.4.

For joint venture entities that do not have a GDOT Certificate of Qualification as a joint venture and for joint bidder submittals, each entity must submit its qualifications separately.

(e) Information (resume) pertaining to each Key Personnel position (identified on Form G) including but not limited to:

i. Education

ii. Registration (as applicable and as identified on Form G)

iii. Years of experience by major role or assignment (list as "From (month/year) – To (month/year)"). A minimum of ten (10) years of experience is required for each Key Personnel position

B.3 Signed Amendment(s) Acknowledgement(s)

The Proposal shall include signed Amendment(s) acknowledgement(s), as applicable.

B.4 No Contract Sum Information

NO PART OF THE ADMINISTRATIVE INFORMATION (INCLUDING, WITHOUT LIMITATION, DELIVERABLES UNDER SECTIONS B.2.1.17 OR B.2.1.18) SHOULD CONTAIN THE PROPOSER'S PROPOSED CONTRACT SUM OR OTHER INFORMATION THAT WOULD ALLOW SUCH CONTRACT SUM TO BE CALCULATED.

EXHIBIT C

TECHNICAL PROPOSAL SUBMITTAL REQUIREMENTS

The Proposer shall submit the Technical Proposal in accordance with this Exhibit C, submitted in the sequence indicated in Section C.1 below. The Technical Proposal shall be labeled appropriately and organized. Proposers shall not amend the order or change the section headings. The Technical Proposal shall be limited to an aggregate of six pages.

The Technical Proposal page count shall be as follows:

Section C.1.1: One page each for Lead Contractor and for Lead Design Consultant
Section C.1.2: Two pages maximum; note C.1.2(c) schematic plans will be excluded from page count
Section C.1.3: Two pages maximum
Total pages: six

The organization chart and high-level Proposal Schedule output shall be submitted on 11X17-inch sheets. Each 11X17-inch sheet will be counted as one page.

All other pages shall be on 8-1/2X11-inch sheets.

Do not provide dividing sheets within the Technical Proposal.

C.1 Technical Proposal

The Technical Proposal shall include the following:

C.1.1. Information regarding DB Team

Provide basic company information for the Lead Contractor and for the Lead Design Consultant:

a. Company name(s)
b. Company address(es)
c. Name of primary contact and all contact information including telephone number(s) and e-mail address.
d. Company website(s) (if available)
e. If the company has multiple offices, include information about the parent company and branch office(s) separately. Identify the office from which the Project will be managed.
f. Provide form of ownership (whether it is a sole proprietorship, partnership, corporation, Limited Liability Corporation (LLC), joint venture, or other structure), including state of residency or incorporation, and the number of years in business.

C.1.2. Project Approach Narrative

Provide a brief Construction Staging and Traffic Management narrative addressing the approach to accommodate and minimize impacts to traffic during construction. The narrative shall discuss:

(a) How the construction phasing will be accomplished, identifying the most significant known and anticipated Project challenges (no more than five) to the construction phasing and how they will be addressed, and the overall traffic management and control and sequencing approach.

(b) Indicate how Proposer's approach to design and construction of the Project differs materially from the design indicated in any of the RIDs.

(c) Provide a narrative describing the overall management approach and how the Proposer plans to address continuity of Work.

(d) Provide a copy of the organization chart submitted as part of the qualifications package per Exhibit B, Section B.2.1.19.

C.1.3. Proposal Schedule

Provide a high-level Proposal Schedule summary output (on maximum of two 11X17 inch sheets) that identifies:

(a) Major design activities.

(b) Major construction activities.

(c) Permit and/or environmental related work restrictions.

(d) Other activities and/or restrictions that the Proposer chooses to identify.

Show NTP 1 as the initial activity. Assume NTP 1 occurs 60 days after Letting (Selection of Apparent Successful Proposer) for purposes of the Proposal Schedule only.

C.2 Project Differences from Reference Information Documents (RIDs)

The Proposer shall indicate how its approach to any of the design and construction of the Project differs materially from the design provided in the RIDs.

Schematic Plans are not required. However, the Proposer shall clearly identify any differences in the RIDs in its Proposal. The Proposer may choose to use Schematic Plans to illustrate the differences. Schematic Plans of the Project will not count towards the Proposal's page limit.

C.3 No Contract Sum Information

NO PART OF THE TECHNICAL PROPOSAL, INCLUDING THE PROPOSAL SCHEDULE, SHOULD CONTAIN THE PROPOSER'S PROPOSED CONTRACT SUM OR OTHER INFORMATION THAT WOULD ALLOW SUCH CONTRACT SUM TO BE CALCULATED.

EXHIBIT D

PRICE PROPOSAL AND PROPOSAL BOND SUBMITTAL REQUIREMENTS

The Proposer shall submit the Price Proposal in accordance with this Exhibit D. The Price Proposal shall be separated and labeled appropriately and organized in accordance with the following requirements.

Provide a dividing sheet to separate any Financial Statements and the Other Financial Capacity Information (if required) from the Forms D, F, and I. Dividing sheets are not required to separate the Forms individually.

D.1 General Instructions

This Exhibit D describes the required information and submission format for the Price Proposal.

The Proposer shall submit the information required by this Exhibit D in the format specified herein. The Proposer shall not amend the order or change the section headings. Each component of the Price Proposal shall be clearly titled and identified.

All Forms named herein are attached to the ITP. All blank spaces in the Proposal Forms must be filled in as appropriate. No substantive change shall be made in the Proposal Forms.

The Proposer shall indicate their Proposal Price as indicated on Form F.

D.2 Format of Price Proposal

All financial information provided in the Price Proposal shall be in U.S. Dollar currency only and all amounts shall be clearly identified as nominal dollars.

If there are any differences between the sum of the individual line amounts and totals, the individual line amounts will prevail.

If required due to the Proposer being a single purpose entity or Joint Venture, Financial Statements and Financial Capacity Information shall be submitted in a separate file in accordance with Sections D.3.1 and D.3.2 below. Note that the Financial Statements and Financial Capacity Information, if applicable, shall be submitted within three Business Days following Letting in accordance with Section 6.2.1.

ALL OTHER REQUIREMENTS OF EXHIBIT D SHALL BE SUBMITTED IN AN ELECTRONIC PACKAGE WITH NAMING AS PER ITP SECTION 4.3. NO OTHER PART OF THE PROPOSAL SHOULD CONTAIN THE PROPOSER'S PROPOSED CONTRACT SUM OR OTHER INFORMATION THAT WOULD ALLOW SUCH CONTRACT SUM TO BE CALCULATED.

D.3 Contents of Price Proposal

D.3.1. Financial Statements (For Single Purpose Entities or Joint Ventures Only)
(provided in separate file per Section D.2)

Subject to Section D.3.2(b) below, the Price Proposal shall include electronic financial statements to the extent available for the Proposer, the Participating Members, and, if applicable, any joint venturers which include Major Non-Participating Members, for all periods subsequent to those statements previously submitted to GDOT during the procurement process.

These subsequent statements must be audited by a certified public accountant in accordance with U.S. Generally Accepted Accounting Standards (GAAP), International Financial Reporting Standards (IFRS) or accompanied by a letter in the form specified in paragraph (f) below.

Financial statements shall be provided in U.S. Dollars where practicable, but financial statements in other currencies will be allowed if the conversion rates for each exhibit are clearly stated and can be confirmed. If audited financial statements are not available for a Participating Member or Major Non-Participating Member, the Proposal shall include unaudited financials for such member, certified as true, correct and complete by the chief financial officer or treasurer of the entity.

If audited financial statements are not available, the Proposal shall include unaudited financial statements for such entity, certified as true, correct and accurate by the chief financial officer or treasurer of the entity.

The financial statements, whether for the most recent completed fiscal year or for the period since the most recent completed fiscal year, must include the following:

(a) Opinion Letter (Auditor's Report).

(b) Balance Sheet.

(c) Income Statement.

(d) Statement of Changes in Cash Flow.

(e) Notes to the financial statements.

(f) If financial statements are prepared in accordance with principles other than U.S. GAAP or IFRS, a letter must be provided from the certified public accountant of the applicable entity, addressing the areas of the financial statements that would be affected by a conversion to U.S. GAAP or IFRS, and the financial impact thereof. A restatement of the financial information in U.S. GAAP or IFRS is not required.

D.3.2. Other Financial Capacity Information (For Single Purpose Entities or Joint Ventures Only)

(a) **Newly Formed Entity** - If the Proposer is a newly formed entity and does not have independent financial statements, financial statements for the Participating Members and Major Non-Participating Members (if any) and, if applicable, any joint ventures making up the Major Non-Participating Members, shall be sufficient

(and the Proposer shall expressly state that the Proposer is a newly formed entity and does not have independent financial statements – but shall nonetheless provide sufficient background information on such entity – i.e. organizational, legal, ownership structure, initial funding, purpose, etc.).

(b) **SEC Filings** - If any other entity for whom financial information is submitted hereby files reports with the Securities and Exchange Commission (SEC), then such reports shall be provided through a copy of their annual report on Form 10-K. Also, for all subsequent quarters, provide a copy of any report filed on Form 10-Q or Form 8-K which has been filed since the latest filed 10-K. If any of these reports have previously been submitted to GDOT during the procurement process, they are not required to be resubmitted.

(c) **Credit Ratings** - Credit ratings must be supplied for the Proposer, each Participating Members, each Major Non-Participating Members (if any), each joint venturer making up the Major Non-Participating Members (if applicable) and each Guarantor, to the extent such entities have credit ratings. If no credit ratings exist, include a statement specifying that no credit ratings exist for that entity. If the ratings have been submitted and not changed (and there has not been a change on the rating outlook either, i.e. positive, neutral or negative), there is no need to resubmit.

(d) **Material Changes in Financial Condition -** A letter from the chief financial officer ("CFO") or treasurer of the Proposer, each Participating Member, each Major Non-Participating Member (if any), each joint venturer making up the Major Non-Participating Members (if applicable) and each Guarantor, in each case providing information on any material changes in financial condition of such entity and, if applicable, its direct or indirect parent entities that are pending. Additionally, Proposers shall be required to provide updated financial information following the Proposal Due Date if the dissemination of such information is permitted by law.

At the discretion of GDOT, any failure to disclose a prior or pending material change may result in disqualification from further participation in the selection process. In instances where a material change has occurred, or is anticipated, the affected entity shall provide a statement describing each material change in detail, the likelihood that the developments will continue during the period of performance of the project development, and the projected full extent of the changes likely to be experienced in the periods ahead. Estimates of the impact on revenues, expenses and the change in equity shall be provided separately for each material change as certified by the CFO or treasurer. References to the notes in the financial statements are not sufficient to address the requirement to discuss the impact of material changes. The affected entity shall also provide a discussion of measures that would be undertaken to insulate the project from any recent material adverse changes, and those currently in progress or reasonably anticipated in the future. If the financial statements indicate that expenses and losses exceed income in the most recent completed periods (even if there has not been a material change), the affected entity shall provide a discussion of measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.

The following list identifies certain items that GDOT would consider a material change in financial condition. This list is intended to be indicative only.

List of Indicative Material Changes:

i. An event of default or bankruptcy involving the affected entity, a related business unit within the same corporation, or the parent corporation of the affected entity.

ii. A downward change in tangible net worth of 10% of shareholder equity.

iii. A sale, merger or acquisition exceeding 10% of the value of shareholder equity prior to the sale, merger or acquisition which in any way involves the affected entity, a related business unit, or parent corporation of the affected entity.

iv. A downward change in credit rating for the affected entity, a related business unit, or parent corporation of the affected entity.

v. Inability to meet conditions of loan or debt covenants by the affected entity, a related business unit or parent corporation of the affected entity which has required or will require a waiver or modification of agreed loan stipulations, or additional credit support from shareholders or other third parties.

vi. The affected entity, a related business unit in the same corporation, or the parent corporation of the affected entity either: (i) incurred a net operating loss; (ii) sustained charges exceeding 5% of the then shareholder equity due to claims, changes in accounting, write-offs or business restructuring; or (iii) implemented a restructuring/reduction in salaried personnel exceeding 200 positions or involving the disposition of assets exceeding 10% of the then shareholder equity.

vii. Other events known to the affected entity, a related business unit or parent corporation of the affected entity which represents a material change in financial condition that may be pending for the next reporting period.

(e) **Letter of Parent Company Support -** Where a Participating Member or Major Non-Participating Member of a Proposer team is a subsidiary of another company, provide a letter from the parent company, signed by a parent company officer, confirming their intention to support the subsidiary's participation in the Project. This letter must clearly state that the parent company will provide the financial support and human resources needed by the subsidiary to successfully carry out the Project.

(f) **Off-Balance Sheet Liabilities** - A letter from the CFO, treasurer or certified public accountant for each entity for which financial information is submitted, identifying all material off balance sheet liabilities.

(g) **Non-recourse financing -** A letter from the CFO, treasurer or certified public accountant for each entity for which financial information is submitted, identifying the amount of non-recourse financing on the balance sheet.

The information required under this Section D.3.2 shall be packaged separately for each separate entity with a cover sheet identifying the name of the organization and its role in the Proposer's organization (i.e., Participating Member).

D.3.3. Proposal Bond – Form D

In accordance with Section 4.6 of the ITP, the Proposal shall include a properly executed Proposal Bond in the amount described in the form provided in Form D (Form of Proposal Bond).

D.3.4. SVDBE Certification and Program Description – Form I

The Proposal shall include an executed copy of Form I confirming, among other things, that the Proposer will make a good faith effort to obtain SVDBE commitments equal to or exceeding the SVDBE participation goal provided in Form I.

The Proposal shall also include a commitments list for the project as specified in Form I.

D.3.5. Contract Sum Information - Form F

The Proposal shall include the completed Form F. Such Contract Sum shall include all DB Team costs and expenses. The Proposal shall also include Form D.

D.4 Verification

Each Proposer shall satisfy itself as to the costs and tax consequences of entering into a DBA. GDOT makes no representations or warranties, express or implied, and assumes no liability whatsoever, with respect to costs or the consequences of federal or state income tax treatment of DB Team under the DBA.

EXHIBIT E

RESERVED

EXHIBIT F

LIST OF GDOT PROJECT TEAM

A list of restricted firms (including any affiliates) include:

- ARCADIS
- Gude Management Group
- HNTB Corporation
- Southeastern Engineering, Inc.

EXHIBIT G

LIST OF SHAREPOINT DOCUMENTS

Type	Sharepoint Documents*	Posting Dates
RFP	**DB Contract**	**10/2/2020**
RID	**Environmental Studies**	**10/2/2020**
RID	**MicroStation Files**	**10/2/2020**
RID	**Concept Reports**	**TBD**
RID	**Existing Roadway Information**	**10/2/2020**
RID	**Traffic**	**10/2/2020**
RID	**Utilities**	**10/2/2020**
RID	**Other Documents**	**10/2/2020**

*Documents are posted to the Sharepoint for the Project. Each Proposer is to check the Sharepoint site regularly for additions or revisions to the documents. Other documents not listed above may be posted as well.

FORM A

Proposal Letter

PROPOSER: _____

Proposal Date: _____, 2020

Georgia Department of Transportation
One Georgia Center
600 West Peachtree Street, NW
Atlanta, Georgia 30308

The undersigned (**"Proposer"**) submits this proposal (this **"Proposal"**) in response to that certain Request for Proposals (the "**RFP**") issued by the Georgia Department of Transportation (**"GDOT"**), an agency of the State of Georgia, dated October 2, 2020, as amended, to develop the Statewide ITS DMS Deployment Design-Build Project (the "**Project**"), as more specifically described herein and in the documents provided with the RFP. Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP.

In consideration for GDOT supplying us, at our request, with the RFP and agreeing to examine and consider this Proposal, the undersigned undertakes [jointly and severally] ***[if the Proposer is a joint venture or association other than a corporation, limited liability company or a partnership, leave in the words "jointly and severally," otherwise delete]***:

a) to keep this Proposal open for acceptance for a period of 120 Calendar Days without unilaterally varying or amending its terms and without any member or partner withdrawing or any other change being made in the composition of the partnership/joint venture/limited liability company/consortium on whose behalf this Proposal is submitted, without first obtaining the prior written consent of GDOT, in GDOT's sole discretion; and

b) to provide security (including bonds and insurance) for the due performance of the Design-Build Agreement (the **"DBA"**) as stipulated therein.

If selected by GDOT, the Proposer agrees to: (a) enter into the DBA and satisfy all other conditions to execute the Design-Build Documents as set forth in Section 6 of the Instructions to Proposers (**"ITP"**) included in the RFP; and (b) perform its obligations as set forth in the Design-Build Documents, including compliance with all commitments contained in this Proposal.

Enclosed, and by this reference incorporated herein and made a part of this Proposal, are the following Proposal components:

- Administrative Information Submittals;
- Technical Proposal; and
- Price Proposal

The Proposer acknowledges receipt, understanding and full consideration of the following:

- ***[list any amendments to the RFP]***

The Proposer certifies the following: the Proposal is submitted without reservation, qualification, assumptions or conditions; the Proposer has carefully examined and is fully familiar with all of the RFP documents and is satisfied that the RFP documents provide sufficient detail regarding the intended "Design-Build Team's" obligations and do not contain internal inconsistencies; the Proposer has carefully checked all the words, figures and statements in the Proposal; the Proposer has conducted such other field investigations and additional design development as is prudent and reasonable in preparing this Proposal; the Proposer has requested clarification or interpretation with respect to any perceived deficiency in or omission from the RFP documents or other documents provided by GDOT; and the Proposer has notified GDOT of any unusual site conditions observed prior to the date hereof.

By signature below and submittal of Form F with the attached Proposal Schedule with the Technical Proposal, the Proposer hereby certifies it has reviewed its Proposal Schedule and Proposal estimates for the Project and that all Work can be completed within the Milestone Deadlines, including all Interim Milestone Deadlines, Substantial Completion Deadline and Final Acceptance Deadline.

Proposer represents that all statements made in the Proposal by the Proposer are true, correct and accurate as of the date hereof. The

The Proposer understands that GDOT is not bound to award the DBA to the Proposer submitting the Proposal with the lowest proposed bid, the highest scoring Proposal, or any Proposal GDOT may receive.

The Proposer further understands that all costs and expenses incurred by it in preparing this Proposal and participating in the RFP process will be borne solely by the Proposer.

The Proposer acknowledges they have read and understand Volume 1, Exhibit 18 and the Liquidated Damages and Nonrefundable Deductions which may be imposed. The amounts of Liquidated Damages and Nonrefundable Deductions represent good faith estimates as to the actual potential damages that GDOT would incur as a result for failure to meet requirements of the Agreement with associated Liquidated Damages and Nonrefundable Deductions.

The Proposer agrees that GDOT will not be responsible for any errors, omissions, inaccuracies or incomplete statements in the Proposal.

The Proposal shall be governed by and construed in all respects according to the laws of the State of Georgia.

Proposer's business address:

_____
(No.) (Street) (Floor or Suite)

_____
(City) (State or Province) (ZIP or Postal Code) (Country)

State or Country of Incorporation/Formation/Organization: _____

[insert appropriate signature block from following pages]

1. Sample signature block for corporation or limited liability company:

[Insert the Proposer's name]

By: _____

Print Name: _____

Title: _____

2. Sample signature block for partnership or joint venture:

[Insert the Proposer's name]

By: *[Insert general partner's or member's name]*

By: _____

Print Name: _____

Title: _____

[Add signatures of additional general partners or members as appropriate]

3. Sample signature block for attorney in fact:

[Insert the Proposer's name]

By: _____

Print Name: _____
Attorney in Fact

[insert appropriate signature block from this page including additional requirements]

ADDITIONAL REQUIREMENTS FOR SINGLE PURPOSE ENTITIES AND JOINT VENTURES ONLY:

Describe in detail the legal and organizational structures of the entity (corporation, partnership, joint venture or limited liability company) making the Proposal. Include the following as applicable:

A. Provide a table or tables showing the legal and organizational structure of the anticipated Design-Build Team and any Major Non-Participating Members entity. This table shall describe the role of all Participating Members, Major Non-Participating Members, and Contractors.

B. Provide the following as noted for corporation, partnership, joint venture or limited liability company.

1. If the Proposer (or any member, partner or joint venturer of the Proposer) is a corporation or includes a corporation as a joint venturer, partner or member, provide the following:

   i. the state or country of incorporation in addition to the business address;

   ii. articles of incorporation and bylaws for the Proposer and each corporation certified by an appropriate individual; and

   iii. With respect to authorization of execution and delivery of the Proposal and validity thereof, provide evidence in the form of a resolution of its governing body certified by an appropriate officer of the corporation.

2. If the Propose (or any member, partner or joint venturer of the Proposer) is a partnership or includes a partnership as a joint venturer, partner or member, provide the following:

   i. the state or country of formation;

   ii. the full names and addresses of all partners and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer and each general partner (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual; and

   iii. With respect to authorization of execution and delivery of the Proposal and validity thereof, provide evidence in the form of a partnership resolution and a general partner resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate officer of the general partner.

3. If the Proposer (or any member, partner or joint venturer of the Proposer) is a joint venture or includes a joint venture as a joint venturer, partner or member, provide the following:

i. the state or country of organization;

ii. the full names and addresses of all joint venturers and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer and each joint venturer (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual; and

iii. with respect to authorization or execution and delivery of the Proposal and validity thereof, provide evidence in the form of a resolution of each joint venturer, certified by an appropriate officer of such joint venturer. If the Proposer is a joint venture or a partnership, the Proposal must be executed by all joint venture members or all general partners, as applicable.

4. If the Proposer (or any member, partner or joint venturer of the Proposer) is a limited liability company or includes a limited liability company as a joint venturer, partner or member, provide the following:

i. the state or country of organization;

ii. the full names and addresses of all members and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer and each member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture) certified by an appropriate individual; and

iii. with respect to authorization of execution and delivery of the Proposal and validity thereof, provide evidence in the form of a limited liability company resolution and a managing member(s) resolution providing such authorization, certified by an appropriate officer of the managing member(s). If there is no managing member, each member shall provide the foregoing information.

iv. Attach evidence to the Proposal and to each letter that the person signing has authority to do so.

C. The Proposer's partnership agreement, limited liability company operating agreement, and joint venture agreement, as applicable, must include an express provision satisfactory to GDOT, in its sole discretion, stating that, in the event of a dispute between or among joint venturers, partners or members, as applicable, no joint venturer, partner or member, as applicable, shall be entitled to stop, hinder or delay work on the Project. Proposers shall submit the applicable agreement to GDOT and identify on a cover page where in the agreement the provision can be found.

FORM B

Non-Collusion Affidavit*

STATE OF _____)
)SS:
COUNTY OF _____)

Each of the undersigned, being first duly sworn, deposes and says that:

A. _____ [name] is the _____ [title] of _____ [firm] and _____ [name] is the _____ [title] of _____ [firm], which entity(ies) are the _____ [relationship to Proposer] of _____, the entity making the foregoing Proposal.

B. The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, joint venture, limited liability company or corporation; the Proposal is genuine and not collusive or a sham; the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham Proposal, and has not directly or indirectly colluded, conspired, connived or agreed with any Proposer or anyone else to put in a sham Proposal or refrained from proposing; the Proposer has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the prices of the Proposer or any other Proposer, or to fix any overhead, profit or cost element included in the Proposal, or of that of any other Proposer, or to secure any advantage against GDOT or anyone interested in the proposed DBA; all statements contained in the Proposal are true; and, further, the Proposer has not, directly or indirectly, submitted its prices or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, joint venture, limited liability company, organization, Proposal depository or any member, partner, joint venture member or agent thereof to effectuate a collusive or sham Proposal.

C. The Proposer will not, directly or indirectly, divulge information or data regarding the price or other terms of its Proposal to any other Proposer, or seek to obtain information or data regarding the price or other terms of any other Proposal, until after award of the DBA or rejection of all Proposals and cancellation of the Request for Proposals.

* Initially capitalized terms not otherwise defined herein shall have the meanings ascribed thereto pursuant to the Instructions to Proposers within the Request for Proposals for the Project.

[*signature page follows*]

(Signature)	(Signature)
(Name Printed)	(Name Printed)
(Title)	(Title)
(Signature)	(Signature)
(Name Printed)	(Name Printed)
(Title)	(Title)
(Signature)	(Signature)
(Name Printed)	(Name Printed)
(Title)	(Title)

Subscribed and sworn to before me this ___ day of _____, 20__.

Notary Public in and for
said County and State

[Seal]

My commission expires: _____.

[Proposers shall duplicate or modify this form as necessary so that it accurately describes the entity making the Proposal and so that it is signed on behalf of all partners, members, joint venture members, Participating Members and Major Non-Participating Members.]

FORM C

Conflict of Interest Disclosure Statement

Proposer's Name: _____ ("Proposer")

The Proposer's attention is directed to Section 1.6.3 of the ITP regarding organizational conflicts of interest and the restrictions applicable to such conflicts. Proposers are advised that certain firms will not be allowed to participate on any Proposer's team for the Statewide ITS DMS Deployment Design-Build Project (the "**Project**") because of their work with GDOT in connection with the Project procurement.*

* Initially capitalized terms not otherwise defined herein shall have the meanings ascribed thereto pursuant to the Instructions to Proposers within the Request for Proposals for the Project.

1. Required Disclosure of Conflicts

In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present, or planned interest(s) of the Proposer's team (including the Proposer, Participating Members, Major Non-Participating Members, proposed consultants and proposed subcontractors, and their respective chief executives, directors, and other key personnel for the project) which may result, or could be viewed as, an organizational conflict of interest in connection with this RFP.

For any facts relating to past, present, or planned interest(s) of the Proposer's team (including the Proposer, Participating Members, Major Non-Participating Members, proposed consultants and proposed subcontractors, and their respective chief executives, directors, and other key personnel for the project) which may result, or could be viewed as, an organizational conflict of interest in connection with this RFP, the Proposer shall disclose (a) any current contractual relationships with GDOT, (b) any past, present, or planned contractual or employment relationships with any officer or employee of GDOT, and (c) any other circumstances that might be considered to create a financial interest in the contract by any GDOT member, officer or employee, if the Proposer is awarded the DBA. The Proposer shall also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, any of the individuals or entities involved in preparing the RFP. The Proposer shall also disclose contractual relationships (i.e. joint ventures) with any of the individuals or entities involved in preparing the RFP, including those identified in ITP Exhibit G, as well as relationships wherein such individual or entity is a contractor or consultant (or subcontractor or subconsultant) to the Proposer or a member of the Proposer's team. The foregoing is provided by way of example, and shall not constitute a limitation on the disclosure obligations.

_____

_____

_____

_____

2. Explanation

In the space provided below, and on supplemental sheets as necessary, identify steps the Proposer or other entities have taken or will take to avoid, neutralize, or mitigate any organizational conflicts of interest described herein.

3. Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

_____
Signature

_____
Name

_____
Title

_____
Company Name

_____, 202_
Date

[Proposers shall duplicate or modify this form as necessary so that it accurately describes the entity making the Proposal and so that it is signed on behalf of all partners, members, joint venture members, Participating Members and Major Non-Participating Members, proposed consultants and proposed subcontractors.]

FORM D

Form of Proposal Bond

Bond No. _____

KNOW ALL PERSONS BY THESE PRESENTS, that the _____, as Principal and _____, as Surety or as Co-Sureties, each a corporation duly organized under the laws of the State indicated on the attached page, having its principal place of business at the address listed on the attached page, in the State indicated on the attached page, and authorized as a surety in the State of Georgia, are hereby jointly and severally held and firmly bound unto the Georgia Department of Transportation ("GDOT"), in the sum of five percent (5%) of the Price Proposal amount of **[insert written Price Proposal total] United States Dollars (US $ [insert numeric Price Proposal total e.g. XX,XXX,XXX])** (the "Bonded Sum"), the payment of which we each bind ourselves, and our heirs, executors, administrators, representatives, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal is herewith submitting its Proposal to design and build Statewide ITS DMS Deployment Design-Build(the "**Project**"), which Proposal is incorporated herein by this reference and has been submitted pursuant to GDOT's Request for Proposals dated as October 2, 2020 (as amended or supplemented, the "RFP");

NOW, THEREFORE, the condition of this bond is such that, upon occurrence of any of the events set forth below in subsections (a)-(c), then this obligation shall be null and void; otherwise it shall remain in full force and effect, and the Bonded Sum will be forfeited to GDOT as Liquidated Damages and not as a penalty, upon receipt by the Principal and Surety or by the Principal and Sureties listed on the attached page (the "Co-Sureties") of notice of such forfeiture from GDOT:

(a) The Principal's receipt of written notice from GDOT that either (i) GDOT will not award the DBA for the Project pursuant to the RFP, or (ii) GDOT has awarded the DBA for the Project, has received the executed DBA and other required documents and does not intend to award the DBA to the Principal;

(b) The Principal's performance of all of its obligations under the RFP in connection with award of the DBA; or

(c) Failure of GDOT to award the DBA to the Principal within one 120 Calendar Days after the Proposal Due Date.

If the Principal shall (i) fail to promptly and properly fully satisfy on a timely basis the conditions for release set forth in (b) above (including, without limitation, any failure to comply on a timely basis with the terms of Section 5.6 of the Instructions to Proposers within the RFP (the "ITP")) or (ii) withdraw its Proposal in a manner that is not permitted by the ITP, the Principal and the Surety or Co-Sureties hereby agree to pay to GDOT the full Bonded Sum herein above set forth, as Liquidated Damages and not as a penalty, within 10 days after such failure.

In accordance with Section 4.6 of the ITP, GDOT shall return this Proposal Bond to the Principal following GDOT's receipt from Principal of conforming Payment and Performance Bonds.

The following terms and conditions shall apply with respect to this bond:

1. If suit is brought on this bond by GDOT and judgment is recovered, the Principal and Surety or Co-Sureties shall pay all costs incurred by GDOT in bringing such suit, including, without limitation, reasonable attorneys' fees and costs as determined by the court.

2. Any extension(s) of the time for award of the DBA that the Principal may be granted in accordance with the ITP or otherwise, shall be subject to the reasonable approval of Surety or Co-Sureties.

3. The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that Obligee will have no obligation to deal with multiple sureties hereunder. All correspondence from Obligee to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The Co-Sureties also agree to designate a single agent for service of process with respect to any actions on this Bond, which agent shall either be (a) a natural person or (b) a corporation qualified to act as an agent for service of process under Georgia law. The designated representative and agent for service of process may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to Obligee designating a single new representative and/or agent, signed by all of the Co-Sureties. The initial representative shall be:

_____

_____

_____
[name and address]

and the initial agent for service of process shall be:

_____

_____

_____
[name and address]

SIGNED and SEALED this _____ day of _____, 20__

_____
Principal

By: _____

_____
Co-Surety

By: _____
Attorney in Fact

By: _____

_____
Co-Surety

By: _____
Attorney in Fact

By: _____

_____
Co-Surety

By: _____
Attorney in Fact

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

CO-SURETIES

SURETY NAME	SURETY ADDRESS	INCORPORATED IN

STATE OF GEORGIA DEPARTMENT OF TRANSPORTATION FORM
EEOP PREQUALIFICATION OFFICE
Revised 05/16/11

FORM E
CONSTRUCTION CONTRACTORS
BID OPPORTUNITY LIST

This information shall be submitted within three Business Days following Letting

---

Prime Contractor/Consultant: _____
Address/Telephone Number: _____
Bid/Proposal Number: _____
Quote Submitted MM/YY: _____

49 CFR Part 26.11 requires the Georgia Department of Transportation to develop and maintain a "bid opportunity list". The list is intended to be a listing of all firms participating or attempting to participate, on DOT assisted contracts. The list must include all firms that bid on prime contracts, or bid or quote subcontracts and materials supplies on DOT-assisted projects, including both DBEs and non-DBEs. For consulting companies, this list must include all subconsultants contacting you and expressing an interest in teaming with you on a specific DOT assisted project. Prime contractors and consultants must provide information for Nos. 1, 2, 3, and 4 and must provide information they have available on Numbers 5, 5.A., 6, 7, 8 and 9 for themselves, and their subcontractors and subconsultants.

1. Federal Tax ID Number: _____
2. Firm Name: _____
3. Phone: _____
4. Address: _____

_____

5. Contact _____
5.A. Company E-mail address _____

6. ☐ DBE
   ☐ Non-DBE
7. ☐ Subcontractor
8. ☐ Subconsultant
9. ☐ Supplier

---

1. Federal Tax ID Number: _____
2. Firm Name: _____
3. Phone: _____
4. Address: _____

_____

5. Contact _____
5.A. Company E-mail address _____

6. ☐ DBE
   ☐ Non-DBE
7. ☐ Subcontractor
8. ☐ Subconsultant
9. ☐ Supplier

---

1. Federal Tax ID Number: _____
2. Firm Name: _____
3. Phone: _____
4. Address: _____

_____

5. Contact _____
5.A. Company E-mail address _____

6. ☐ DBE
   ☐ Non-DBE
7. ☐ Subcontractor
8. ☐ Subconsultant
9. ☐ Supplier

FORM F
Design-Build Price Proposal

Proposer Name: _____

The Proposer shall complete the required fields of Section A below. See Exhibit D for additional explanation and requirements.

The Proposer shall indicate its proposed Contract Sum on this Form F, such Contract Sum shall include all Design-Build Team cost and expenses.

A. Proposal Schedule of Values (SOV)

All items below shall be provided as Lump Sum amounts. If there are any differences between the sum of the individual line amounts and totals, the individual line amounts will prevail.

Payment Activity Description	Scheduled Value
DESIGN COMPLETE	
1. Design	$
CONSTRUCTION	
1. Work Zone Law Enforcement	$
2. Traffic Control	$
3. Erosion Control	$
4. Grading	$
5. Drainage	$
6. Barrier and Guardrail	$
7. Aggregate Base Course	$
8. Asphalt Paving*	$
9. Concrete Paving	$
10. Signing, Striping, and Signal	$
11. ITS	$
12. Lighting	$
13. Utilities	$
Subtotal CONSTRUCTION	$
MISCELLANEOUS ACTIVITIES	
1. General Conditions and Administration**	$
2. Mobilization (not including demobilization) (Not to exceed **2.5%** of Design Complete + Construction)	$
3. Record Drawings, Punch List, Demobilization, and Final Close-out (No less than **1.0%** of Design Complete + Construction)	$
Subtotal MISCELLANEOUS ACTIVITIES	$
CONSTRUCTION COMPLETE	
Subtotal CONSTRUCTION COMPLETE (CONSTRUCTION + MISCELLANEOUS ACTIVITIES)	$
CONTRACT SUM	
CONTRACT SUM (DESIGN COMPLETE + CONSTRUCTION COMPLETE)	**$**

*GDOT Special Provision 109.11 Price Adjustments does not apply to this Project; Asphalt Cement Price Adjustments will not be considered nor made.

** Includes all management, management plans, payment and performance bond, insurance, project management and coordination, home office overhead and support, and quality management.

BY SIGNATURE BELOW AND SUBMITTAL OF THIS FORM F WITH THE PROPOSAL SCHEDULE, THE PROPOSER HEREBY CERTIFIES IT HAS REVIEWED ITS PROPOSAL SCHEDULE AND PROPOSAL ESTIMATES FOR THE PROJECT AND THAT ALL WORK CAN BE COMPLETED WITHIN THE MILESTONE DEADLINES, INCLUDING ANY INTERIM COMPLETION DEADLINES, SUBSTANTIAL COMPLETION DEADLINE AND FINAL ACCEPTANCE DEADLINE.

Date: _____

Signature: _____

Design-Build Team: _____

FORM G

Form of Participating Members, Major Non-Participating Members, Contractors and Key Personnel Commitment

Proposer's Name: _____ (the "Proposer")

The Proposer hereby commits that, if awarded the Statewide ITS DMS Deployment Design-Build Project (the "**Project**"), the Proposer will use the entities and individuals listed below for their stated positions and that, to the extent within the Proposer's control, such entities and individuals will be available to fulfill their Project-related responsibilities.

Lead Contractor: _____

Participating Member: _____

Lead Design Consultant: _____

Key Personnel (Participating Members and Major Non-Participating Members, as appropriate):

- **Lead Contractor Project Manager**: _____
- **Lead Design Consultant Project Manager (GA P.E. required)**: _____
- **Engineer of Record (GA P.E. required)**: _____
- **Contractor Superintendent**: _____
- **Construction Quality Assurance Manager**: _____

Signed: _____

Printed Name: _____

Title: _____

Date: _____

FORM H

RESERVED

FORM I

SVDBE Certification

SMALL, VETERAN, AND DISADVANTAGED BUSINESS ENTERPRISES SPECIAL PROVISION (SVDBE) REQUIREMENTS

The following Project goal for participation by SVDBEs is established for professional services and construction work:

SVDBE GOAL

7% of the overall Project design and construction costs, with respect to the SVDBE participation by the Design-Build Team.

SVDBE Certification

By signing below, the Proposer certifies that (1) the Design-Build Team will provide a good faith effort to meet the goal; (2) the Design-Build Team will direct its efforts toward the utilization of SVDBE firms in both design and construction components of the Project; (3) the Design-Build Team will submit monthly and annual summary reports of the SVDBE goal attainment on the Project, identifying the components of the Project on which SVDBE firms are/have been utilized. See the following page of this form for the Commitments List requirements.

Failure to submit the SVDBE Commitments List will be considered a breach of the requirements of the RFP. As a result, the Proposal Bond provided by the Proposer will become property of GDOT and the Proposer will be precluded from participating in any re-procurement of the DBA for the Project.

_____
[name]

_____
[title]

The SVDBE firms to be utilized as counting toward the proposed goal must be listed on this form, along with their addresses, type of work and the amount to be paid to each of the certified SVDBE firms. The amount entered will not necessarily be the contract amount, but must be the actual amount that will be paid to the SVDBE firm. Attach the SVDBE Commitments list to this Form I; an example of this is shown in Table I-1:

Table I-1: Example SVDBE Commitments Chart

Vender Number	Company Name and Address (City and State)	Type of Work	*Work Code	Race Neutral	Race Conscious	Amount
	ABC Oil Company Atlanta, GA	Diesel Fuel Supplier				$80,000.00
TOTAL						

The Contractor shall indicate for each SVDBE and Type of Work whether the SVDBE Participant is Race Neutral or Race Conscious by placing a checkmark in the appropriate column.

FORM J

RESERVED

FORM K

RESERVED

FORM L

Debarment and Suspension Certification

The undersigned Proposer certifies on behalf of itself, and all Participating Members, Major Non-Participating Members and Contractors identified by such Proposer as of the date hereof, as follows:

The undersigned certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State or local) transaction or contract under a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, State or local) with commission of any of the offenses enumerated in paragraph b. of this certification; and

d. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, State or local) terminated for cause or default.

Where the Proposer is unable to certify to any of the statements in this certification, it shall attach a certification to its proposal or bid stating that it is unable to provide the certification and explaining the reasons for such inability.

Date: _____

Proposer: _____

Signature: _____

Title: _____

FORM M

RESERVED

FORM N

RESERVED

FORM O

PAYMENT AND PERFORMANCE BOND FORM

Form O-1 Resident Contractor Payment and Performance Bond Form

Form O-2 Nonresident Contractor Payment and Performance Bond Form

Form O-1 Resident Contractor Payment and Performance Bond Form

DEPARTMENT OF TRANSPORTATION
PERFORMANCE AND PAYMENT BONDS
(GEORGIA RESIDENT CONTRACTOR)

KNOW ALL MEN BY THESE PRESENTS, That we,

[name of contractor]
GA

as Principal, and the Corporation or Corporations hereinafter designated as Surety A or Surety A to Surety ___ inclusive, as Surety or Sureties, are held and firmly bound, both "jointly and severally" as well as "severally" only, unto the Department of Transportation in the penal sum of 120 percent of the Original Contract Amount of:

[fill in written contract amount and then numeric contract amount e.g., One Thousand Dollars $1,000.00]

for the use of the Obligee herein named and of all persons doing work or furnishing skill, tools, machinery, or materials under or for the purpose of this contract hereinafter described; Provided, that it is mutually understood and agreed between the Principal and Surety and/or Sureties and the Obligee herein named that this bond is to be construed as being in compliance with and subject to the provisions of Sections 13-10-1 and 36-82-101 of the Official Code of Georgia Annotated, as well as the other applicable provisions, and that in compliance with the aforesaid sections this instrument is intended and is to be construed as two separate bonds, namely, as a "performance bond" in the full penal sum heretofore set forth, and as a "payment bond", in an amount equal to 110 percent of the full penal sum heretofore named and that both bonds shall be construed to be in full force and effect at the same time, as the case may be, and that the obligations shall be several, in the full amount of said penal sum, as to each type of bond; and for the payment of which sums well and truly to be made we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents; Provided, that the Sureties bind themselves in such sums "jointly and severally", as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, and with each other, for 210 percent of the penal sum of this bond, and provided further that, while each Surety binds itself, jointly and severally with the Principal, for 210 percent of the penal sum herein provided for, the total liability of all Sureties shall not exceed the total penal sum heretofore provided for as to each of the respective obligations herein provided for.

Signed and sealed this day of_____.

Surety	Name and State of incorporation	Name and Address of Bonding Agent
A		Agent Name:
B		Agent Address
C		Agent Phone Number
D		*PLEASE PRINT ALL INFORMATION*
Bond #		

Note: The Surety Company for Performance and Payment Bonds shall be a company acceptable as Surety on Federal Bonds and listed in the current Federal Register and licensed in the State of Georgia.

THE CONDITIONS OF THE FOREGOING OBLIGATIONS is such that whereas the above named Principal has entered into a contract with said Department of Transportation bearing even date herewith for the Construction of:

[brief description of project including length, major items of work, Project ID # and county(ies)]

The surety hereby binds itself to provide performance bond and payment bond for work added by Supplemental Agreement(s) and/or Extension Agreement(s), whereby the original Contract amount or the total Project length may be increased by as much as 20 percent without the written assent of the Surety.

Now, therefore, the condition of these obligations is such that if the above named bound Principal shall in all respects comply with the terms and conditions of said contract, including all modifications or extensions thereof, and his obligations thereunder, including the notice to contractors, the plans, general conditions, specifications, special provisions and proposals, therein referred to and made a part thereof, and shall complete the said contract in accordance with its terms and shall save Obligee free from all cost and charge that may accrue on account of the doing of the work specified, then this bond, construed as a "performance bond" shall be void, otherwise of full force and effect.

Provided further, that upon the failure of the said Principal to promptly and efficiently prosecute said work, in any respect, in accordance with the contract, the above bound Surety or Sureties shall take charge of said work and complete the contracts at its own expense, pursuant to its terms, receiving, however, any balance of funds in the hands of said Department of Transportation under said contract.

And, further, the condition of these obligations is such that if the above bound Principal shall make prompt payment to all subcontractors and all other persons supplying labor, materials, machinery and equipment furnished for the performance of the work provided for in said contract, as well as all duly authorized modifications thereof which may hereafter be made, including any extension of time to complete the same, then this bond, as a "payment bond", shall be void, otherwise of full force and effect.

It is agreed that, in the event that this bond is executed by more than one surety company, the term "Surety" as used in this bond shall be construed to mean any one or all of such surety companies executing this bond. It is further agreed that such surety companies herein named and executing this bond as surety for the Principal, by mutual agreement between themselves, and with the Principal, and with the Obligee herein named, do hereby designate and authorize:

_____

as the "controlling surety"

It is further agreed that the term, "controlling surety", shall be defined as that one of such sureties herein designated and authorized by all of such sureties, upon whom any notice or other demand may be made by the Obligee herein named, or other person having a claim against the Principal under the provisions of this bond, or with whom such Obligee, or other such person, may negotiate or deal as to any matter pertaining to the obligations of this bond, and against whom any right of action growing out of this bond may be enforced, as provided for by Sections 36-82-102 through 36-82-105 of the Official Code of Georgia Annotated as fully and effectively as though the same were had or done with each of such named sureties individually, and with the right upon the part of such "controlling surety" to vouch such co-sureties into court to defend any action against it or them arising out of the obligations of this bond, as provided by Section 9-10-13 of the Official Code of Georgia Annotated, or to call upon such co-sureties, in accordance with the terms of any notice, demand, suit, suit at law, or other action, commenced or brought against it by the Obligee named herein, or any other person having a claim against the Principal under the conditions and provisions of this bond, or in accordance with any private contract between the sureties executing this bond on behalf of said Principal, it being the purpose and intent of this contract that the Obligee named in this bond, or such other person

having a claim under the provisions of this bond, may enforce any right that it or they may have growing out of this bond by notice, demand, negotiation, suit, or other appropriate action against the controlling surety only, and such action shall be deemed to be binding upon all the sureties named herein; Provided however, the foregoing notwithstanding, the Obligee, or such other person having a claim under this bond, at its or their option, may take such action against any or all of said surety companies.

It is agreed by the parties hereto that in the event the Department of Transportation in making the contract with the Principal herein shall be acting as Agent for the United States Government, or for the Cobb, Cherokee, and Chatham Counties.

or for both, as well as for itself, then the said Department of Transportation shall have the right in the event of a breach of the contract resulting in loss to the said County or to the United States Government; or to itself, to maintain a suit hereon for the use of itself, or the United States Government, or said County as well as for itself; or said County and said United States Government shall have the right in their own names to maintain a suit herein in the same manner and to the same extent as the Department of Transportation has by virtue of Sections 36-82-104 and 36-82-105 of the Official Code of Georgia Annotated.

IN WITNESS WHEREOF, the said "Authorized Signer" and the said "Surety" have duly executed this bond under seal this date_____.

Signed, Sealed, and Delivered in the presence of us.

IN WITNESS WHEREOF THE PARTIES HAVE SET THEIR HANDS AND AFFIXED THEIR SEALS

[name of contractor] **[name of surety]**

_____ _____

Signature of Contractor (SEAL) Signature of Attorney-In-Fact (SEAL)

_____ _____

Printed Name of Signee: Printed Name of Signee:

Form O-2 Nonresident Contractor Payment and Performance Bond Form

DEPARTMENT OF TRANSPORTATION
PERFORMANCE, PAYMENT, AND NONRESIDENT
CONTRACTOR'S TAX BONDS
(NONRESIDENT CONTRACTOR)

KNOW ALL MEN BY THESE PRESENTS, That we,

[name of contractor]
[state]

as Principal, and the Corporation or Corporations hereinafter designated as Surety A or Surety A to Surety _____ inclusive, as Surety or Sureties, are held and firmly bound, both "jointly and severally" as well as "severally" only, unto the Department of Transportation in the penal sum of 120 percent of the Original Contract Amount of:

[fill in written contract amount and then numeric contract amount e.g., One Thousand Dollars $1,000.00]

for the use of the Obligee herein named and of all persons doing work or furnishing skill, tools, machinery, or materials under or for the purpose of this contract hereinafter described, and for the use of the State and all political subdivisions thereof for all taxes (including contributions due under the employment security law), together with penalties and interest collectible as taxes, which may accrue during the period of this bond on account of the execution and performance of this contract hereinafter described; Provided, that it is mutually understood and agreed between the Principal and Surety and/or Sureties and the Obligee herein named that this bond is to be construed as being in compliance with and subject to the provisions of Sections 13-10-1, 36-82-101, and 48-13-30 through 48-13-38 of the Official Code of Georgia Annotated, as well as the other applicable provisions, and that in compliance with the aforesaid sections this instrument is intended and is to be construed as three separate bonds, namely, as a "performance bond" in the full penal sum heretofore set forth, and as a "payment bond", in the full penal sum heretofore named, and as a "tax bond" in the amount of ten percent of the full penal sum heretofore named and that all bonds shall be construed to be in full force and effect at the same time, as the case may be, and that the obligations shall be several as to each type of bond; and for the payment of which sums well and truly to be made we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents; Provided, that the Sureties bind themselves in such sums "jointly and severally", as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, and with each other, for 210 percent of the penal sum of this bond, and provided further that, while each Surety binds itself, jointly and severally with the Principal, for 210 percent of penal sum herein provided for, the total liability of all Sureties shall not exceed the total penal sum heretofore provided for as to each of the respective obligations herein provided for.

Signed and sealed this day of_____.

Surety	Name and State of incorporation	Name and Address of Bonding Agent
A		Agent Name:
B		Agent Address
C		Agent Phone Number
D		*PLEASE PRINT ALL INFORMATION*
Bond #		

Note: The Surety Company for Performance and Payment Bonds shall be a company acceptable as Surety on Federal Bonds and listed in the current Federal Register and licensed in the State of Georgia.

THE CONDITIONS OF THE FOREGOING OBLIGATIONS is such that whereas the above named Principal has entered into a contract with said Department of Transportation bearing even date herewith for the Construction of:

[brief description of project including length, major items of work, Project ID # and county(ies)]

The surety hereby binds itself to provide performance bond and payment bond for work added by Supplemental Agreement(s) and/or Extension Agreement(s), whereby the original Contract amount or the total Project length may be increased by as much as 20 percent without the written assent of the Surety.

Now, therefore, the condition of these obligations is such that if the above named bound Principal shall in all respects comply with the terms and conditions of said contract, including all modifications or extensions thereof, and his obligations thereunder, including the notice to contractors, the plans, general conditions, specifications, special provisions and proposals, therein referred to and made a part thereof, and shall complete the said contract in accordance with its terms and shall save Obligee free from all cost and charge that may accrue on account of the doing of the work specified, then this bond, construed as a "performance bond" shall be void, otherwise of full force and effect.

Provided further, that upon the failure of the said Principal to promptly and efficiently prosecute said work, in any respect, in accordance with the contract, the above bound Surety or Sureties shall take charge of said work and complete the contracts at its own expense, pursuant to its terms, receiving, however, any balance of funds in the hands of said Department of Transportation under said contract.

And, further, the condition of these obligations is such that if the above bound Principal shall make prompt payment to all subcontractors and all other persons supplying labor, materials, machinery and equipment furnished for the performance of the work provided for in said contract, as well as all duly authorized modifications thereof which may hereafter be made, including any extension of time to complete the same, then this bond, as a "payment bond", shall be void, otherwise of full force and effect.

It is agreed that, in the event that this bond is executed by more than one surety company, the term "Surety" as used in this bond shall be construed to mean any one or all of such surety companies executing this bond. It is further agreed that such surety companies herein named and executing this bond as surety for the Principal, by mutual agreement between themselves, and with the Principal, and with the Obligee herein named, do hereby designate and authorize:

_____

as the "controlling surety"

It is further agreed that the term, "controlling surety", shall be defined as that one of such sureties herein designated and authorized by all of such sureties, upon whom any notice or other demand may be made by the Obligee herein named, or other person having a claim against the Principal under the provisions of this bond, or with whom such Obligee, or other such person, may negotiate or deal as to any matter pertaining to the obligations of this bond, and against whom any right of action growing out of this bond may be enforced, as provided for by Sections 36-82-102 through 36-82-105 of the Official Code of Georgia Annotated as fully and effectively as though the same were had or done with each of such named sureties individually, and with the right upon the part of such "controlling surety" to vouch such co-sureties into court to defend any action against it or them arising out of the obligations of this bond, as provided by Section 9-10-13 of the Official Code of Georgia Annotated, or to call upon such co-sureties, in accordance with the terms of any notice, demand, suit, suit at law, or other action, commenced or brought against it by the Obligee named herein, or any other person having a claim against the Principal under the conditions and provisions of this bond, or in accordance with any private contract between the sureties executing this bond on behalf of said Principal, it being the purpose and intent of this contract that the Obligee named in this bond, or such other person having a claim under the provisions of this bond, may enforce any right that it or they may have growing out of this bond by notice, demand, negotiation, suit, or other appropriate action against the controlling surety only, and such action shall be deemed to be binding upon all the sureties named herein; Provided however, the foregoing notwithstanding, the Obligee, or such other person having a claim under this bond, at its or their option, may take such action against any or all of said surety companies.

It is agreed by the parties hereto that in the event the Department of Transportation in making the contract with the Principal herein shall be acting as Agent for the United States Government, or for the Cobb, Cherokee, and Chatham Counties.

or for both, as well as for itself, then the said Department of Transportation shall have the right in the event of a breach of the contract resulting in loss to the said County or to the United States Government; or to itself, to maintain a suit hereon for the use of itself, or the United States Government, or said County as well as for itself; or said County and said United States Government shall have the right in their own names to maintain a suit herein in the same manner and to the same extent as the Department of Transportation has by virtue of Sections 36-82-104 and 36-82-105 of the Official Code of Georgia Annotated.

IN WITNESS WHEREOF THE PARTIES HAVE SET THEIR HANDS AND AFFIXED THEIR SEALS

[name of contractor]	**[name of surety]**
_____	_____
Signature of Contractor (SEAL)	Signature of Attorney-In-Fact (SEAL)
_____	_____
Printed Name of Signee:	Printed Name of Signee:

FORM P

RESERVED

FORM Q

RESERVED

FORM R

Georgia Security and Immigration Compliance Act Affidavit

Contract No. and Name:
Design-Build Agreement for the Statewide ITS DMS Deployment Design-Build Project
(the "**Project**")

Name of Contracting Entity: _____

By executing this affidavit, the undersigned person or entity verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with the Georgia Department of Transportation has registered with, is authorized to participate in, and is participating in the federal work authorization program commonly known as E-Verify,[1] in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91.

The undersigned person or entity further agrees that it will continue to use the federal work authorization program throughout the contract period, and it will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the undersigned with the information required by O.C.G.A. § 13-10-91(b).

The undersigned person or entity further agrees to maintain records of such compliance and provide a copy of each such verification to the Georgia Department of Transportation at the time the subcontractor(s) is retained to perform such service.

_____	_____
EEV/E-Verify™ User Identification Number	Date of Authorization
_____	_____
BY: Authorized Officer or Agent (Name of Person or Entity)	Date
_____	_____
Title of Authorized Officer or Agent	Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE

____ DAY OF _____ 202__

_____ [NOTARY SEAL]
Notary Public

My Commission Expires: _____

[1] or any subsequent replacement operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify Information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603.

FORM S

Opinion of Counsel

[Letterhead of independent law firm or in-house counsel – See Section 6.2.1 of the ITP for legal counsel requirements- If applicable]

Mr. Matthew Cline
Georgia Department of Transportation
One Georgia Center
600 West Peachtree Street, NW
Atlanta, Georgia 30308

Re: Design-Build Agreement for the Statewide ITS DMS Deployment Design-Build Project (the "**Project**")

Dear Mr. Cline**,**

This letter is provided with regard to the Design-Build Agreement dated as of _____, 2020 (the "DBA"), by and between the Georgia Department of Transportation (**"GDOT"**), an agency of the State of Georgia, and _____ (the "Design-Build Team") for the Statewide ITS DMS Deployment Design-Build Project (the "**Project**").

[Describe relationship to Design-Build Team and its joint venture members, general partners, members, as applicable, and any other entities whose approval is required in order to authorize execution of the DB Documents.]

[This letter is provided to you pursuant to Section 6.2.1 of the Instructions to Proposers of that certain Request for Proposals issued by GDOT on October 2, 2020]

In giving this opinion, we have examined _____. We have also considered such questions of law and we have examined such documents and instruments and certificates of public officials and individuals who participated in the procurement process as we have deemed necessary or advisable. *[if a certificate is used/obtained from Design-Build Team, such certificate shall also run in favor of GDOT, and shall be attached to the opinion]*

In giving this opinion, we have assumed that all items submitted to us or reviewed by us are genuine, accurate and complete, and if not originals, are true and correct copies of originals, and that all signatures on such items are genuine.

Subject to the foregoing, we are of the opinion that:

1. [opinion regarding organization/formation and existence of the Design-Build Team and that the Design-Build Team has corporate power to own its properties and assets, carry on its business, enter into the DBA and to perform its obligations under the DBA] *[if Design-Build Team is a partnership/joint venture, these opinions are also required for each of its joint venture members and general partners]*

2. [opinion regarding good standing and qualification to do business in the state of Georgia for Design-Build Team] [*if Design-Build Team is a partnership/joint venture, these opinions are also required for each of its joint venture members and general partners*]

3. [opinion that the DBA has been duly authorized by all necessary corporate action on the part of Design-Build Team and the DBA has been duly executed and delivered by Design-Build Team] *[if Design-Build Team is a partnership/joint venture, add: "and its joint venture members/general partners" after the first and second "Design-Build Team"]*

4. [opinion that the DBA constitutes a legal, valid and binding obligation of Design-Build Team enforceable against Design-Build Team in accordance with its terms] *[if Design-Build Team is a partnership/joint venture, add: "and its joint venture members/general partners" after the second "Design-Build Team"]*

5. [opinion that all required approvals have been obtained with respect to execution, delivery and performance of the DBA; and that the DBA do not conflict with any agreements to which Design-Build Team is a party *[if Design-Build Team is a partnership/joint venture, add: "and its joint venture members/general partners are a party"]* or with any orders, judgments or decrees by which Design-Build Team is bound *[if Design-Build Team is a partnership/joint venture, add: "and its joint venture members/general partners are bound"]*

6. [opinion that execution, delivery and performance of all obligations by Design-Build Team under the DBA do not conflict with, and are authorized by, the articles of incorporation and bylaws of Design-Build Team *[if Design-Build Team is a partnership, replace "articles of incorporation and bylaws" with "partnership agreement and (if applicable) certificate of limited partnership"; if Design-Build Team is a joint venture, replace "articles of incorporation and bylaws" with "joint venture agreement"; if Design-Build Team is a limited liability company, replace "articles of incorporation and bylaws" with "operating agreement and certificate of formation"]*

7. [opinion that execution and delivery by Design-Build Team of the DBA do not, and Design-Build Team's performance of its obligations under the DBA will not, violate any current statute, rule or regulation applicable to Design-Build Team or to transactions of the type contemplated by the DBA]

8. [opinion that the Design-Build Team Agreements (as applicable) have been duly authorized by all necessary corporate action on the part of Design-Build Team and such agreements have been duly executed and delivered by Design-Build Team] *[if Design-Build Team is a partnership/joint venture, add: "and its joint venture members/general partners" after the first and second "Design-Build Team"]*

9. [opinion that the Design-Build Team Agreements constitute legal, valid and binding obligations of Design-Build Team enforceable against Design-Build Team in accordance with their terms] *[if Design-Build Team is a partnership/joint venture, add: "and its joint venture members/general partners" after the second "Design-Build Team"]*

FORM T

Drug Free Workplace

STATE OF _____)
)SS:
COUNTY OF _____)

Each of the undersigned, being first duly sworn, deposes and says that:

_____ is the _____ of _____ and _____ is the _____ of _____, which entity(ies) are the _____ of _____, the entity making the foregoing Proposal.

The undersigned certifies that the provisions of Code Sections 50-24-1 through 50-24-6 of the Official Code of Georgia Annotated, relating to the "Drug-free Workplace Act", have been complied with in full.

The undersigned further certifies that:

> (1) A drug-free workplace will be provided for the Contractor's employees during the performance of the Contract; and
>
> (2) Each Contractor who hires a Subcontractor to work in a drug-free workplace shall secure from that Subcontractor the following written certification:
>
> "As part of the subcontracting agreement with (Contractor's name)_____,_____ (Subcontractor's name)_____ certifies to the Contractor that a drug free workplace will be provided for the Subcontractor's employees during the performance of this Contract pursuant to paragraph (7) of subsection (b) of Code Section 50-24-3."

Also, the undersigned further certifies that he will not engage in the unlawful manufacture, sale distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Contract.

[*signature page follows*]

_____	_____
(Signature)	(Signature)
_____	_____
(Name Printed)	(Name Printed)
_____	_____
(Title)	(Title)

Subscribed and sworn to before me this ___ day of _____, 202_.

_____
Notary Public in and for
said County and State

[Seal]

My commission expires: _____.

[Proposers shall duplicate or modify this form as necessary so that it accurately describes the entity making the Proposal and so that it is signed on behalf of all partners, members, joint venture members, Participating Members and Major Non-Participating Members.]

FORM U

Certification of Compliance with the State of Georgia's Sexual Harassment Prevention Policy

The State of Georgia promotes respect and dignity and does not tolerate sexual harassment in the workplace. The State is committed to providing a workplace and environment free from sexual harassment for its employees and for all persons who interact with state government. All State of Georgia employees are expected and required to interact with all persons including other employees, contractors, and customers in a professional manner that contributes to a respectful work environment free from sexual harassment. Furthermore, the State of Georgia maintains an expectation that its contractors and their employees and subcontractors will interact with entities of the State of Georgia, their customers, and other contractors of the State in a professional manner that contributes to a respectful work environment free from sexual harassment.

Pursuant to the State of Georgia's Statewide Sexual Harassment Prevention Policy (the "Policy"), all contractors who are regularly on State premises or who regularly interact with State personnel must complete sexual harassment prevention training on an annual basis.

A contractor, including its employees and subcontractors, who have violated the Policy, including but not limited to engaging in sexual harassment and/or retaliation may be subject to appropriate corrective action. Such action may include, but is not limited to, notification to the employer, removal from State premises, restricted access to State premises and/or personnel, termination of contract, and/or other corrective action(s) deemed necessary by the State.

(i) If Contractor is an individual who is regularly on State premises or who will regularly interact with State personnel, Contractor certifies that:

(a) Contractor has received, reviewed, and agreed to comply with the State of Georgia's Statewide Sexual Harassment Prevention Policy located at http://doas.ga.gov/human-resources-administration/board-rules-policy-and-compliance/jointly-issued-statewide-policies/sexual-harassment-prevention-policy;

(b) Contractor has completed sexual harassment prevention training in the last year; or will complete the Georgia Department of Administrative Services' sexual harassment prevention training located at http://doas.ga.gov/human-resources-administration/sexual-harassment-prevention/hr-professionals/employee-training (scroll down to section for entities without a LMS section) or this direct link **https://www.youtube.com/embed/NjVt0DDnc2s?rel=0** prior to accessing State premises and prior to interacting with State employees; and on an annual basis thereafter; and,

(c) Upon request by the State, Contractor will provide documentation substantiating the completion of sexual harassment training.

(ii) If Contractor has employees and subcontractors that are regularly on State premises or who will regularly interact with State personnel, Contractor certifies that:

(a) Contractor will ensure that such employees and subcontractors have received, reviewed, and agreed to comply with the State of Georgia's Statewide Sexual

Harassment Prevention Policy located at **http://doas.ga.gov/human-resources-administration/board-rules-policy-and-compliance/jointly-issued-statewide-policies/sexual-harassment-prevention-policy**;

(b) Contractor has provided sexual harassment prevention training in the last year to such employees and subcontractors and will continue to do so on an annual basis; or Contractor will ensure that such employees and subcontractors complete the Georgia Department of Administrative Services' sexual harassment prevention training located at **http://doas.ga.gov/human-resources-administration/sexual-harassment-prevention/hr-professionals/employee-training** (scroll down to section for entities without a LMS section) or this direct link **https://www.youtube.com/embed/NjVt0DDnc2s?rel=0** prior to accessing State premises and prior to interacting with State employees; and on an annual basis thereafter; and

(d) Upon request of the State of the Georgia Department of Transportation, Contractor will provide documentation substantiating such employees and subcontractors' acknowledgment of the State of Georgia's Statewide Sexual Harassment Prevention Policy and annual completion of sexual harassment prevention training.

Date: _____

Proposer: _____

Signature: _____

Title: _____

FORM V

CERTIFICATION FORM

I, _____, being duly sworn, state that I am _____(title) of _____
_____(Proposer) and hereby duly certify that I have read and understand the information presented in the attached proposal and any enclosure and exhibits thereto.

I further certify that to the best of my knowledge the information given in response to the Request for Proposal is full, complete and truthful.

I further certify that the submitting Proposer and any principal employee of the submitting Proposer has not, in the immediately preceding five (5) years, been convicted of any crime of moral turpitude or any felony offense, nor has had their professional license suspended, revoked or been subjected to disciplinary proceedings.

I further certify that the submitting Proposer has not, in the immediately preceding five (5) years, been suspended or debarred from contracting with any federal, state or local government agency, and further, that the submitting Proposer is not now under consideration for suspension or debarment from any such agency.

I further certify that the submitting Proposer has not in the immediately preceding five (5) years been defaulted in any federal, state or local government agency contract and further, that the submitting Proposer team or any member is not now under any notice of intent to default on any such contract.

I further certify that in regards to Audit and Accounting System Requirements, that the Lead Design Consultant:

I. Has an accounting system in place to meet requirements of 48 CFR Part 31 and, in the case of nonprofit organizations, OMB Circular A-122.
II. Has submitted its yearly Certified Public Accountant overhead audit if it currently has an aggregate contract amount exceeding $250,000.
III. Has no significant outstanding deficient audit findings from previous contracts with GDOT that have not been resolved.
IV. Is responsible for being reasonably assured that all subconsultant(s) presented as a part of the proposed team are similarly in compliance with the above requirements.

I acknowledge, agree and authorize, and certify that the Proposer acknowledges, agrees, and authorizes that GDOT may, by means that either deems appropriate, determine the accuracy and truth of the information provided by the Proposer and that GDOT may contact any person or entity named in the Proposal for the purpose of verifying the information supplied therein.

I acknowledge and agree that all of the information contained in the Proposal is submitted for the express purpose of inducing GDOT to award a contract.

A material false statement or omission made in conjunction with this proposal is sufficient cause for suspension or debarment from further contracts, or denial or rescission of any contract entered into based upon this proposal thereby precluding the entity from doing business with, or performing work for, the State of Georgia. In addition, such false statement or omission may subject the person and entity making the proposal to criminal prosecution under the laws of the State of Georgia of the United States, including but not limited to O.C.G.A. §16-10-20, 18 U.S.C. §§1001 or 1341.

Sworn and subscribed before me

This _____ day of _____, 20__.

_____
Signature

_____
NOTARY PUBLIC

_____

_____
NOTARY SEAL

My Commission Expires: _____

FORM W

E-BUILDER ACCESS REQUEST

INSTRUCTIONS:

(a) Submit one copy of Form W for each Proposer team per Section 1.4 (Schedule of Events).
(b) Submit this form in PDF format to the Contracting Officer email address listed in Section 2.2.1 (Designated Point of Contact).
(c) An authorized representative of the Proposer must sign this Form W.

Attn: Chip Meeks

Subject: e-Builder Access Request

PI. No. 0017389 – Statewide ITS DMS Deployment Design-Build Project

Name of Proposer: _____ Date: _____

We request access to e-Builder for purposes of uploading the Proposer's Proposal. Please provide credentials to the following representative:

Name: _____

Email Address: _____

Telephone Number: _____

We also identify the following person as the Proposer's **"Authorized Representative"**, as the single point of contact for Proposer, who is making this request.

By: _____ Print Name: _____

Title: _____ Date: _____

Telephone Number(s): _____ Email Address: _____

Mailing Address: _____

GEORGIA DEPARTMENT OF TRANSPORTATION
DESIGN-BUILD AGREEMENT
FOR
THE STATEWIDE ITS DMS DEPLOYMENT DESIGN-BUILD PROJECT
PI NO. 0017389

Dated Advertisement: October 2, 2020

Letting Date: December 18, 2020

Between

Georgia Department of Transportation,

State of Georgia

and

_____,
a _____

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DESIGN-BUILD AGREEMENT
Statewide ITS DMS Deployment Design-Build PROJECT

This Design-Build Agreement for the Statewide ITS DMS Deployment Project (this "Agreement", or "DB Agreement", or the "DBA") is entered into and effective as of [Date] by and between the Georgia Department of Transportation ("GDOT"), an agency of the State of Georgia, and _____, a _____[Include if JV] [include as follows if a JV: and jointly and severally, each of (insert company name), a (insert state) limited liability company and (insert company name), a (insert state) corporation, such joint venture doing business as (insert joint venture name)] ("DB Team").

R E C I T A L S

A. Pursuant to Section 32-2-81 (c) of the Official Code of Georgia Annotated (the "Code"), GDOT is authorized to "combine any or all of the environmental services, utility relocation services, right of way services, design services, and construction phases of a public road or other transportation purpose project into a single contract using a design-build procedure."

B. Pursuant to Section 32-2-81 of the Code, "the term 'design-build procedure'" means a method of contracting under which the Department contracts with another party for the party to both design and build the structures, facilities, systems, and other items specified in the contract." GDOT "may use the design-build procedure for buildings, bridges and approaches, rail corridors, technology deployments, and limited or controlled access projects or projects that may be constructed within existing rights of way where the scope of work can be clearly defined or when a significant savings in project delivery time can be attained."

C. On October 2, 2020, GDOT issued an RFP with respect to the Project.

D. On December 10, 2020, GDOT received responses to the RFP, including the response of DB Team (the "Proposal").

E. As part of the RFP, GDOT required Proposers commit to entering into an Agreement with GDOT for the design and construction of the Project.

F. GDOT evaluated and determined the DB Team was the qualified Proposer with the lowest responsive price based on the selection criteria contained in the RFP.

NOW, THEREFORE, in consideration of the Work to be performed by DB Team, and DB Team's obligations with respect thereto, the foregoing premises and the covenants and agreements set forth herein, the Parties hereby agree as follows:

Article 1 DEFINITIONS; DB DOCUMENTS; ORDER OF PRECEDENCE; PRINCIPAL PROJECT DOCUMENTS

1.1 Acronyms and Definitions

Acronyms and definitions for certain terms used in this Agreement and the other DB Documents are contained in Exhibit 1 (Acronyms and Definitions). Other definitions may be identified within the text of the DB Documents.

1.2 DB Documents; Order of Precedence

Each of the DB Documents is an essential part of the agreement between the Parties. The DB Documents are intended to be complementary and to be read together with this Agreement as a complete agreement. Each of the DB Documents (other than this Agreement) is hereby expressly incorporated herein by reference.

1.2.1 Subject to Article 1.2.2, in the event of any conflict, ambiguity or inconsistency among the DB Documents, the order of precedence, from highest to lowest, shall be as follows:

1.2.1.1 Supplemental Agreements, Agreement amendments, and all exhibits, riders, and attachments thereto;

1.2.1.2 The Agreement (also referred to as Volume 1) and all exhibits thereto other than Exhibit 2 (Key Personnel and Other Proposal Commitments) , and Exhibit 5 (Proposal SOV);

1.2.1.3 Exhibit 2 (Key Personnel and Other Proposal Commitments, and Exhibit 5 (Proposal SOV);

1.2.1.4 Volume 2 "Technical Provisions for Design-Build Agreement" amendments, and all exhibits and attachments to such amendments;

1.2.1.5 Volume 2 "Technical Provisions for Design-Build Agreement", and all exhibits and attachments to the Technical Provisions;

1.2.1.6 Volume 2, Attachment 3-1 "Manuals" (Technical Documents) amendments; provided that GDOT in its sole discretion may designate that such amendments or portions thereof take precedence over the Technical Provisions to the extent provided in Article 7.2.5;

1.2.1.7 Volume 2, Attachment 3-1 "Manuals" (Technical Documents);

1.2.1.8 The DB Team's Proposal, including DB Team's Schematic Plan of Project; provided that certain provisions therein shall supersede the specified provisions of the other DB Documents.

1.2.2 If the Proposal, including DB Team's Schematic Plan of Project, includes statements, offers, terms, concepts or designs that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the other DB Documents or to perform services or meet standards in addition to or better than those otherwise required, or otherwise contains terms or designs which are more advantageous to GDOT than the requirements of the other DB Documents, as reasonably determined in its sole discretion by GDOT, then DB Team's obligations hereunder shall include compliance with all such statements, offers, terms, concepts and designs, which shall have the priority of Agreement amendments (Article 1.2.1.1) and Technical Provisions amendments (Article 1.2.1.4), as applicable.

1.2.3 If the DB Documents contain differing provisions on the same subject matter, the provisions that establish the higher quality manner or method of performing the Work or use more stringent standards will prevail. Additional details in a lower priority DB Document shall be given effect except to the extent they irreconcilably conflict, as determined at GDOT's sole discretion, with requirements, provisions and practices contained in the higher priority DB Document.

1.2.4 Where there is an irreconcilable conflict among any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Project set forth in one or more manual(s) or publication(s) referenced within a DB Document or set of DB Documents with the same order of priority (including within documents referenced therein), the standard, criterion, requirement, condition, procedure, specification or other provision offering higher quality or better performance will apply, unless GDOT in its sole discretion approves otherwise in writing. If there is an irreconcilable conflict between manuals or publications referenced in DB Document of differing priorities, the order of precedence set forth in Article 1.2.1 will apply. If either Party becomes aware of any such conflict, it shall promptly notify the other party of the conflict in writing. If the DB Team notifies GDOT of a potential conflict, GDOT shall determine if a conflict does exist and if the order of precedence does not determine which takes precedence, GDOT shall promptly issue a written determination respecting which of the conflicting provisions is to be applied.

1.3 Construction and Interpretation of the DB Documents

1.3.1 The headers or captions of the Articles of this Agreement and Sections in the other DB Documents are for convenience only and shall not be deemed part of this Agreement or the DB Documents or considered in construing this Agreement or the DB Documents.

1.3.2 The language in all parts of the DB Documents shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any Party. The Parties hereto acknowledge and agree that the DB Documents are the product of an extensive and thorough, arm's length exchange of ideas, questions, answers, information and drafts during the Proposal preparation process, that each Party has been given the opportunity to independently review the DB Documents with legal counsel, and that each Party has the requisite experience and sophistication to negotiate, understand, interpret and agree to the particular language of the provisions of the DB Documents. Accordingly, in the event of an ambiguity in or Dispute regarding the interpretation of the DB Documents, the DB Documents shall not be interpreted or construed against the Party preparing it, and instead other rules of interpretation and construction shall be utilized. GDOT's final answers to the questions posed during the Proposal preparation process for this Agreement shall in no event be deemed part of the DB Documents and shall not be relevant in interpreting the DB Documents except as they may clarify provisions otherwise considered ambiguous.

1.3.3 Reserved

1.3.4 All terms defined in the DB Documents shall be deemed to have the same meanings in all riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this Agreement unless the context thereof clearly requires the contrary.

1.3.5 Unless otherwise stated in this Agreement or the other DB Documents, words that have well-known technical or construction industry meanings are used in this Agreement or the other DB Documents in accordance with such recognized meaning.

1.3.6 Wherever the word "including," "includes" or "include" is used in the DB Documents, it shall be deemed to be followed by the words "without limitation".

1.3.7 Wherever reference is made in the DB Documents to a particular Governmental Entity, it includes any public agency succeeding to the powers and authority of such Governmental Entity.

1.3.8 As used in this Agreement and the other DB Documents and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

1.4 Reserved

1.5 Reference Information Documents

1.5.1 DB Team acknowledges that GDOT has provided and disclosed to DB Team the Reference Information Documents ("RIDs"). The RIDs are not mandatory or binding on DB Team. DB Team is not entitled to rely on the RIDs as presenting design, engineering, operating or maintenance solutions or other direction, means or methods for complying with the requirements of the DB Documents, Governmental Approvals or Law.

1.5.2 Except as expressly set forth herein, DB Team acknowledges that GDOT neither represents nor warrants that the information contained in the RIDs is complete or accurate or that such information is in conformity with the requirements of the DB Documents, Governmental Approvals or Laws, and GDOT is neither responsible or liable in any respect for any causes of action, claims or Losses whatsoever suffered by DB Team or any DB Team-Related Entity by reason of any use of information contained in, or any action or forbearance in reliance on, the RIDs.

1.6 Errata to the GDOT Standard Specifications

In interpreting standards, policies and specifications referenced in the latest edition of the GDOT Standard Specifications, Construction of Transportation Systems, as well as the Manuals listed in Volume 2 (Technical Provisions for Design-Build Agreement), Attachment 3-1 (Manuals), the following apply:

(a) References to the "Department" shall mean GDOT.

(b) References to the "Contractor" shall mean the DB Team.

(c) References to "Resident Engineer" or "Engineer" in the context of the provider of compliance judgment may mean the Design Quality Assurance Manager or Engineer of Record, as applicable, or it may mean a GDOT representative, or any combination thereof, depending on the context, and as determined by GDOT in its sole discretion and without recourse for the DB Team.

(d) References to the "Contract" shall mean the DB Documents.

(e) References to "plan(s)" shall mean the DB Documents.

(f) References to "The Work" shall mean the Work.

(g) Cross-references to measurement and payment provisions contained in the referenced standards, policies and specifications shall be deemed to refer to the measurement and payment provisions contained in the DB Documents.

(h) Any conflicts, ambiguities, or lack of clarity in regard to items included in the provisions, terms, or definitions used will be interpreted and defined by GDOT in its sole discretion. The DB Team shall not take advantage of any apparent conflict, omission, ambiguity, inconsistency, inaccuracy, deficiency, or inadequacy related to the application of a requirement, action to be taken, or the definition of roles and responsibilities in the execution of the Work. Should it appear that any definition of roles and responsibilities is contrary to the philosophy of those established by the Agreement, it is the responsibility of the DB Team to request a determination by GDOT related to the respective roles and responsibilities of the DB Team and GDOT.

Article 2 GRANT OF AUTHORITY AND RIGHT OF WAY

2.1 Grant of Authority for Undertaking

2.1.1 GDOT hereby grants to DB Team the revocable right, and DB Team accepts the obligation, to design and construct (including any maintenance obligations during such period as required pursuant to the DB Documents) the Project in accordance with the requirements of this Agreement and the other DB Documents.

2.2 Right of Way; Construction Easement; Ownership

2.2.1 The Project shall be constructed on and within the property as identified in the NEPA Approval and any amendment thereto (the "Property"). GDOT shall provide DB Team with access rights to the Property, together with the Existing Right of Way as set forth in this Article 2.2 (Right of Way; Construction Easement; Ownership).

2.2.1.1 Reserved

2.2.1.2 GDOT reserves the right to enter upon, possess, control and utilize the Property with or without payment of compensation to DB Team in accordance with this Agreement.

2.2.1.3 GDOT has granted, and has further reserved the right to grant, to other parties, utility and other permits and easements and modifications thereto and rights of use to the Property subject to the limitations of the DB Documents.

2.2.2 Existing Right of Way

2.2.2.1 Upon the terms and conditions of this Agreement, including as set forth in this Article 2.2, and subject to the terms and conditions of the DB Documents, as of the Effective Date, GDOT shall and does, subject to and upon issuance of NTP 1:

(a) grant to DB Team a non-exclusive right of access, ingress and egress (and the right to grant to DB Team-Related Entities a non-exclusive right of access, ingress and egress) to all real property comprising the Existing Right of Way, subject to the exclusions and reservations set forth in this Agreement, in accordance with the terms described in the DB Documents

2.2.2.2 DB Team represents that it has reviewed the Existing Right of Way and confirmed that the access rights to the property and timing for the grant of such rights as identified therein are sufficient and complete so as to allow DB Team access to all areas of the Property as required for the performance and completion of the Work.

Article 3 CONTRACT TIME

3.1 Term of Agreement

This Agreement shall remain in effect until Final Acceptance, subject to the survival of all such obligations as expressly provided herein, including without limitation, any warranty periods (the "Term"); provided that this Agreement shall be subject to earlier termination in accordance with the terms of this Agreement and the DB Documents.

3.2 Project Schedule

3.2.1 As a material consideration for entering into this Agreement, DB Team hereby commits, and GDOT is relying upon DB Team's commitment, to develop, design and fully construct the Project in accordance with the milestones and time periods set forth in this Agreement and the other DB Documents, including without limitation, in the Technical Provisions, the Project Schedule and Completion Deadlines, subject only to delays caused by Relief Events specifically provided hereunder.

3.2.2 The time limitations set forth for DB Team's performance of its covenants and obligations as required pursuant to the DB Documents, including without limitation performance of the Work as required pursuant to the Completion Deadlines, and Project Schedule, are of the essence, and except where this Agreement expressly provides for extension of time due to a Relief Event or Compensation Event, DB Team waives any right at law or in equity to

tender or complete performance beyond the applicable time period, or to require GDOT to accept such performance. All references to days shall mean Calendar Days unless otherwise specified.

3.2.3 DB Team shall achieve the Substantial Completion on or before the Substantial Completion Deadline and Final Acceptance on or before the Final Acceptance Deadline, time being of the essence.

3.2.4 DB Team hereby represents and warrants that the Project Schedule is in the form described in the Technical Provisions, has been developed in accordance with Volume 2, Section 2.5 (Project Schedule Requirements), and is consistent with the Milestone Deadlines set forth in Exhibit 9 to this Agreement. DB Team shall use the Proposal Schedule as a foundation to prepare the Baseline Project Schedule for GDOT's review and approval, as set forth in Section 2.5 of the Technical Provisions. The Parties shall use the Proposal Schedule for planning and monitoring the progress of the Work until such time that the Baseline Project Schedule is approved by GDOT. The proposed Baseline Project Schedule shall be consistent with the Proposal Schedule and Milestone Deadlines except to the extent adjustments are allowed as provided in the DB Documents and as approved by GDOT.

3.2.5 All Float contained in the Project Schedule shall be considered a shared resource among GDOT and the DB Team, available to any or all such parties as needed to absorb delay caused to the Critical Path components as set forth in the Project Schedule or Milestone Deadlines, whether on account of Relief Events or other events of delay not constituting Relief Events. All Float shall be shown as such in the Project Schedule on each affected schedule path. GDOT shall have the right to examine the identification of (or failure to identify) Float on the Project Schedule in determining whether to approve or accept the Project Schedule. Once identified, DB Team shall monitor and account for Float in accordance with Critical Path methodology.

3.3 Contract Time, Date of Commencement, and Notice to Proceed

3.3.1 DB Team's time period for completion of the Work is the period from the day after issuance of NTP 1 through the Final Acceptance Date, as may be adjusted for any Relief Event as expressly provided in the Agreement (the "Contract Time"). All Work shall be performed in accordance with the Milestone Deadlines attached as Exhibit 9 (Milestone Deadlines).

3.3.1.1 GDOT anticipates issuing NTP 1 promptly following the Effective Date, and shall in any case provide for issuance of NTP 1 within 30 days from DB Team's satisfaction of the conditions for execution of the Agreement. Issuance of NTP 1 authorizes DB Team to commence preliminary design activities in accordance with 23 CFR § 636.103. Prior to completion of the Environmental Documents review process, any such preliminary engineering and other activities and analyses are at the DB Team's sole risk and shall not materially affect the objective consideration of alternatives in the Environmental Documents review process. Preliminary design activities shall be completed in accordance with the Management Plans, the Technical Provisions, and other

activities anticipated to be performed after NTP 1, including satisfying the conditions to issuance of NTP 3 under Article 3.3.1.3.

3.3.1.2 Issuance of NTP 2 authorizes the DB Team to perform all NTP 1 activities, Final Design activities, and any other activities required for start of the Construction Work in accordance with 23 CFR § 636.103. NTP 2 will be issued once the Environmental Documents are approved, or with NTP 1 if the Environmental Documents have been approved by the Agreement execution date.

3.3.1.3 Issuance of NTP 3, also referred to as Released for Construction ("RFC"), authorizes DB Team to perform all other Work and activities pertaining to the Project, subject to conforming RFC Plans as may be related to commencement of any Element of the Construction Work. DB Team may not proceed to commence any construction activity with respect to the Project except as authorized pursuant to an RFC. An RFC may be issued for the entire Project or any Construction Phase of the project. GDOT anticipates issuing NTP 3 within five Business Days from DB Team's satisfaction of the following conditions:

(a) Submittal by DB Team to GDOT and acceptance by GDOT of the Quality Management Plan in accordance with Article 9 (Management Systems and Oversight) of this Agreement and Volume 2, Section 2.3 (Quality Management Requirements);

(b) Submittal by DB Team to GDOT and acceptance by GDOT of DB Team's Safety Plan under Volume 2, Section 2.4 (Safety and Security);

(c) Submittal by DB Team to GDOT and acceptance by GDOT of DB Team's Released for Construction Plans for the phases of the Project under Volume 2, Section 3 (Design and Submittals);

(d) Submittal by DB Team to GDOT and acceptance by GDOT of DB Team's proposed Schedule of Values under Volume 2, Section 2.6 (Payments Requests and Payment);

(e) Submittal by DB Team to GDOT and acceptance by GDOT of the DB Team's proposed Baseline Project Schedule under Volume 2, Section 2.5 (Project Schedule Requirements);

(f) Submittal by DB Team to GDOT and acceptance by GDOT of DB Team's Traffic Control Plan under Volume 2, Section 18.3 (Design Requirements) for the approved Project Phase;

(g) Submittal by DB Team to GDOT and acceptance by GDOT of DB Team's Construction Phasing and Staging Plan of Project, as applicable, under Volume 2, Section 2.2.4 (Construction Phasing and Staging Plan);

(h) Submittal by DB Team to GDOT and acceptance by GDOT of DB Team's Maintenance Management Plan under Volume 2, Section 19.3 (Design Requirements);

(i) Evidence by DB Team of all required Government Approvals as required under Article 6.2 (Governmental Approvals and Third-Party Agreements) for the approved Project Phase;

(j) Reserved;

(k) Submittal by DB Team to GDOT and acceptance by GDOT of the Emergency Utility Response Plan under Article 7.5 (Utility Adjustments) of the Agreement and Volume 2, Section 6 (Utility Adjustments);

(l) Submittal by DB Team to GDOT of qualified Worksite Erosion Control Supervisor (WECS) and Worksite Traffic Control Supervisor (WTCS); and

(m) Submittal by DB Team to GDOT and acceptance by GDOT of all other Management Plans and other submittals required by the DB Documents to be submitted and/or accepted or approved prior to NTP 3 or start of the Construction Work for that Element of the Project.

3.3.1.4 Notwithstanding any provision to the contrary in this Article 3.3 (Contract Time, Date of Commencement, and Notice to Proceed), DB Team shall not perform, nor be obligated to perform, any portion of the Work prior to issuance of approval of the Environmental Documents, except for Work authorized under 23 C.F.R. 636.103, Preliminary Work.

3.3.2 DB Team shall satisfy all conditions prior to issuance of NTP 3. DB Team shall satisfy all conditions to commencement of the Construction Work and commence such Construction Work with diligence and continuity, by the deadlines therefor set forth in Milestone Deadlines attached as Exhibit 9, and any adjustments set forth therein, all as the same may be extended pursuant to this Agreement.

3.3.3 Prior to the start of any Construction Work, the DB Team shall satisfy conditions set forth in Volume 2, Section 2 (Project Management) and Volume 2, Section 3 (Design and Submittals).

Article 4 CONTROL OF THE WORK

4.1 DB Team Quality Management

The DB Team shall perform the quality control, that is all operation techniques and activities performed or conducted to fulfill the contract requirements, and quality management necessary to meet its obligations under the DB Documents and in accordance with GDOT Standard Specification 105.

4.2 Reserved

4.3 Reserved

4.4 Limitations on DB Team's Right to Rely

4.4.1 No review, comment, objection, rejection, acceptance, disapproval, certification (including certificates of Substantial Completion and Final Acceptance), concurrence, monitoring, testing, verification sampling, inspection, spot checking, auditing or other oversight by or on behalf of GDOT or their representatives or agents, or lack thereof by GDOT, or their representatives or agents, shall constitute acceptance of materials or Work or waiver of any legal or equitable right under the DB Documents, at Law, or in equity. GDOT shall be entitled to remedies for Nonconforming Work and to identify additional Work which must be done to bring the Work and Project into compliance with requirements of the DB Documents, regardless of whether previous review, comment, objection, rejection, acceptance, disapproval, certification, concurrence, monitoring, testing, inspection, spot checking, auditing or other oversight were conducted or given by GDOT, or their representatives or agents. Regardless of any such activity or failure to conduct any such activity by GDOT, or its representatives or agents, DB Team at all times shall have an independent duty and obligation to fulfill the requirements of the DB Documents. DB Team agrees and acknowledges that any such activity or failure to conduct any such activity by GDOT, or their representatives or agents:

(a) is solely for the benefit and protection of GDOT;

(b) does not relieve DB Team of its responsibility for the selection and the competent performance of all DB Team-Related Entities;

(c) does not create or impose upon GDOT any duty or obligation toward DB Team to cause it to fulfill the requirements of the DB Documents;

(d) shall not be deemed or construed as any kind of warranty, express or implied, by GDOT;

(e) may not be relied upon by DB Team or used as evidence in determining whether DB Team has fulfilled the requirements of the DB Documents;

(f) may not be asserted by DB Team against GDOT as a defense, legal or equitable, to, or as a waiver of or relief from, DB Team's obligation to fulfill the requirements of the DB Documents; and

(g) shall not be deemed or construed as any assumption of risk by GDOT as to the quality of Work or materials.

4.4.2 DB Team shall not be relieved or entitled to reduction of its obligations to perform the Work in accordance with the DB Documents, or any of its other liabilities and obligations, including its indemnity obligations, as the result of any

activity identified in Article 4.4.1 or failure to conduct any such activity by GDOT. Such activity by GDOT shall not relieve DB Team from liability for, and responsibility to cure and correct Nonconforming Work or DB Team Defaults.

4.4.3 To the maximum extent permitted by Law, DB Team hereby releases and discharges GDOT from any and all duty and obligation to cause DB Team's Work or the Project to satisfy the standards and requirements of the DB Documents. GDOT is an intended third-party beneficiary of this Article 4.4 (Limitations on DB Team's Right to Rely).

4.4.4 Notwithstanding the provisions of Articles 4.4.1, 4.4.2 and 4.4.3:

(a) DB Team shall be entitled to rely on written approvals, acceptances, lack of responses from GDOT (i) for the limited purpose of establishing that the approval, acceptance or lack of response occurred or (ii) that are within its sole discretion, but only to the extent that DB Team is prejudiced by a subsequent decision of such party to rescind such approval or acceptance;

(b) DB Team shall be entitled to rely on the certificates of Substantial Completion and Final Acceptance from GDOT for the limited purpose of establishing that Substantial Completion and Final Acceptance, as applicable, have occurred, and the respective dates thereof;

(c) GDOT is not relieved from any liability arising out of a knowing and intentional material misrepresentation under any written statement GDOT delivers to DB Team; and

(d) GDOT is not relieved from performance of its express responsibilities under the DB Documents in accordance with all standards applicable thereto.

4.5 Reserved

4.6 Oversight by GDOT

4.6.1 GDOT shall independently have the right at all times to monitor, inspect, sample, measure, attend, observe or conduct tests and investigations, and conduct any other oversight respecting any part or aspect of the Project or the Work, to the extent necessary or advisable (a) to comply with U.S. Army Corps of Engineers or other applicable federal agency requirements, and (b) to verify on an audit basis DB Team's compliance with the DB Documents and Management Plans as provided in Article 22.2 (Audits).

4.6.2 DB Team acknowledges and agrees that GDOT will have the right to audit, monitor and inspect DB Team and its Contractors compliance with Good Industry Practice and its responsibilities and obligations under the DB Documents.

4.6.3 GDOT will not conduct formal prior reviews of Design Documents except to the extent necessary or advisable, provided that the aforementioned shall not limit GDOT's rights pursuant to this Agreement. GDOT reserve the right to conduct "over-the-shoulder" reviews of Design Documents or other Submittals as they may deem necessary or appropriate, including pursuant to Article 17.3.8 (Increased Oversight, Testing, and Inspection), provided that they shall not have any obligation to conduct such reviews nor assume any responsibility for DB Team's Work, regardless of whether or not electing to perform or performing any such "over-the-shoulder" reviews.

4.6.4 Nothing in the DB Documents shall preclude, and DB Team shall not interfere with, any review, audit or oversight of Submittals, Work or books and records that the GDOT may desire to conduct.

4.7 Rights of Cooperation and Access; Increased Oversight

4.7.1 DB Team shall coordinate and cooperate, and require its Contractors to coordinate and cooperate, with GDOT and any such parties as provided in Article 4.6 (Oversight by GDOT) to facilitate the full, efficient, effective and timely performance of all such monitoring, inspection, sampling, measuring, testing, reporting, auditing, and other oversight functions. DB Team shall cause its representatives to be available at all reasonable times for consultation with GDOT and such other parties as required.

4.7.2 Without limiting the foregoing and subject to GDOT complying with DB Team's reasonable safety requirements, DB Team shall afford GDOT:

(a) safe and unrestricted access to the Project at all times,

(b) safe access during normal business hours to DB Team's Project offices and operations buildings,

(c) safe access during normal business hours to the Project Specific Locations and

(d) unrestricted access to data respecting the Project design, construction, operations and maintenance, and the Utility Adjustment Work.

Without limiting the foregoing, DB Team shall deliver to GDOT upon request accurate and complete books, records, data and information regarding Work, the Project and the Utility Adjustment Work, in the format required by the Technical Provisions.

4.7.3 GDOT shall have the right to increase the type and level of their oversight as provided in Article 4.6 Oversight by GDOT) and Article 17.3.8 (Increased Oversight, Testing, and Inspection).

4.8 Limits of Responsibility for Oversight, Review, Recommendations, Inspection and Acts by GDOT

4.8.1 Although GDOT, and its representatives and agents, may consult with DB Team during the course of the Work, no such party shall have control over, charge of, or responsibility for any of the Work, including without limitation, any design or engineering thereof, or means, methods, techniques, sequences or procedures in connection therewith, nor shall any such party be responsible for DB Team's failure to perform the Work in accordance with the requirements of the DB Documents. Any such review is not for the purpose of determining the accuracy and completeness of information or work product, all of which are DB Team's responsibility. Any review, recommendation, acceptance, inspection, response, act or omission with respect to any Submittals, or with respect to the Project, the Work (whether Construction Work or Design Work), or the Construction Documents shall be pursuant to, and solely in furtherance of the inspection powers as set forth in O.C.G.A. § 50-21-24(8).

4.8.2 DB Team shall, at all times and notwithstanding any such acts or omissions by GDOT as provided in this Article 4 (Control of the Work) or elsewhere in this Agreement, be fully responsible for all architectural design and engineering required for the Project. DB Team expressly waives and releases (a) all claims for right of contribution against either GDOT, or its respective representatives and agents, other than for such parties' sole negligence, arising from or related to any third-party claims, including without limitation for personal injury, death, or property damage, and (b) all claims and defenses by DB Team against either GDOT, or its respective representatives and agents in derogation of the limitations of this Article 4 , including this Article 4.8 (Limits of Responsibility for Oversight, Review, Recommendations, Inspections and Acts by GDOT), and/or that any or all of such parties otherwise have, or by their acts or omissions, assumed any responsibility for, or related to, the design or construction of the Project, or any means, methods, or techniques in respect thereof. DB Team hereby further expressly waives any claim or defense the basis of which is to assert that GDOT may not delegate the responsibility for any Element of the design and construction of the Project involving public roadways, signs, or traffic controls to DB Team as provided in this Agreement.

Article 5 CONTRACT SUM, PAYMENTS, AND PUBLIC FUNDS

5.1 Payment of Contract Sum

5.1.1 GDOT shall pay DB Team the Contract Sum for Work properly performed in accordance with the DB Documents. DB Team, in consideration for all Work performed in accordance with the DB Documents, shall be entitled to receive the Contract Sum, which amount is inclusive of all fees, overhead, profit, insurance and bond premiums, labor and material costs, installations, delivery, warehouse and handling charges, duties, taxes and other assessments.

5.2 Reserved

5.3 Reserved

5.4 GDOT Monetary Obligations and Overall Limitation of Liability

5.4.1 Notwithstanding anything to the contrary in the DB Documents, in no event shall GDOT's outstanding liability to DB Team under the DB Documents, including liability related to Compensation Events and Compensation Amounts, exceed the amount of compensation that would be payable to DB Team pursuant to a Termination for Convenience under Article 19.1 (Termination for Convenience).

5.4.2 The payment of any moneys owed by GDOT under the DB Documents, including without limitation amounts payable in connection with a termination, upon the occurrence of a GDOT Event of Default, or in any suit for monetary damages alleging breach of this Agreement by GDOT, shall be limited to funds available to GDOT for such payments.

5.4.3 Reserved

5.4.4 Reserved

Article 6 PROJECT PLANNING AND ACCEPTANCES; PROJECT ADMINISTRATION, REVIEW AND OVERSIGHT; PUBLIC INFORMATION

6.1 Preliminary Planning and Engineering Activities; Site Conditions

6.1.1 DB Team shall perform or cause to be performed all architectural and engineering activities appropriate for design and construction of the Project in accordance with Good Industry Practice and the DB Documents, which may include, subject to the scope of Work set forth in the DB Documents or as required by GDOT by Supplemental Agreement or Directive Letter:

(a) Utility Adjustments;

(b) technical studies and analyses;

(c) geotechnical investigations;

(d) right of way mapping, surveying and appraisals;

(e) Subsurface Utility Engineering (SUE) investigations and mapping;

(f) Hazardous Materials investigations; and

(g) design and construction surveys.

6.1.2 Except to the extent that DB Team is entitled to a Relief Event and/or a Compensation Event under this Agreement, DB Team shall bear the risk of any incorrect or incomplete review, examination and investigation by it of the Site or

the Existing Improvements and surrounding locations, and of any incorrect or incomplete information resulting from preliminary architectural and engineering activities conducted by DB Team, GDOT, or any other Person. DB Team acknowledges and agrees that GDOT makes no warranties or representations as to any surveys, data, reports or other information provided by GDOT or other Persons concerning surface conditions and subsurface conditions, including the presence of Utilities, Hazardous Materials, contaminated groundwater, archeological, paleontological and cultural resources, and Threatened or Endangered Species, affecting the Site, the Existing Improvements, or surrounding locations. DB Team acknowledges that such information is for DB Team's reference only and has not been verified.

6.1.3 Except to the extent that DB Team is entitled to a Relief Event and/or a Compensation Event under this Agreement, DB Team shall bear the risk of all conditions occurring on, under or at the Site and the Existing Improvements, including (a) physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area, (b) changes in surface topography, (c) variations in subsurface moisture content, (d) Utility facilities, (e) the discovery at, near or on the Property of any archeological, paleontological or cultural resources, and (f) the discovery at, near or on the Property of any Threatened or Endangered Species.

6.2 Governmental Approvals and Third-Party Agreements

6.2.1 GDOT retains responsibility for obtaining all Provided Approvals based on the design schematic contained in the NEPA Approvals. GDOT shall deliver to DB Team true and complete copies of all Provided Approvals. DB Team shall obtain all other Governmental Approvals and, except to the extent the DB Documents expressly provide GDOT is responsible therefor, all third-party approvals and agreements required in connection with the Project or the Work, including any modifications, renewals and extensions of the Provided Approvals (including those required in connection with a Compensation Event). DB Team shall deliver to GDOT true and complete copies of all new or amended Governmental Approvals and third-party approvals and agreements. In no event shall GDOT be responsible or liable for any delays in obtaining Provided Approvals to the extent such delays are caused by differences between the schematic contained in the NEPA Approvals and DB Team's Final Design, unless such differences are due to a GDOT Change.

6.2.2 Prior to submitting to a Governmental Entity any application for a Governmental Approval (or any proposed modification, renewal, extension or waiver of a Governmental Approval or provision thereof), DB Team shall submit the same, together with any supporting environmental studies and analyses, to GDOT (a) for acceptance or (b) for review and comment, as specified in Table 4-2 (GDOT-Led Environmental Preparation and Approval).

6.2.3 Except as expressly set forth in this Agreement to the contrary, in the event DB Team's design differs from the schematic contained in the approved Environmental Documents upon which the Provided Approvals were based, as among GDOT and DB Team, DB Team shall support necessary actions, and shall bear all risk of delay, resulting from or arising out of any associated change

in the Project location and design, including (a) conducting all necessary environmental studies and preparing all necessary Environmental Documents in compliance with applicable Environmental Laws, and (b) obtaining and complying with all necessary new Governmental Approvals (including any modifications, renewals and extensions of the Provided Approvals, and other existing Governmental Approvals). GDOT will independently evaluate all environmental studies and documents and fulfill the other responsibilities assigned to them by 23 CFR Part 771.

6.2.4 Subject to clauses of Article 14.2 (Compensation Events) and clauses of Article 14.1 (Relief Events) and except to the extent required under the Technical Provisions, in the event DB Team is unable to obtain necessary Governmental Approvals for any design that differs from the schematics contained in the approved Environmental Documents upon which Provided Approvals were based, DB Team shall be obligated to design and construct the Project according to a design in compliance with the requirements of the Provided Approvals, and no such circumstance shall constitute a Relief Event or Compensation Event.

6.2.5 At DB Team's request, GDOT shall reasonably assist and cooperate with DB Team in obtaining from Governmental Entities the Governmental Approvals (including any modifications, renewals and extensions of existing Governmental Approvals from Governmental Entities) required to be obtained by DB Team under the DB Documents.

6.2.5.1 GDOT and DB Team shall work jointly to establish a scope of work and budget for GDOT Recoverable Costs related to the assistance and cooperation GDOT will provide as contemplated herein, subject to any rights of DB Team in the case of a Compensation Event.

6.2.5.2 Such costs and expenses shall be subject to the limitations for GDOT Recoverable Costs provided however that, notwithstanding the limitations of subpart (a) in the definition of GDOT Recoverable Costs, such reimbursable amounts shall expressly include costs and expenses incurred to conduct further or supplemental environmental studies as a result of any DB Team Release(s) of Hazardous Material.

6.2.6 DB Team shall comply with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect all Governmental Approvals, including performance of all environmental mitigation measures required by the DB Documents or Governmental Approvals and including payment of mitigation credits and any other fees required for Governmental Approvals, except to the extent that responsibility for performance of such measures and payment is expressly assigned to GDOT in the DB Documents.

6.2.7 In the event that any Governmental Approvals required to be obtained by DB Team must formally be issued in GDOT's name, DB Team shall undertake necessary efforts to obtain such approvals subject to GDOT's reasonable cooperation with DB Team, as the case may be, at DB Team's expense (except in connection with a Compensation Event), in accordance with Article 6.2.5,

including execution and delivery of appropriate applications and other documentation in form accepted by GDOT. Refer to Volume 2, Section 4.2 (Administrative Requirements) for more specific provisions on applications in GDOT's name for Environmental Approvals.

6.2.8 In the event that GDOT must act as the lead agency and directly coordinate with a Governmental Entity in connection with obtaining Governmental Approvals which are the responsibility of DB Team, DB Team shall provide all necessary support to facilitate the approval, mitigation or compliance process. Such support may include conducting necessary field investigations, surveys, and preparation of any required reports, documents and applications.

6.2.9 DB Team shall be responsible for compliance with all applicable Laws in relation to Project Specific Locations and Additional Properties for obtaining any Environmental Approval or other Governmental Approval required in connection with Project Specific Locations.

6.2.10 DB Team shall not enter into any agreement with any Governmental Entity, Utility Owner, railroad, property owner or other third party having regulatory jurisdiction over any aspect of the Project or Work or having any property interest affected by the Project or the Work that in any way purports to obligate GDOT, or the State or an agency or department thereof, or states or implies that GDOT has an obligation, to the third party to carry out any installation, design, construction, maintenance, repair, operation, control, supervision, regulation or other activity after the end of the Term, unless GDOT otherwise accepts in writing in its sole discretion. DB Team has no power or authority to enter into any such agreement with a third party in the name or on behalf of GDOT.

6.3 Review and Oversight

6.3.1 Submittal, Review and Acceptance Terms and Procedures

6.3.1.1 This Article 6.3 (Review and Oversight) sets forth uniform terms and procedures that shall govern all Submittals pursuant to the DB Documents and component plans thereunder. In the event of any irreconcilable conflict between the provisions of this Article 6.3 and any other provisions of the DB Documents and component plans thereunder concerning submission, review and acceptance, rejection, or approval procedures, this Article 6.3 shall exclusively govern and control, except to the extent that the conflicting provision expressly states that it supersedes this Article 6.3.

6.3.2 Time Periods

6.3.2.1 Except as expressly set forth elsewhere in the DB Documents or as provided below, whenever GDOT is entitled to review and comment, or accept a Submittal, GDOT shall promptly respond within 30 days from the date it receives an accurate and complete Submittal, accuracy and completeness shall be at GDOT's sole discretion, together with a completed transmittal form, in form to be mutually agreed upon, and all necessary information and documentation

concerning the subject matter included. Any period of review by GDOT more than 30 days, or as specifically set forth elsewhere in the DB Documents providing for a different time period, may be deemed a GDOT Caused-Delay and give rise to Relief Event, subject to the provisions and satisfying all DB Document requirements for Relief Events. The time periods set forth in the DB Documents for GDOT's review and acceptance or approval of Submittals, as and to the extent required shall apply to and restart with all re-submittals or if additional information or documentation is required to complete a Submittal which DB Team may be required to provide.

6.3.2.2 The time periods set forth herein with respect to GDOT's review and acceptance, rejection, or approval, or comment on Submittals shall be subject to adjustment as provided in Volume 2, Section 3 (Design and Submittals) for multiple concurrent Submittals.

6.3.2.3 All time periods for GDOT to act upon Submittals shall be extended by the period of any delay caused by any Relief Event impacting same, including as set forth in clauses of Article 14.1 (Relief Event) or otherwise as and to the extent of any delay of DB Team or any DB Team-Related Entity.

6.3.2.4 During any time that GDOT is entitled under Article 17.3.8 (Increased Oversight, Testing, and Inspection) to increase the level of its auditing, monitoring, inspection, sampling, measuring, testing and oversight of the Project, the Utility Adjustments and DB Team's compliance with its obligations under the DB Documents, the applicable period for GDOT to act on any Submittals received during such time and not related to curing the DB Team Default(s) that instigated the Article 17.3.8 action shall automatically be extended by 14 days.

6.3.2.5 GDOT shall endeavor to reasonably accommodate a written request from DB Team for expedited action on a specific Submittal, within the practical limitations on availability of personnel appropriate for acting on the types of Submittal in question; provided DB Team sets forth in its request specific, abnormal circumstances demonstrating the need for expedited action. This provision shall not apply, however, during any time described in Articles 6.3.2.3 and Article 6.3.2.4.

6.3.3 GDOT Discretionary Acceptances

If the Submittal is one where the DB Documents indicate approval or acceptance is required from GDOT in its sole discretion or good faith discretion, then GDOT's lack of approval, acceptance, determination, decision, or other action within the applicable time period under Article 6.3.2 (Time Periods) shall be deemed non-acceptance. If the approval is subject to good faith discretion of GDOT, then its decision shall be binding unless it is finally determined by clear and convincing evidence that such decision is determined to be arbitrary and capricious and causes delay; when so determined, it will then constitute and be treated as a GDOT-Caused Delay.

6.3.4 Other GDOT Acceptances

6.3.4.1 Whenever the DB Documents indicate that a Submittal or other matter is subject to GDOT's approval or acceptance, and no particular standard therefor is stated, then the standard shall be reasonableness.

6.3.4.2 If the reasonableness standard applies to GDOT's right of approval or acceptance of a Submittal, and GDOT delivers no approval or acceptance within the applicable time period under Article 6.3.2 (Time Periods), then DB Team may deliver to GDOT a written notice stating the date within which GDOT was to have decided or acted. If GDOT does not respond or act within seven days after receipt of the notice, then a delay may constitute GDOT-Caused Delay under Article 14 (Relief Events; Compensation Events), subject to the provisions and satisfying all DB Document requirements for Relief Events and Compensation Events. Regardless of the actual days of delay, the start of any GDOT-Caused Delay shall be measured from 14 days from the end of the last review period for that Submittal. DB Team hereby agrees to plan for and account for such notice periods within the Project Schedule.

6.3.4.3 If GDOT requires an approval of a Submittal, such approval is a formal conditional determination in writing by GDOT that a particular matter, Submittal, or item is good or satisfactory for the Project. Such determination may be based on requirements or commitments beyond those set forth in the DB Documents and may reflect preferences of GDOT.

6.3.5 GDOT Review and Comment

6.3.5.1 Whenever the DB Documents indicate that a Submittal or other matter is subject to GDOT's review, comment, review and comment, disapproval or similar action not entailing a prior approval or acceptance and GDOT delivers no comments, exceptions, objections, rejections or disapprovals within the applicable time period under Article 6.3.2 (Time Periods), then DB Team may proceed thereafter at its election and risk, without prejudice to GDOT's rights to later object, reject, or disapprove.

6.3.5.2 No such failure or delay by GDOT in delivering comments, exceptions, objections, rejections or disapprovals within the applicable time period under Article 6.3.2 (Time Periods) shall constitute a GDOT-Caused Delay, GDOT Change, Relief Event or Compensation Event.

6.3.5.3 When used in the DB Documents, the phrase "completion of the review and comment process" or similar terminology means either (a) GDOT has reviewed, provided comments, exceptions, objections, rejections or disapprovals, and all the same have been resolved, or (b) the applicable time period has passed without GDOT providing any comments, exceptions, objections, rejections or disapprovals.

6.3.6 Submittals Not Subject to Prior Review, Comment or Acceptance

Whenever the DB Documents indicate that DB Team is to deliver a Submittal to GDOT but express no requirement for GDOT review, comment, disapproval, prior acceptance or

other GDOT action, then DB Team is under no obligation to provide GDOT any period of time to review the Submittal or obtain acceptance of it before proceeding with further Work, and GDOT shall have the right, but is not obligated, to at any time review, comment on, take exception to, object to, reject or disapprove the Submittal. No failure or delay by GDOT in delivering comments, exceptions, objections, rejections or disapprovals with respect to any Submittal as set forth in this Article 6.3 (Review and Oversight) shall constitute a Relief Event or Compensation Event.

6.3.7 Resolution of GDOT Comments and Objections

6.3.7.1 If the Submittal is one not governed by Article 6.3.3 (GDOT Discretionary Acceptances) or Article 6.3.6 (Submittals Not Subject to Prior Review, Comment or Acceptance), GDOT's exception, objection, rejection or disapproval shall be deemed reasonable, valid and binding if based on any of the following grounds:

(a) The Submittal or subject provision thereof fails to comply with any applicable covenant, condition, requirement, commitment, term, or provision of the DB Documents or Management Plans thereunder;

(b) The Submittal or subject provision thereof is not to a standard equal to or better than the requirements of Good Industry Practice;

(c) DB Team has not provided all content or information required in respect of the Submittal or subject provisions thereof, provided that GDOT assumes no duty, obligation or liability regarding completeness or correctness of any Submittal, including a Submittal that is to be delivered to a Governmental Entity as a proposed Governmental Approval, or in order to obtain, modify, amend, supplement, renew, extend, waive or carry out a Governmental Approval;

(d) Adoption of the Submittal or subject provision thereof, or of any proposed course of action thereunder, would result in a conflict with or violation of any Law or Governmental Approval; or

(e) In the case of a Submittal that is to be delivered to a Governmental Entity as a proposed Governmental Approval, or in order to obtain, modify, amend, supplement, renew, extend, waive or carry out a Governmental Approval, it proposes commitments, requirements, actions, terms or conditions that are not arrangements that GDOT offers or accepts for addressing similar circumstances affecting its own projects.

6.3.7.2 DB Team shall timely and promptly respond to all of GDOT's comments and objections to a Submittal and, except as provided below, make modifications to the Submittal as necessary to fully reflect and resolve all such comments and objections, in accordance with the review processes set forth in this Article 6.3 (Review and Oversight). DB Team acknowledges that GDOT may provide comments and objections which reflect concerns regarding interpretation or preferences of the commenter or which otherwise do not directly relate to grounds set forth in Article 6.3.7.1. DB Team agrees to undertake reasonable

efforts to accommodate or otherwise resolve any such comments or objections through the review processes described in this Article 6.3.

6.3.7.3 If DB Team fails to notify GDOT within such time period, GDOT may deliver to DB Team a written notice stating the date by which DB Team was to have responded to GDOT's comments and that if DB Team does not respond to those comments within five Business Days after receipt of this notice, then that failure shall constitute DB Team's agreement to make all changes necessary to accommodate and resolve the comment or objection and full acceptance of all responsibility for such changes without right to a Relief Event or Compensation Event.

6.3.7.4 The foregoing shall in no way be deemed to obligate DB Team to incorporate any comments or resolve objections that would render the Submittal erroneous, defective or less than Good Industry Practice, except pursuant to a GDOT Change.

6.3.7.5 After GDOT receives DB Team's explanation as to why the modifications are not required as provided in Article 6.3.7.2, Article 6.3.7.3 and Article 6.3.7.4, the Parties shall attempt in good faith to resolve the Dispute. If they are unable to resolve the Dispute, it shall be resolved according to Article 17.7 (Dispute Resolution Procedures) except (a) as provided otherwise in Article 6.3.3 (GDOT Discretionary Acceptances), and (b) if GDOT elects to issue a Directive Letter pursuant to Article 13.1 (Directive Letters) with respect to the disputed matter, the DB Team shall proceed in accordance with GDOT's directive while retaining any claim as to the disputed matter.

Article 7 DEVELOPMENT OF THE PROJECT

7.1 General Obligations of DB Team

DB Team, in addition to performing all other requirements of the DB Documents, shall:

7.1.1 Furnish all design, engineering and other services, provide construction management and all work, including all materials, equipment, labor, and installations, and undertake all efforts necessary or appropriate (excluding only those materials, services and efforts which the DB Documents expressly specify will be undertaken by GDOT or other Persons) to construct the Project and maintain it during construction, so as to achieve Substantial Completion and Final Acceptance by the applicable Milestone Deadlines;

7.1.2 At all times provide a Project Manager approved by GDOT who:

(a) will have full responsibility for the prosecution of the Work, including Design Work and Construction Work,

(b) will act as agent and be a single point of contact in all matters on behalf of DB Team,

(c) will be present (or his/her designee approved by GDOT will be present) at the Site at all times that Design Work or Construction Work is performed, and

(d) will be available to respond to GDOT;

7.1.3 Comply with, and require that all Contractors comply with, all requirements of all applicable Laws;

7.1.4 Cooperate with GDOT and Governmental Entities with jurisdiction in all matters relating to the applicable portions of the Work, including Design Work and Construction Work for the Project, including their review, inspection and oversight of the design and construction; and

7.1.5 Use commercially reasonable efforts to mitigate delay to design and construction of the Project and mitigate damages due to delay in all circumstances, to the extent possible, including by re-sequencing, reallocating, or redeploying DB Team's and its Contractors' forces to other work.

7.2 Performance, Design and Construction Standards

7.2.1 DB Team shall furnish all aspects of the Design Work and all Design Documents, and shall construct the Project and perform the Construction Work as designed, free from Defects, and in accordance with (a) Good Industry Practice, (b) the requirements, terms and conditions set forth in the DB Documents, (c) the Project Schedule, (d) all Laws, (e) the requirements, terms and conditions set forth in all Governmental Approvals, and (f) the requirements of the accepted Quality Management Plan (QMP) or to be prepared thereunder, in each case taking into account the Existing Right of Way, Required Right of Way, and any Additional Property limits and other constraints affecting the Project and the Property.

7.2.2 Reserved

7.2.3 DB Team acknowledges that prior to the Effective Date it had the opportunity to identify any provisions of the Technical Provisions or Technical Documents that are erroneous or create a potentially unsafe condition, and the opportunity and duty to notify GDOT in writing of such fact and of the changes to the provision that DB Team believed were the minimum necessary to render it correct and safe. If it is reasonable or necessary to adopt changes to the Technical Provisions or Technical Documents after the Effective Date to make the provisions correct and safe, such changes shall not be grounds for a Relief Event or Compensation Event unless (a) DB Team neither knew nor had reason to know prior to the Effective Date that the provision was erroneous or created a potentially unsafe condition or (b) DB Team knew of and reported to GDOT the erroneous or potentially unsafe provision prior to the Effective Date and GDOT did not adopt reasonable and necessary changes. Except for a circumstance as set forth under (b) herein, if DB Team commences or continues any Design Work or Construction Work affected by such a change after the need for the change was discovered or suspected, or should have been discovered or suspected through the exercise of reasonable care, DB Team shall bear any additional

costs associated with redoing the Work already performed. Inconsistent or conflicting provisions of the DB Documents shall not be treated as erroneous provisions under this Article 7.2.3, but instead shall be governed by Article 1.2 (DB Documents; Order of Precedence).

7.2.4 References in the Technical Provisions or Technical Documents to manuals or other publications governing the Design Work or Construction Work prior to the Substantial Completion Date shall mean the most recent editions in effect at the date of the RFP advertisement, unless expressly provided otherwise. Any changes to the Technical Provisions and Technical Documents, including Safety Standards, respecting Design Work or Construction Work prior to the Substantial Completion Date shall be subject to the Supplemental Agreement process for a GDOT Change in accordance with Article 13 (GDOT Changes; DB Team Changes; Directive Letters). Safety Compliance changes shall be in accordance with Article 12.1 (Safety Compliance).

7.2.5 The Parties anticipate that from time to time after the Effective Date, GDOT will adopt, through revisions to existing manuals and publications or new manuals and publications, changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards, relating to Design Work and Construction Work. GDOT shall have the right to add such changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards, to Volume 2 by notice to DB Team, whereupon they shall constitute amendments, and become part, of the Technical Documents. If such changed, added or replacement Technical Documents or Safety Standards encompass matters that are addressed in the Technical Provisions or Technical Documents as of the Effective Date, they may, upon inclusion in Volume 2, replace and supersede inconsistent provisions of the Technical Provisions and Technical Documents to the extent designated by GDOT in its sole discretion. GDOT will identify the superseded provisions in its notice to DB Team. Notwithstanding the foregoing, in the absence of a GDOT Change and except as provided otherwise in Article 7.5.3 (Requirements) with respect to Adjustment Standards, if GDOT adopts the changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions, including changed, added or replacement Safety Standards, prior to the Final Acceptance Date, DB Team shall not be obligated to (but may) incorporate the same into its design and construction of the Project prior to the Final Acceptance Date.

7.3 Design Implementation and Submittals

7.3.1 DB Team, through the appropriately qualified and licensed design professionals identified in DB Team's Key Personnel as identified in Exhibit 2 and in accordance with Volume 2, Section 2 (Project Management), shall prepare designs, Plans and specifications in accordance with the DB Documents. DB Team shall cause the Engineer of Record for the Project to sign and seal all Released for Construction Documents, any revisions to the Released for Construction Documents, all design changes; and for conformance, the Record Drawings (As-Builts).

7.3.2 DB Team shall deliver to GDOT accurate and complete duplicates of all Interim Design, and Preliminary and Final Plans and Construction Documents within the time and in the form required by the Technical Provisions.

7.3.3 The Engineer of Record shall initiate or sign-off on all requests for information prior to the requests being submitted to GDOT.

7.4 Reserved

7.5 Utility Adjustments

7.5.1 DB Team's Responsibility

7.5.1.1 DB Team is responsible for causing, in accordance with the Project Schedule, all Utility Adjustments necessary to accommodate construction, operation, maintenance and/or use of the Project. DB Team shall coordinate, monitor, and otherwise undertake the necessary efforts to cause Utility Owners performing Utility Adjustment Work to perform such work timely, in coordination with the Work, and in compliance with the standards of design and construction and other applicable requirements specified in the DB Documents.

7.5.1.2 In addition to GDOT's Project administration, GDOT shall independently have the right at all times to approve Utility Adjustments as provided herein. DB Team shall coordinate and be required to procure GDOT approval as required.

7.5.1.3 Regardless of the arrangements made with the Utility Owners, the DB Team shall continue to be the responsible party to GDOT for timely performance of all Utility Adjustment Work so that upon completion of the Work, all Utilities that might impact the Project or be impacted by it (whether located within or outside the Construction Maintenance Limits) are compatible with the Project. GDOT will provide to DB Team the benefit of any provisions in recorded utility or other easements affecting the Project.

7.5.2 Standard Utility Agreements

The DB Team will be responsible for completion of all required Standard Utility Agreements. The DB Team working with the Utility Owner will provide the cost estimate and supporting documents to the District Utilities Manager for review and acceptance. Upon the acceptance by the District, the approved cost estimate and supporting documents shall be forwarded to the State Utilities Preconstruction Manager for processing, final acceptance, and preparation of the Standard Utility Agreement. As described in the GDOT Utility Accommodation Policy and Standards Manual ("UAM"), Chapter 4.2.F Agreements cover all requirements for Standard Utility Agreements.

7.5.3 Requirements

Each Utility Adjustment (whether performed by DB Team, Subcontractor or by the Utility Owner) shall comply with the Adjustment Standards in effect at the date of the RFP advertisement, unless expressly provided otherwise, together with any subsequent amendments and additions to those standards that (a) are necessary to conform to

applicable Law, or (b) are adopted by the Utility Owner and affect the Utility Adjustment pursuant to the applicable Standard Utility Agreement(s). In addition, all Utility Adjustment Work shall comply with all applicable Laws, the applicable Standard Utility Agreement(s), and all other requirements specified in Volume 2, Section 6 (Utility Adjustments).

7.5.4 Failure of Utility Owners to Cooperate/Escalation

DB Team shall use diligent efforts to obtain the cooperation of each Utility Owner as necessary for Utility Adjustments. It shall be the DB Team's responsibility to coordinate and track each Utility Owner's progress in relation to the Utility Work Plan or Revised Utility Work Plan previously accepted by GDOT. Once the DB Team has determined that the Utilities work progress is at least 20% behind the accepted Utility Work Plan; the DB Team will notify the Utility Owner, and GDOT of such apparent delay through written correspondence. Such written correspondence shall detail the delay in question and request the Utility to submit a proposal on how the Utility Owner plans to rectify such delay and maintain the project's schedule prescribed by the previously accepted Utility Work Plan. The Utility will respond to this letter within 10 Business Days. The response shall include a proposal to cure the delay identified by the DB Team. In some cases, the complexity of the project may require that a utility coordination meeting be held to address the issues identified by the DB Team. If the Utility determines that this is the case, then the Utilities response letter shall include a request to hold a utility coordination meeting with the DB Team, the Office of Innovative Delivery Utility Liaison, the District Utility Manager and the Construction Manager for utility delay resolution. If the utility delay cannot be resolved through the coordination efforts described above after 20 Business Days from the date provided in the DB Team's original written correspondence; the said Dispute shall escalate to the State Construction Engineer for further consideration. If additional escalation is required, DB Team shall follow escalation procedures as outlined in the UAM, Chapter 672-19 of the Rules, and O.C.G.A. § 32-6-171.

7.5.5 Utility Permits (GUPS)

7.5.5.1 It is anticipated that during the design and construction phases of the Work, from time to time Utility Owners will apply for utility permits to install new Utilities that would cross or longitudinally occupy the Property, or to modify, upgrade, repair, relocate or expand existing Utilities within the Property for reasons other than accommodation of the Project.

7.5.5.2 As specified in Article 7.5.5.1, for all such utility permit applications pending as of or submitted after the Effective Date, DB Team shall furnish the most recent Project design information and/or as-built Plans, as applicable, to the applicants, and shall assist each applicant with information regarding the location of other proposed and existing Utilities.

7.5.6 Unexpected Utility Adjustments

Within 120 days after the NTP 1, DB Team shall conduct an investigation for any unidentified Utility. If DB Team finds an unidentified Utility during the 120 day time frame, DB Team may be entitled to a Compensation Event or a Relief Event. If DB Team finds an unidentified Utility after the 120 day time frame, DB Team shall not be entitled to a

Compensation Event or a Relief Event. If a Utility is shown on the SUE Plans and not to be impacted by DB Team's Final Design, but is later identified by DB Team as needing to be relocated, DB Team shall not be entitled to a Compensation Event or a Relief Event. Notwithstanding the foregoing, DB Team shall not be entitled to a Compensation Event or a Relief Event for any Utility whose location, size and dimensions were reasonably accurate and shown on the SUE Plans.

7.5.7 Reserved

7.6 Conditions to Commencement of Construction Work

7.6.1 Construction Work Generally

Except to the extent expressly permitted in writing by GDOT, DB Team shall not commence or permit or suffer commencement of construction of the Project, or applicable portion thereof, until GDOT issues NTP 3 and all of the conditions of Article 3.3.1.3 have been met.

7.6.2 Utility Adjustments

DB Team shall not commence or permit or suffer commencement of construction of a Utility Adjustment included in the Construction Work until GDOT issues NTP 3, and the requirements of Article 7.5 (Utility Adjustments) have been met.

7.7 Substantial Completion, Punch List, Final Acceptance; Early Opening of Portions of the Project

7.7.1 Substantial Completion

7.7.1.1 GDOT will issue a written certificate of Substantial Completion at such time as Substantial Completion occurs which shall be subject to the terms and conditions of this Article 7.7.1 (Substantial Completion).

7.7.1.2 Substantial Completion shall occur upon satisfactory completion of the requirements of GDOT Standard Specification 108.07.G.

7.7.1.3 All comments from EPD on the Post-Construction Stormwater Report have been addressed by the DB Team, and the EPD's 90-day Post-Construction Stormwater Report disapproval period has expired.

7.7.1.4 DB Team shall provide GDOT with not less than 20 days prior written notification of the date DB Team determines it will achieve Substantial Completion. A written request for Substantial Completion will not be taken into consideration unless the requirements of the DB Documents have been met, and the request has been approved in writing by GDOT confirming Substantial Completion requirements of Article 7.7 (Substantial Completion, Punch List, Final Acceptance; Early Opening of Portions of the Project) are met. During such notice period, DB Team and GDOT shall meet and confer and exchange information on a regular cooperative basis with the goal being GDOT's orderly, timely inspection and review of the Project per the applicable Final Plans and

Construction Documents, and GDOT's issuance of a written certificate of Substantial Completion.

7.7.1.5 During the period specified in Article 7.7.1.4, GDOT shall conduct an inspection of the Project and its components, a review of the applicable Final Plans and Construction Documents and such other investigation as may be necessary to evaluate whether Substantial Completion is achieved. GDOT shall deliver a Punch List to the DB Team following such inspection, review and investigation within five Business Days. GDOT shall then either (a) issue the written certificate of Substantial Completion or (b) notify DB Team in writing setting forth, as applicable, why the Project has not reached Substantial Completion. If GDOT and DB Team cannot agree that the Substantial Completion has been completed by the Substantial Completion Date defined in Exhibit 9, such Dispute shall be resolved according to Article 17 (Default; Remedies; Claim for Adjustments and Disputes).

7.7.2 Punch List

7.7.2.1 GDOT will prepare and maintain the final Punch List. Each participant shall have the right to add items to the Punch List and none shall remove any item added by any other without such other's express permission. If DB Team objects to the addition of an item by GDOT, the item shall be noted as included under protest, and if the Parties thereafter are unable to reconcile the protest, the Dispute shall be resolved according to Article 17 (Default; Remedies; Claim for Adjustments and Disputes).

7.7.2.2 DB Team shall immediately commence work on the Punch List items and diligently prosecute such work to completion, consistent with the DB Documents, prior to issuance of Final Acceptance.

7.7.3 Final Acceptance

7.7.3.1 Promptly after achieving Substantial Completion, DB Team shall perform all remaining Work for the Project, including completion of all Punch List items, all landscaping other than vegetative ground cover, and aesthetic features. DB Team shall prepare and adhere to a timetable for planting and establishing the vegetative ground cover landscaping, taking into account weather conditions necessary for successful planting and growth, which timetable shall in any event provide for vegetative ground cover landscaping to be planted and established by 12 months after Substantial Completion.

7.7.3.2 GDOT will issue a written certificate of Final Acceptance at such time as all of the following have occurred for the Project:

(a) All requirements for Substantial Completion have been satisfied;

(b) All Punch List items have been completed and delivered to the reasonable satisfaction of GDOT;

(c) GDOT has received a complete set of the Record Drawings in form and content required by Volume 2, Section 2.7.1.2 (Record Drawings);

(d) All Utility Adjustment Work and other work that DB Team is obligated to perform for or on behalf of third parties has been accepted by such third parties, and DB Team has paid for all work by third parties that DB Team is obligated to pay for, other than disputed amounts;

(e) DB Team has paid in full all Liquidated Damages that are due to GDOT pursuant to this Agreement and are not in Dispute, and has provided to GDOT reasonable security for the full amount of Liquidated Damages that may then be the subject of an unresolved Dispute;

(f) There exist no uncured DB Team Defaults that are the subject of a Warning Notice, or with the giving of notice or passage of time, or both, could become the subject of a Warning Notice (except any DB Team Default for which Final Acceptance will affect its cure);

(g) DB Team has received, and paid all associated fees for, all applicable Governmental Approvals and other applicable third-party approvals required pursuant to the DB Documents, and there exists no uncured material violation of the terms and conditions of any such Governmental Approval or other third-party approvals;

(h) DB Team has delivered to GDOT all warranties, manuals and other Deliverables as required pursuant to the Technical Provisions; and

(i) DB Team has delivered to GDOT verification of all required post construction period, including completed operations, Insurance Policies required under the DB Documents.

7.7.3.3 DB Team shall provide GDOT with written notification when DB Team determines it has achieved Final Acceptance. During the 15 Business Day period following receipt of such notification, DB Team and GDOT shall meet and confer and exchange information on a regular cooperative basis with the goal being GDOT's orderly, timely inspection and review of the Project and the Record Drawings, and GDOT's issuance of a written certificate of Final Acceptance.

7.7.3.4 During such 15 Business Day period, GDOT shall conduct an inspection of the Punch List items, a review of the Record Drawings and such other investigation as may be necessary to evaluate whether the conditions to Final Acceptance are satisfied. GDOT shall deliver a written report of findings and recommendations to DB Team following such inspection, review and investigation and in any case by the end of such 15 Business Day period.

7.7.3.5 Within five Business Days after expiration of such 15 Business Day period GDOT shall either (a) issue a certificate of Final Acceptance or (b) notify DB Team in writing setting forth, as applicable, why Final Acceptance has not been achieved. If GDOT and DB Team cannot agree as to the date of Final Acceptance, such Dispute shall be resolved according to Article 17 (Default; Remedies; Claim for Adjustments and Disputes).

7.7.4 Reserved

7.8 Hazardous Materials Management

DB Team shall comply with all requirements set forth in GDOT Standard Specification 107.22 and Exhibit 11.

7.9 Environmental Compliance

Throughout the course of the Design Work and Construction Work, DB Team's Work shall take into account, be coordinated to allow for, and be performed in accordance with all environmental mitigation measures required under the Environmental Document approvals, including but not limited to the NEPA/GEPA Approval and any other Governmental Approvals for the Project or under the DB Documents, and shall comply with all other conditions and requirements of the Environmental Approvals in accordance with Volume 2, Section 4 (Environmental), provided that the foregoing shall not require nor imply any requirement for DB Team to perform any remediation or disposal of Pre-existing Hazardous Materials or GDOT Release(s) of Hazardous Materials.

7.10 Meetings

7.10.1 DB Team shall conduct regular progress meetings with GDOT during the course of Design Work and Construction Work. These meetings shall be attended by the DB Team's Lead Contractor's project manager and the Engineer of Record or Authorized Representatives of each and any other Key Personnel and other personnel as needed for productive use of the meetings.

7.10.2 In addition, GDOT and DB Team, through their respective Authorized Representatives, shall meet from time to time at the other Party's request to discuss and resolve matters relating to the Work or the Project.

7.10.3 DB Team shall schedule all meetings with GDOT at a date, time, and place reasonably convenient to both Parties and, except in the case of urgency, shall provide GDOT with written notice and a meeting agenda at least one Business Day in advance of each meeting, in the absence of any timeframe specified in the Technical Provisions.

7.10.4 DB Team shall be responsible to document and maintain the full subject matter of all meetings and shall distribute copies of meeting minutes to GDOT not later than the timeframes specified in the Technical Provisions, and in the absence of any specified timeframe, within five days following such meetings.

7.11 Contractor Warranties and Correction of Non-Conforming and Defective Work

7.11.1 DB Team shall obtain customary and reasonable warranties from all Contractors with respect to design, materials, workmanship, installations, equipment, tools, supplies, software or services, all of which DB Team shall cause to be expressly extended and assigned to GDOT, or its designee; provided that the foregoing requirement shall not apply to standard, pre-specified manufacturer warranties of mass-marketed materials, products (including software products), equipment or supplies where the warranty cannot be extended to GDOT using commercially reasonable efforts. To the extent that any Contractor warranty would be voided by reason of DB Team's negligence in incorporating material or equipment into the Work, DB Team shall be responsible for correcting such defect.

7.11.2 Contractor warranties (if any) are in addition to all rights and remedies available under the DB Documents or applicable Law or in equity, and shall not limit DB Team's liability or responsibility imposed by the DB Documents or applicable Law or in equity with respect to the Work, including liability for design defects, latent construction defects, strict liability, breach, negligence, willful misconduct or fraud.

7.11.3 When any act, omission, or other action of DB Team occurs that violates the requirements, conditions, or terms of the DB Documents, or affects the health, safety, or welfare of the public or natural resources, GDOT shall have the right, but not the obligation, to require and direct DB Team to take prompt action to replace, repair, or restore such damage, injury or condition within a time frame established by GDOT, at DB Team's sole cost and expenses and without entitlement to a Relief Event or Compensation Event.

7.12 Maintenance During Construction Work

7.12.1 GDOT shall be responsible for the operation and maintenance of the Existing Right of Way and any acquired right or interest in any Required Right of Way until the Construction Commencement Date. Upon NTP 3, DB Team shall assume full responsibility for maintenance of all Elements within the Construction Maintenance Limits in accordance with the Maintenance Management Limits Plan and the requirements of the DB Documents.

7.12.2 Upon Final Acceptance, GDOT will assume responsibility for the operation and maintenance of the entire Project, provided that where GDOT has opened any portion of the Project to the public prior to Final Acceptance, GDOT shall then assume responsibility for the operations and maintenance of such portions of the Project at such earlier time, provided, however that in all cases, DB Team shall remain responsible for all Work until Final Acceptance and nothing contained herein shall otherwise limit any warranty obligations of DB Team with respect to any Defect or non-conforming Work.

Article 8 SECURITY AND INCIDENT RESPONSE

8.1 Security and Incident Response

8.1.1 DB Team is responsible for the safety and security of the applicable portion of the Project that is under the control of any DB Team-Related Entity and the workers and public thereon during the performance of the Work.

8.1.2 DB Team shall comply with all rules, directives and guidance of the U.S. Department of Homeland Security and comparable State agency, and shall coordinate and cooperate with all Governmental Entities providing security, first responder and other public emergency response services, including, without limiting the foregoing, whenever the National Terrorism Advisory System (NTAS) or successor system issues an "Imminent" or "Elevated" Threat Alert or comparable level of threat or alert for any region in which the Project is located or which the Project serves. Unless directed otherwise by GDOT, DB Team, at its expense, shall assign management personnel with decision-making authority to be personally present at the relevant emergency operations center serving the region, including during a disaster affecting the Project proclaimed by the Governor of Georgia, the President of the United States, or their respective designees. DB Team shall provide such service 24 hours a day, seven days a week, until such level or threat or alert has expired, or until the lead agency at the operations center determines such staffing level is no longer necessary.

8.1.3 DB Team shall perform and comply with the provisions of the Technical Provisions concerning Incident Response, safety and security.

Article 9 MANAGEMENT SYSTEMS AND OVERSIGHT

9.1 Project Management

9.1.1 DB Team is responsible for all activities necessary to manage the Work, including the Utility Adjustment Work. DB Team shall undertake all required aspects of for the Project and Work in accordance with the DB Documents and Good Industry Practice.

9.1.2 DB Team shall develop the necessary plans and documentation in accordance with the Proposal, this Agreement, and Volume 2, Section 2 (Project Management) and Volume 2, Section 3 (Design and Submittals) of the Technical Provisions, and Good Industry Practice.

9.1.3 DB Team shall submit to GDOT for acceptance in its good faith discretion in accordance with the procedures described in Article 6.3 (Review and Oversight) of this Agreement and the Technical Provisions each component part, plan and any proposed changes or additions to or revisions of any such component part, plan or other documentation identified in the DB Documents. Each component part, plan and other documentation of the Management Plans or any submittal identified in this Agreement, Volume 2, Section 3 (Design and Submittals), including in Table 3-1 (Master Submittal List), and the DB Documents, and each proposed change or addition to or revision of any such

component part, plan or other documentation shall constitute a separate Submittal for purposes of Article 6.3 (Review and Oversight). GDOT may propose any change required to comply with Good Industry Practice or to reflect a change in working practice to be implemented by DB Team.

9.1.4 DB Team shall not commence or permit the commencement of any aspect of the design or construction before the relevant component parts, plans and other documentation of the Management Plans applicable to such Work have been submitted to and accepted by GDOT.

9.1.5 Reserved

9.1.6 DB Team shall carry out internal audits of the Management Plans at the times prescribed in the Management Plans.

9.1.7 DB Team shall cause each of its Contractors at every level to comply with the applicable requirements of the DB Documents.

9.1.8 The DB Team shall designate a Quality Assurance Manager who shall, irrespective of their other responsibilities, have defined authority for ensuring the establishment and maintenance of the Management Plans and reporting to GDOT on the performance of the Management Plans.

9.2 Traffic Management

9.2.1 Upon GDOT issuance of NTP 3 and until Final Acceptance of the Project, DB Team shall be responsible for the general management of traffic on the applicable portion of the Project under the control of any DB Team-Related Entity. DB Team shall manage traffic to preserve and protect safety of traffic on such portions and Related Transportation Facilities and, to the maximum extent practicable, to avoid disruption, interruption or other adverse effects on traffic flow, throughput or level of service on the Related Transportation Facilities. DB Team shall conduct and carry out traffic management in accordance with all applicable Technical Provisions, Technical Documents, Laws and Governmental Approvals, as well as any directives as may be required pursuant to Article 8.1.2.

9.2.2 Reserved

9.2.3 GDOT shall have at all times, without obligation or liability to DB Team, the right to:

9.2.3.1 Issue a Directive Letter to DB Team regarding traffic management and control (with which DB Team shall comply), or directly assume traffic management and control, of the Project during any period that:

(a) GDOT designates the Project or portion of the Project for immediate use as an emergency evacuation route or a route to respond to a disaster proclaimed by the Governor of Georgia, the President of the United States, or by any other federal or State agency, or any of the aforementioned respective designees, including reversing the direction of traffic flow during such period,

(b) GDOT designates the Project or a portion of the Project for immediate use as an alternate route for diversion of traffic from any interstate or Highway temporarily closed to all lanes in one or both directions due to Incident or Emergency, or

(c) the Commissioner determines such action will be in the public interest as a result of an emergency or natural disaster; and

9.2.3.2 Provide on the Project, via message signs or other means consistent with Good Industry Practice, non-discriminatory traveler and driver information, and other public information (e.g. AMBER alerts), provided that the means to disseminate such information does not materially interfere with the Work.

Article 10 CONTRACTING AND LABOR PRACTICES

10.1 Reserved

10.2 Responsibility for Work, Contractors and Employees

10.2.1 DB Team shall retain or cause to be retained only Contractors that are qualified, experienced and capable in the performance of the portion of the Work assigned. DB Team shall assure that each Contractor has at the time of execution of the Contract, and maintains at all times during performance of the assigned Work, all licenses required by applicable Laws. DB Team shall require all Contractors to adhere to the requirements herein with respect to Subcontractors.

10.2.2 The retention of Contractors by DB Team will not relieve DB Team of its responsibilities hereunder or for the quality of the Work or materials or services provided by it.

10.2.3 Each Contract shall include terms and conditions sufficient to ensure compliance by all Contractors and Subcontractors, all parties performing any Work on behalf thereof, with the requirements of the DB Documents, and shall include those terms that are specifically required by the DB Documents to be included therein, including, to the extent applicable, those set forth in Exhibit 8 (Federal Requirements) and any other applicable Federal Requirements.

10.2.4 Nothing in the DB Documents will create any contractual relationship between GDOT and any Subcontractor. No Contract entered into by or under DB Team shall impose any obligation or liability upon GDOT to any Subcontractor, or any of their respective employees.

10.2.5 DB Team shall supervise and be fully responsible for the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any Contractor or DB Team-Related Entity, or their respective members, officers, directors, partners, and employees, as though DB Team directly employed all such individuals.

10.3 Reserved

10.4 Key Personnel

10.4.1 DB Team shall retain, employ and utilize the individuals specifically listed in Exhibit 2 (Key Personnel and Other Proposal Commitments) to fill the corresponding Key Personnel positions listed therein. DB Team shall not change or substitute any such individuals except due to retirement, death, disability, incapacity, or voluntary or involuntary termination of employment, or as otherwise accepted by GDOT pursuant to Article 10.4.2. In such circumstances, DB Team shall promptly propose a replacement with comparable experience for such position.

10.4.2 DB Team shall notify GDOT in writing of any proposed replacement for any Key Personnel position. Any proposed replacement for a Key Personnel position must be equal or better than the original Key Personnel. GDOT shall have the right to review the qualifications and character of each individual to be appointed to a Key Personnel position (including personnel employed by Contractors to fill any such position) and to accept or disapprove use of such individual in such position prior to the commencement of any Work by such individual. If DB Team fails to provide a proposed replacement that is sufficiently qualified, in GDOT's sole discretion, within 30 days after notifying GDOT of a proposed replacement for any Key Personnel position, then such failure may, at GDOT's sole discretion, constitute a DB Team Default pursuant to Article 17.1.1.

10.4.3 DB Team shall cause each individual filling a Key Personnel position to dedicate the full amount of time necessary for the proper prosecution and performance of the Work.

10.4.4 DB Team shall provide to GDOT the phone numbers and e-mail addresses for all Key Personnel. GDOT requires the ability to contact Key Personnel 24 hours per day, seven days per week.

10.5 Reserved

10.6 Labor Standards

10.6.1 In the performance of its obligations under the DB Documents, DB Team at all times shall comply, and require by contract that all Contractors and vendors comply, with all applicable federal and State labor, occupational safety and health standards, rules, regulations and federal and State orders.

10.6.2 All individuals performing the Work shall have the skill and experience and any licenses or certifications required to perform the Work assigned to them.

10.6.3 If any individual employed by DB Team or any Contractor is not performing the Work in a proper, safe and skillful manner, then DB Team shall, or shall cause such Contractor to, remove such individual and such individual shall not be re-employed on the Work. If, after notice and reasonable opportunity to cure, such individual is not removed or if DB Team fails to ensure that skilled and experienced personnel are furnished for the proper performance of the Work,

then GDOT may suspend the affected portion of the Work by delivering to DB Team written notice of such suspension. Such suspension shall in no way relieve DB Team of any obligation contained in the DB Documents or entitle DB Team to any additional compensation or time extension hereunder.

10.6.4 DB Team and its Contractors shall comply with the Georgia Immigration & Compliance Act ("Immigration Act"), O.C.G.A. § 13-10-90, *et seq*. DB Team must certify compliance with the Immigration Act using the form attached as Exhibit 19. The required certificates and affidavits must be filed with GDOT and copies maintained by DB Team and each Contractor as of the Effective Date, recertified as of July 15 of each year, and again recertified upon final completion of the Work under the applicable Contract. State officials, including officials of the Georgia Department of Labor and GDOT, retain the right to inspect and audit the Project and employment records of DB Team and all Contractors without notice during normal working hours until the Work under the applicable Contract is complete, and as otherwise specified by Law.

10.7 Reserved

10.8 Reserved

10.9 Small, Veteran, and Disadvantaged Business Enterprise

10.9.1 General Description

10.9.1.1 Subcontract a portion of the work to firms designated by the GDOT as Small, Veteran, or Disadvantaged Business Enterprise. A Small, Veteran, and Disadvantaged Business Enterprise (SVDBE) Goal is specified in certain contracts funded through the Georgia Transportation Act of 2015. A portion of the project goal, not greater than 50% of the specified Goal, may be achieved through the use of Small and/or Veteran owned businesses. The entire goal may be met through the use of GDOT approved DBEs.

10.9.1.2 Questions concerning DBE Certification/Criteria or other small or veteran owned business issues should be directed to the GDOT's EEO Office at (404) 631-1972 or dbework@dot.ga.gov.

10.9.2 SVDBE Directories

10.9.2.1 Small Business entities are those firms identified as such in the Georgia Procurement Registry at the time of the submission of Proposals.

10.9.2.2 Veteran Owned firms are those firms identified by the U.S. Department of Veteran Affairs at the time of the submission of Proposals.

10.9.2.3 DBE firms are those identified by the Georgia Department of Transportation's Unified Certification Program at the time of the submission of Proposals.

10.9.3 Proposal Submittals

10.9.3.1 GDOT reserves the right to reject and disqualify any Proposal if the Apparent Successful Proposer fails to provide a list of bona fide SVDBE participants within 10 calendar days after the selection of the Apparent Successful Proposer. The submission shall provide a list of participants that at a minimum meets the established goal.

10.9.3.2 GDOT may consider for award a proposal with less participation than the established goal if both:

(a) The Apparent Successful Proposer can adequately demonstrate that no greater participation could be obtained and;

(b) The participation proposed by the Apparent Successful Proposer is not substantially less than the participation proposed by the other Proposers.

10.9.3.3 The DB Team shall demonstrates good business judgment in negotiating with SVDBEs including consideration of a firm's price and capabilities as well as the overall contract goals of the Project. The fact there may be some additional costs involved in finding and using SVDBEs is not in itself sufficient reason for a DB Team's failure to meet the contract SVDBE goal, so long as such costs are reasonable.

10.9.3.4 The DB Team is not required to accept higher quotes from a SVDBE if the price difference is excessive or unreasonable as compared to the general market. The ability or desire of a DB Team to perform the work with its own organization does not relieve the DB Team of the responsibility to make good faith effort to secure and retain SVDBE firms to reach the SVDBE goal.

10.9.3.5 Issuance of the Notice to Proceed does not constitute an acceptance of an individual SVDBE firms. GDOT reserves the right to accept or not accept a SVDBE firm after review of the SVDBE firm and contract agreements. SVDBE firms must be Registered or Prequalified with the Georgia Department of Transportation to perform work on projects.

10.9.4 Participation Requirements

10.9.4.1 Submit a "SVDBE Participation Report" monthly to the GDOT. The report shall include the following:

(a) Name of each firm.

(b) Designation of the participating firm/s as DBE, Small Business or Veteran Owned firm.

(c) Description of the work that has been performed, materials, supplies, and/or services provided by each SVDBE

(d) Description of the work to be performed, materials, supplies, and/or services provided by each SVDBE.

(e) Whether each SVDBE is a supplier, subcontractor, owner/operator, or other.

(f) Total dollar value of each SVDBE subcontract or supply agreement.

(g) Actual payment to date to each SVDBE subcontractor or supplier.

(h) Percentage of the overall goal obtained by each SVDBE subcontractor or supplier.

(i) Percentage of overall goal obtained and percentage of overall goal remaining.

10.9.5 SVDBE Participation Goals

10.9.5.1 The SVDBE Project goal is seven percent of the overall Project cost (including design, construction, professional services, management and administration, and inspection). DB Team's SVDBE commitments list is attached as Exhibit 14.

10.10 Reserved

10.11 Reserved

10.12 Prompt Payment to Contractors and Pay When Paid Provisions

DB Team shall comply with the Georgia Prompt Payment Act, Code Section 13-11-1 *et seq*. Further, neither DB Team, the Design-Build Contractor or Contractor, nor any Subcontractor shall impose retainage upon any consultant, laborer, subcontractor, vendor, materialman, or supplier with whom any of them have contracted.

Prime contractors, who sublet a portion of their work, shall pay their subcontractors for satisfactory performance of their contracts no later than 10 calendar days from receipt of each payment made to them. Any delay or postponement of payment among the parties may take place only for good cause with prior written approval from the Department. If the contractor is found to be in noncompliance with these provisions, it shall constitute a breach of contract and further payments for any work performed may be withheld until corrective action is taken. If corrective action is not taken, it may result in termination of the contract.

Prime contractors must maintain records and documents of payments to subcontractors, including SVDBEs, for a minimum of three (3) years after Contract Final Acceptance. These records shall be made available for inspection upon request by any authorized representative of the Georgia Department of Transportation or USDOT.

All subcontract agreements shall contain this requirement.

10.13 Suspension and Debarment

DB Team shall deliver to GDOT, not later than January 31 of each year through Final Acceptance, and upon Final Acceptance, signed certifications regarding suspension, debarment, ineligibility, voluntary exclusion, convictions and civil judgments from DB Team, from each affiliate of DB Team (as "affiliate" is defined in 29 CFR 98.905 or successor regulation of similar import), and from each Contractor whose Contract amount equals or exceeds $100,000. The annual certification shall be substantially in the form of paragraphs 1.a through 1.d of Attachment 7 (Debarment and Suspension Certification) to Exhibit 8 (Federal Requirements).

10.14 DB Team Identification

Any uniforms, badges, logos and other identification worn by personnel of DB Team-Related Entities or on DB Team Vehicles used to access the Project Site shall bear contrasting colors, lettering, design or other features, clearly visible from a distance.

Article 11 RELATED AND OTHER FACILITIES

11.1 Integration with Related Transportation Facilities

11.1.1 DB Team shall locate, configure, design, and construct the termini, interchanges, entrances and exits of the Project so that the Project will be compatible and integrated with the location, configuration, design, operation and maintenance of, and provide a smooth, safe transition of traffic to and from, Related Transportation Facilities, as set forth in Volume 2, Section 1 (General) and Volume 2, Section 11 (Roadways). The design for the Project shall include and provide for such compatibility, integration and transition. The design and construction of the Project, shall satisfy all provisions of the Technical Provisions and Management Plans relating to compatibility, integration and transition with or at Related Transportation Facilities, including those concerning signage, signaling and communications with Users.

11.1.2 Without limiting the foregoing, DB Team shall cooperate and coordinate with GDOT and any third party that owns, constructs, manages, operates or maintains a Related Transportation Facility with regard to the construction, maintenance and repair programs and schedules for such Related Transportation Facilities, in order to minimize disruption to the operation thereof.

11.1.3 To assist DB Team, GDOT shall provide to DB Team during normal working hours, reasonable access to plans, surveys, drawings, as-built drawings, specifications, reports and other documents and information in the possession of GDOT or its contractors and consultants pertaining to Related Transportation Facilities. DB Team, at its expense, shall have the right to make copies of the same. DB Team, at its expense, shall conduct such other inspections, investigations, document searches, surveys and other work as may be necessary to achieve compatibility, integration and transition with those Related Transportation Facilities identified in Volume 2, Section 11 (Roadways).

11.1.4 GDOT shall provide reasonable assistance to DB Team, upon its request and at its expense, in obtaining cooperation and coordination from third parties that own, manage, operate or maintain Related Transportation Facilities and in enforcing rights, remedies and warranties that DB Team may have against any such third parties. Such assistance may include GDOT's participation in meetings and discussions. In no event shall GDOT be required to bring any legal action or proceeding against any such third party.

11.1.5 GDOT shall have at all times, without obligation or liability to DB Team, the right to conduct traffic management activities on GDOT's Related Transportation Facilities and all other facilities of the State transportation network in the area of the Project in accordance with its standard traffic management practices and procedures in effect from time to time.

Article 12 SAFETY COMPLIANCE

12.1 Safety Compliance

12.1.1 DB Team shall take all reasonable precautions and be solely responsible for the safety of, and shall provide protection to prevent damage, injury, or loss to, all persons on the Site or who would reasonably be expected to be affected by the Work, including individuals performing Work, employees of GDOT and its consultants, visitors to the Site and members of the traveling public who may be affected by the Work. DB Team shall at all times comply with all health and safety requirements contained in the DB Documents and DB Team's Safety Plan and all such requirements under applicable Law.

12.1.2 Safety Compliance Orders

12.1.2.1 GDOT shall use good faith efforts to inform DB Team at the earliest practicable time of any circumstance or information relating to the Project which in GDOT's reasonable judgment is likely to result in unsafe conditions for the public, which may result in the issuance of a Safety Compliance Order. Except in the case of Emergency, GDOT shall consult with DB Team prior to issuing a Safety Compliance Order concerning the risk to public safety, alternative compliance measures, cost impacts, and the availability of DB Team resources to fund the Safety Compliance work.

12.1.2.2 GDOT may monitor and inspect for the purpose of determining whether any circumstances exist that warrant issuance of a Safety Compliance Order with respect to the Design Work and the Construction Work, and giving reports and recommendations to DB Team with respect thereto.

12.1.2.3 Subject to conducting such prior consultation, GDOT may issue Safety Compliance Orders to DB Team at any time from and after the Effective Date.

12.1.3 Duty to Comply

12.1.3.1 Subject to Article 12.1.1 (Duty to Comply), DB Team shall implement all Safety Compliance as expeditiously as reasonably possible following issuance of the Safety Compliance Order. DB Team shall diligently prosecute the work necessary to achieve such Safety Compliance until completion, subject to any remedies allowed from the occurrence of a Relief Event.

12.1.3.2 DB Team shall perform all work required to implement Safety Compliance at DB Team's sole cost and expense. Without limiting the foregoing and for the avoidance of doubt, in no event shall DB Team be entitled to (a) issue a Change Request, or (b) except as provided in Article 12.1.3, claim that a Compensation Event or Relief Event has occurred or resulted from the existence of a Safety Compliance Order.

12.1.4 Contesting Safety Compliance Orders

DB Team may contest a Safety Compliance Order by delivering to GDOT written notice setting forth (a) DB Team's claim that no Safety Compliance conditions exist to justify the Safety Compliance Order, (b) DB Team's explanation of its claim in reasonable detail and (c) DB Team's estimate of impacts on costs and schedule attributable to the contested Safety Compliance Order. If GDOT does not receive such written notice prior to issuance of a Safety Compliance Order, or within 15 days after GDOT issues an emergency Safety Compliance Order, then DB Team thereafter shall have no right to contest. If DB Team timely contests a Safety Compliance Order, DB Team nevertheless shall implement the Safety Compliance Order, but if it is finally determined under the Dispute Resolution Procedures that Safety Compliance conditions did not exist, then the Safety Compliance Order shall be treated as a Directive Letter for a GDOT Change.

Article 13 GDOT CHANGES; DB TEAM CHANGES; DIRECTIVE LETTERS

This Article 13 and Article 14 set forth the requirements for obtaining all Supplemental Agreements under this Agreement. DB Team hereby acknowledges and agrees that the Contract Sum is full and adequate compensation for performance of all of the Work, subject only to those exceptions specified in Article 14 (Relief Events; Compensation Events) and this Article 13.

DB Team unconditionally and irrevocably waives the right to any monetary compensation or other relief in addition to that specifically provided under the terms of this Agreement, except in accordance with Article 14 and this Article 13. The foregoing waiver encompasses all theories of liability, whether in contract, tort (including negligence), equity, quantum meruit or otherwise, and encompasses all theories to extinguish contractual obligations, including impracticability, mutual mistake, and frustration of purpose. Nothing in the Technical Provisions or Technical Documents shall have the intent or effect or shall be construed to create any right of DB Team to any Supplemental Agreement or additional monetary compensation or other relief, any provision in the Technical Provisions or Technical Documents to the contrary notwithstanding.

13.1 Directive Letters

13.1.1 GDOT may at any time issue a Directive Letter to DB Team regarding any matter for which a Supplemental Agreement can be issued or in the event of any Dispute regarding the interpretation of requirements, scope of the Work, or whether DB Team has performed in accordance with the requirements of the DB Documents. The Directive Letter will state that it is issued under this Article 13.1, will describe the Dispute or Work in question, articulate GDOT's position, provide direction, and will state the basis for determining compensation, if any. If applicable and subject to Article 13.2.5, DB Team shall proceed immediately as directed in the letter, pending the execution of a formal Supplemental Agreement (or, if the letter states that the Work is within DB Team's original scope of Work or is necessary to comply with the requirements of the DB Documents, DB Team shall proceed with the Work as directed but shall have the right to assert that a GDOT Change has occurred).

13.1.2 The fact that a Directive Letter was issued by GDOT shall not be considered evidence that in fact that a GDOT Change occurred. The determination whether a GDOT Change in fact occurred shall be based on an analysis of the original requirements of the DB Documents and a determination as to whether the Directive Letter in fact constituted a change in those requirements.

13.1.3 In the event that a Directive Letter is issued, which results in a Force Account, the procedures of Article 14.7 (Force Account Compensation) will be followed.

13.2 GDOT Changes

GDOT may, at any time and without notice to any Surety, authorize, cause and/or require, pursuant to a Request for Change Proposal or Directive Letter, changes in the Work, including additions or deletions, or in terms and conditions of the Technical Provisions or Technical Documents (including changes in the standards applicable to the Work).

13.2.1 GDOT's Request for Change Proposal

13.2.1.1 If GDOT desires to initiate a GDOT Change or to evaluate whether to initiate such a change, then GDOT may, at its discretion, issue a Request for Change Proposal. The Request for Change Proposal shall set forth the nature, extent and details of the proposed GDOT Change.

13.2.1.2 Within seven days after DB Team receives a Request for Change Proposal, or such longer period to which the Parties may mutually agree, GDOT and DB Team shall consult to define the proposed scope of the change. Within seven days after the initial consultation, or such longer period to which the Parties may mutually agree, GDOT and DB Team shall consult concerning the estimated financial and schedule impacts.

13.2.2 Within 30 days following GDOT's delivery to DB Team of the Request for Change Proposal, DB Team shall provide GDOT with a written response as to whether, in DB Team's opinion, the proposed change constitutes a GDOT

Change, will impact DB Team's costs and/or will cause a delay to a Completion Deadline, and if so, a detailed assessment of the cost and schedule impact of the proposed GDOT Change, including the following:

13.2.2.1 DB Team's detailed estimate of the impacts on costs of carrying out the proposed GDOT Change;

13.2.2.2 The effect of the proposed GDOT Change on the Project Schedule, including achievement of the Milestone Deadlines, taking into consideration DB Team's duty to mitigate any delay to the extent reasonably practicable; and

13.2.2.3 Any other relevant information related to carrying out the proposed GDOT Change.

13.2.3 GDOT shall be entitled, but not required, to obtain, from a qualified independent consultant of GDOT's choosing, a report prepared in accordance with Good Industry Practice as to the proposed GDOT Change related to the Design Work or the Construction Work, including recommendations and comments concerning DB Team's estimate of the cost impacts and projected impact on the Project Schedule and Milestone Deadlines. GDOT shall pay for the work of any such consultant.

13.2.4 GDOT and DB Team, giving due consideration to any such report and study as may be commissioned by GDOT, shall exercise good faith efforts to negotiate a mutually acceptable Supplemental Agreement, including adjustment of the Project Schedule and Completion Deadlines, any Compensation Amount to which DB Team is entitled, and the timing and method for payment of any Compensation Amount, in accordance with Article 14 (Relief Events; Compensation Events).

13.2.5 If GDOT and DB Team are unable to reach agreement on a Supplemental Agreement, GDOT may, in its sole discretion, deliver to DB Team a Directive Letter pursuant to Article 13.1 (Directive Letters) directing DB Team to proceed with the performance of the Work in question notwithstanding such disagreement under Force Account provisions. Upon receipt of such Directive Letter, (a) DB Team shall implement and perform the Work in question as directed by GDOT and (b) GDOT will make interim payment(s) to DB Team on a monthly basis for the costs of the Work in question subject to Article 5 (Contract Sum, Payments, and Public Funds), to the extent the payment(s) satisfy Force Account provisions.

13.2.6 GDOT shall be responsible for payment of the Compensation Amount agreed upon, or as determined under Force Account provisions, or determined through the Dispute Resolution Procedures, through one of the payment mechanisms set forth in Article 14.2 (Relief Event and Compensation Event Determinations) and the Project Schedule and Milestone Deadlines shall be adjusted as agreed upon or as determined through the Dispute Resolution Procedures, and in accordance with this Article 13 to reflect the effects of the Supplemental Agreement.

13.3 DB Team Changes

13.3.1 DB Team's Change Requests

13.3.1.1 DB Team may request GDOT to accept modifications to the Technical Provisions or Technical Documents by submittal of a written Change Request using a form approved by GDOT. The Change Request shall set forth DB Team's detailed estimate of impacts on costs and schedule attributable to the requested change.

13.3.1.2 GDOT, in its sole discretion, may accept or reject any Change Request proposed by DB Team, provided that GDOT will accept a Change Request necessary to bring the Technical Provisions or Technical Documents into compliance due to an applicable Change in Law per clause (a) of the definition of a Compensation Event. GDOT may condition its acceptance on new or a modification of compensation for GDOT under this Agreement in order to benefit equally in the estimated net cost savings and revenue benefit, if any, attributable to the proposed change. If GDOT accepts such change, DB Team shall execute a Supplemental Agreement and shall implement such change in accordance with the Supplemental Agreement, applicable Technical Provisions, Technical Documents, the Management Plans, Good Industry Practice, and all applicable Laws.

13.3.1.3 DB Team shall be solely responsible for payment of any increased costs and for any Project Schedule delays or other impacts resulting from a DB Team proposed Change Request. If the Change Request results in a decrease in the costs of designing, constructing or operating the Project, the savings in costs shall be allocated between DB Team and GDOT as set forth in the Supplemental Agreement.

13.3.1.4 DB Team may implement and permit a Utility Owner to implement, without a Change Request or Supplemental Agreement, changes to a Utility Adjustment design that do not vary from the Technical Provisions or Technical Documents, but such changes are subject to GDOT's acceptance as part of a Utility Work Plan as provided in Volume 2, Section 6.3.8.5.

13.3.1.5 No Change Request shall be required to implement any change to the Work that is not specifically regulated or addressed by the DB Documents or applicable Law.

13.3.1.6 Certain minor changes without significant cost savings or revenue benefits may be accepted in writing by GDOT, and in such event, shall not require a Supplemental Agreement. Any other change in the requirements of the DB Documents shall require a Supplemental Agreement.

Article 14 RELIEF EVENTS; COMPENSATION EVENTS

14.1 Notices

14.1.1 DB Team's Notice of Compensation Event and/or Relief Event

14.1.1.1 Except as otherwise expressly provided in this Agreement, if at any time DB Team determines that a change to the work has occurred or is imminent, and that change creates a Compensation Event or Relief Event, DB Team shall submit a written notice of Compensation Event and/or Relief Event to GDOT per this Article 14 stating that a Compensation Event or Relief Event has occurred or will occur. The first Compensation Event notice shall be labeled "Notice of Compensation Event No. 1" and subsequent compensation event notices shall be numbered sequentially. The first relief event notice shall be labeled "Notice of Relief Event No. 1" and subsequent relief event notices shall be numbered sequentially.

14.1.1.2 Time is of the essence in DB Team's delivery of its written notice of Compensation Event or written notice of a Relief Event. Accordingly, if for any reason DB Team fails to deliver a notice of Compensation Event and/or Relief Event in strict accordance with Article 14.1.2 (Relief Event Notice) or 14.1.3 (Compensation Event Notice), DB Team shall be deemed to have irrevocably and forever waived the right to assert a Compensation Event and/or Relief Event.

14.1.1.3 If any notice of Compensation or Relief Event concerns any hazardous condition or material described in Article 7.8 (Hazardous Materials Management), the DB Team shall be deemed to have waived the right to collect any and all costs incurred in connection therewith to the extent that GDOT is not afforded the opportunity to inspect such material or condition before it is disturbed.

14.1.2 Relief Event Notice

14.1.2.1 If at any time DB Team determines that a Relief Event has occurred or is imminent, DB Team shall promptly submit a written Notice of Relief Event as provided for in Article 14.1.1.2 to GDOT as follows:

Notices of Relief Events shall include:

(a) a statement of the Relief Event upon which the delay or inability to perform is based, including its nature, the reasons why the DB Team believes additional time will or may be due, and the date of its occurrence and its actual or, if it has not concluded, its anticipated duration;

(b) the effect of the Relief Event on DB Team's ability to perform any of its obligations under the DB Documents, including details of the relevant obligations;

(c) an explanation of the measures that DB Team proposes to undertake to mitigate the delay and other consequences of the Relief Event; and

(d) provide an estimate of the time within which a response to the notice is required to minimize cost or delay of performance.

14.1.2.2 Failure to file a Notice of Relief Event within 20 days following the date (herein the "starting date") on which DB Team first became aware (or should have been aware, using all reasonable due diligence) of the Relief Event, DB Team shall be deemed to have irrevocably and forever waived and released the right to relief for the Relief Event accruing after such 20 day deadline.

14.1.2.3 If, following submittal of a Notice of Relief Event, but prior to its conclusion, DB Team receives or becomes aware of any further information relating to the Relief Event and/or any delay in performance or failure to perform, it shall submit such further information to GDOT not later than seven days after DB Team's receipt or knowledge of the additional information. GDOT may request from DB Team any further information that GDOT may reasonably require, and DB Team shall supply the same within a reasonable period but not later than seven days after such GDOT request. Within seven days of the conclusion of an asserted Relief Event, DB Team shall update its Notice of Relief Event with the date of its actual or estimated conclusion.

14.1.3 Compensation Event Notice

14.1.3.1 If at any time DB Team determines that a Compensation Event has occurred or is imminent, DB Team shall promptly, submit a written Notice of Compensation Event as provided for in Article 14.1.1.2 to GDOT as follows:

Notices for Compensation Events shall include:

(a) a description of the Compensation Event and its date of occurrence in reasonable detail;

(b) the reasons why the DB Team believes additional compensation will or may be due;

(c) a detailed statement of the basis that the work is not included by the Agreement;

(d) identify particular elements of performance for which additional compensation may be sought;

(e) DB Team's current estimate of the anticipated adverse and beneficial effects of the Compensation Event on the Project and on DB Team's ability to perform any of its obligations under the DB Documents; and

(f) provide an estimate of the time within which a response to the notice is required to minimize cost or delay of performance.

14.1.3.2 Failure to file a Notice of Compensation Event within 20 day following the date (herein the "starting date") on which DB Team first became aware (or should have been aware, using all reasonable due diligence) of the Compensation Event, DB Team shall be deemed to have irrevocably and forever waived and released the right to damages for the Compensation Event accruing after such 20 day deadline.

14.1.3.3 If, following submittal of a Notice of Compensation Event, DB Team receives or becomes aware of any further information relating to the Compensation Event, it shall submit such further information to GDOT not later than seven days of DB Team's receipt or knowledge of the additional information. GDOT may request from DB Team any further information that GDOT may reasonably require, and DB Team shall supply the same within a reasonable period but not later than seven days after such GDOT request. Within seven days of the conclusion of an asserted Compensation Event, DB Team shall update its notice of a Compensation Event with the date of its actual or estimated conclusion.

14.1.4 Compensation and/or Relief Event Package

14.1.4.1 The DB Team shall deliver to GDOT as soon as practicable and in any event within 30 days (or longer time period if acceptable to GDOT) after delivery of the Notice of Compensation Event and/or Notice of Relief Event, a Compensation and/or Relief Event Package labelled with the Compensation Event number or Relief Event number from the corresponding Notice of Compensation or Relief Event, and containing every item specified in Article 14.1.4.2.

14.1.4.2 Each Compensation and/or Relief Event Package shall at a minimum include:

(a) A scope of work describing in detail satisfactory to the GDOT all activities associated with the asserted Compensation or Relief Event.

(b) A cost estimate that sets out the estimated costs in such a way and in sufficient detail that a fair evaluation can be made. It shall be in a form approved by GDOT and shall include both a separate breakdown of costs that impact design and those that impact construction activities and as separate items: labor, materials, equipment, overhead (which includes all indirect costs) and profit, as and to the extent allowed under Article 13 (GDOT Changes; DB Team Changes; Directive Letters) and this Article 14. If the work is to be performed by Subcontractors and if the work is sufficiently defined to obtain Subcontractor quotes, DB Team shall obtain quotes (with breakdowns showing cost of labor, materials, equipment, overhead and profit) on the Subcontractor's stationery and shall include such quotes as back-up for the DB Team estimate. Note that compensation costs are determined in accordance with Article 14.5.1.

(c) If the DB Team claims that a Relief Event has occurred affecting the Critical Path, the DB Team shall provide an impact delay analysis with activity durations, predecessor and successor activities and resources; and showing Float available pursuant to Article 3.2.5, the likely duration of that effect and identify any potential impact to the Critical Path affecting a Completion Deadline, it shall provide a Time Impact Analysis indicating all activities represented or affected by the asserted change in accordance with this Article 14 and Volume 2, Section 2.5 (Project Schedule Requirements). The impacted delay analysis shall only modify the Activities that have been impacted by the event that justifies the extension.

(d) A narrative justification detailing all causes of the asserted change, making specific reference and citing to the applicable provisions of the Agreement and DB Documents, and describing the data and documents that establish the necessity of such asserted change; and

(e) A sworn certification in a form acceptable to GDOT by the DB Team (and Subcontractor(s), for any Subcontractor involved in the Work or event) that the claim is made is good faith and in accordance with the terms of the DB Documents, the amount of time and/or compensation requested accurately reflects the appropriate adjustments and includes all known and anticipated impacts or amounts whatsoever that may be incurred as a result of the event or matter giving rise to such proposed change and that the DB Team (and Subcontractor(s), as applicable) has no reason to believe and does not believe that the factual basis for the claim is falsely represented.

14.2 Relief Event and Compensation Event Determinations

14.2.1 If DB Team complies with the notice and information requirements in Article 14, then within 60 days after receiving the Relief Event Package or such longer period of time to which the Parties may mutually agree, (and, if applicable, any required updates thereto) GDOT shall issue a Relief Event Determination. GDOT shall specify in the Relief Event Determination (a) the relevant obligations for which relief is given, (b) the period of time that Milestone Deadlines or periods set forth in the Project Schedule will be extended based on the number of days of delay affecting a Critical Path, after consumption of Float available pursuant to Article 3.2.5, that is directly attributable to the Relief Event and that cannot be avoided through reasonable mitigation measures and (c) if applicable, the period of time, if any, that the Contract Time will be extended. DB Team shall be relieved from the performance of obligations to the extent specified in the Relief Event Determination.

14.2.2 If DB Team complies with the notice and information requirements of Article 14, then within 60 days after receiving the Compensation Event Package or such longer period of time to which the Parties may mutually agree, (and, if applicable, any required updates thereto) GDOT shall issue a Compensation

Event Determination. GDOT shall specify in the Compensation Event Determination (a) the relevant obligations for which relief is given and (b) the modification of the Contract Sum.

14.2.3 Any final Relief Event Determination and/or final Compensation Event Determination that has been mutually accepted by GDOT and DB Team shall be set forth in a Supplemental Agreement in accordance with Article 14.1.4 (Compensation and/or Relief Event Package). Such Supplemental Agreement shall provide for modification of the Contract Time and the Project Schedule, including to the extent so established by such Relief Event Determination, the Milestone Deadlines, and modification of the Contract Sum pursuant to any such Compensation Event Determination, as the case may be. All Supplemental Agreements shall be all-inclusive, comprehensive, and complete, and shall not include any conditions with respect to pricing or schedule or any other matters. The DB Team is not entitled to any additional costs or time whether deriving from or related to a Supplemental Agreement.

14.2.4 The Package submitted by DB Team will address any and all costs and delays, and after negotiation and upon agreement of the terms and verification that all applicable requirements of Article 13 and this Article 14 are met, the GDOT shall draft the Supplemental Agreement based on the agreed upon terms and the DB Team and GDOT shall execute the Supplemental Agreement.

14.3 Reserved

14.4 Relief Events; Compensation Event Process

14.4.1 Extensions of Time for Relief Events

14.4.1.1 DB Team shall not be excused from compliance with applicable Laws, Technical Provisions or Technical Documents due to the occurrence of a Relief Event, except temporary inability to comply as a direct result of a Relief Event.

14.4.1.2 If GDOT is obligated to but does not provide a Relief Event Determination within such 60 day period or such longer period of time to which the Parties may mutually agree or if DB Team disagrees with the length of the extension of the Contract Time or other relief set forth in the Relief Event Determination, DB Team shall have the right to assert a claim against GDOT for the relevant Relief Event and have such claim determined according to the Dispute Resolution Procedures. Any Dispute regarding the occurrence of a Relief Event, the terms of the Relief Event Determination or waiver of DB Team's right to relief shall be resolved according to the Dispute Resolution Procedures.

14.4.1.3 Without limiting DB Team's rights with respect to monetary relief for Compensation Events as set forth in this Agreement, the extensions of time as provided, if any, pursuant to this Article 14.4 are DB Team's sole remedy for a Relief Event.

14.4.2 Limitations on Time Extensions

14.4.2.1 The DB Team shall be required to demonstrate to GDOT's satisfaction that the change in the Work or other event or situation which is being asserted as a Relief Event will result in or has caused an identifiable and measurable delay of the Work which will impact or has impacted the Critical Path affecting a Completion Deadline.

14.4.2.2 Any extension of a Completion Deadline allowed hereunder shall exclude any delay to the extent that it did not impact the Critical Path affecting a Completion Deadline or was a concurrent delay with any other delay for which the DB Team is not entitled to an extension.

14.5 Compensation Events

14.5.1 Determining Compensable Amounts

The Compensation Amount, if any, for design or construction shall be determined by applying the following provisions.

14.5.1.1 Cost impacts shall:

(a) Exclude (i) third-party entertainment costs, lobbying and political activity costs, costs of alcoholic beverages, costs for first class travel in excess of prevailing economy travel costs, and costs of club memberships, in each case to the extent that such costs would not be reimbursed to an employee of GDOT in the regular course of business, and (ii) unallowable costs under the following provisions of the federal Contract Cost Principles, 48 CFR 31.205: 31.205-8 (contributions or donations), 31.205-13 (employee morale, health, welfare, food service, and dormitory costs and credits), 31.205-14 (entertainment costs), 31.205-15 (fines, penalties, and mischarging costs), 31.205-27 (organization costs), 31.205-34 (recruitment costs), 31.205-35 (relocation costs), 31.205-43 (trade, business, technical and professional activity costs), 31.205-44 (training and education costs), and 31.205-47 (costs related to legal and other proceedings);

(b) Exclude amounts paid or to be paid to Affiliates in excess of the pricing DB Team could reasonably obtain in an arms' length, competitive transaction with an unaffiliated Contractor;

(c) Exclude those costs incurred in asserting, pursuing, or enforcing any Compensation Event, Relief Event or Dispute;

(d) Be reduced by any savings in costs resulting from the Compensation Event;

(e) Be subject to DB Team's obligation to mitigate cost increases and augment cost decreases in accordance with this Article 14.5 (Compensation Events).

(f) Exclude costs caused by the breach of contract or fault or negligence, or act or failure to act of any DB Team-Related Entity.

(g) Exclude costs, which could reasonably, and in accordance with Good Industry Practice, have been avoided by the DB Team, including by resequencing, reallocating, or redeploying its forces to other portions of the Work (including any additional costs reasonably incurred in connection with such reallocation or redeployment) or to other activities unrelated to the Work.

(h) Exclude costs for any rejected Work that failed to meet the requirements of the DB Documents and any necessary remedial Work.

(i) Exclude damages or expenses barred under Section 105.13 of the latest edition of GDOT Standard Specifications: Construction of Transportation Systems.

14.5.1.2 In all cases the Compensation Amount shall be net of all insurance available to DB Team including deductibles or deemed to be self-insured by DB Team under Article 16 (Insurance; Performance Security; Indemnity), with respect to cost or revenue impacts of the Compensation Event.

14.5.1.3 The Compensation Amount shall not include any amount on account of federal, State, or local income taxes. Further and notwithstanding anything to the contrary herein, the Compensation Amount shall not include, under any circumstances, costs incurred by DB Team or any Contractors on account of charges or expenses due to (a) the business organization existence or maintenance of its business of any DB Team-Related Entity or (b) labor or employment matters as a result of any Change in Law.

14.5.1.4 If the Compensation Event is under clause (g) the definition of a Compensation Event, then the Compensation Amount shall be limited to the incremental increase in costs of initial design and construction due to delay and disruption directly attributable to the court order.

14.5.1.5 DB Team shall share with GDOT all data, documents, and information pertaining to bids for any work that is the subject of a Compensation Amount, and all of the aforementioned shall be on an Open Book Basis.

14.5.1.6 Any Dispute between GDOT and the DB Team regarding occurrence of a Compensation Event, determination of the Compensation Amount or waiver of DB Team's right to compensation shall be resolved by mutual agreement or if mutual agreement cannot be achieved then according to the Dispute Resolution Procedures. The dispute resolution body(ies) shall apply the provisions of this Article 14.5 (Compensation Events) in determining the Compensation Amount.

14.5.1.7 Following a determination of the Compensation Amount by mutual agreement or the Dispute Resolution Procedures, GDOT shall pay such Compensation Amount (a) through periodic payments of the Compensation

Amount in accordance with the scheduling and payment provisions in Volume 2, Section 2 (Project Management), (b) in a lump sum, payable as determined by mutual agreement or through the Dispute Resolution Procedures, or (c) in such other manner as agreed upon by the Parties. GDOT, in its sole discretion, shall be entitled to select one or any combination of the foregoing methods of compensation.

14.5.1.8 Without limiting DB Team's rights with respect to non-monetary relief for Relief Events as set forth in this Agreement, the Compensation Amount shall represent the sole right to compensation and damages for the adverse financial effects of a Compensation Event. As a condition precedent to GDOT's obligation to pay any portion of the Compensation Amount, DB Team shall execute a full, unconditional, irrevocable release, in form reasonably acceptable to GDOT, of any claims, Losses or other rights to compensation or other monetary relief associated with such Compensation Event, except for the right to the subject Compensation Amount, DB Team's right to non-monetary relief for a Relief Event, and the right to terminate this Agreement in accordance with Article 19.4 (Termination for GDOT Default, Suspension of Work, Force Majeure Event, or Materially Delayed Notice to Proceed) and to receive any applicable Termination Compensation.

14.5.2 Limitations on Acceleration Costs

14.5.2.1 Acceleration costs shall be compensable hereunder only with express written direction by GDOT to the DB Team to accelerate its efforts and evidenced by Supplemental Agreements issued by GDOT.

14.5.2.2 Acceleration costs are those fully documented increased costs reasonably incurred by the DB Team (i.e., costs over and above what the DB Team would otherwise have incurred) which are directly attributable to increasing the performance level of the Work in an attempt to complete necessary activities of the Work earlier than otherwise anticipated, such as for additional equipment, additional crews, overtime and shift premiums, increased supervision, and any unexpected movement of materials, equipment, or crews necessary for resequencing in connection with acceleration efforts. Acceleration costs do not include any costs for disruption damages as described below in Article 14.5.3 (No Disruption Damages).

14.5.3 No Disruption Damages

14.5.3.1 Disruption damages, whether from a single event or continual, multiple or repetitive events, are not allowed or recoverable under the Agreement. Disruption damages include costs of (i) rearranging the DB Team's Work plan not associated with an extension of a Completion Deadline, and (ii) loss of efficiency, momentum or productivity.

14.5.4 Limitations on Delay Damages

14.5.4.1 Delay damages are compensable and are limited to the provisions of GDOT Standard Specifications 105.13.B.

14.5.4.2 Before the DB Team may obtain any increase in the Contract Sum to compensate for any delay damages or acceleration costs, the DB Team shall have demonstrated to GDOT's satisfaction that:

(a) The Project Schedule in fact sets forth a reasonable method for completion of the Work;

(b) The change in the Work or other event or situation that is the subject of the requested Supplemental Agreement has caused or will result in an identifiable and measurable delay of the Work and impact the Critical Path affecting milestones listed in Exhibit 9 (Milestone Deadlines);

(c) The delay damage was not due to any breach of contract or fault or negligence, or act or failure to act of any DB Team-Related Entity, and could not reasonably have been avoided by the DB Team, including by resequencing, reallocating or redeploying its forces to other portions of the Work (subject to reimbursement for additional costs reasonably incurred in connection with such reallocation or redeployment) or other activities unrelated to the Work;

(d) The delay for which compensation is sought is not concurrent with any other delay for which the DB Team is not entitled to delay damages; and

(e) The DB Team has suffered or will suffer actual costs due to such delay, each of which costs shall be justified and documented in a manner satisfactory to GDOT.

14.5.4.3 Delay damages shall only be available for delays to the Completion Deadline for Substantial Completion. For delays to any other Completion Deadline the only relief available is suspension of Liquidated Damages for the duration of the proven delay.

14.6 Lump Sum Compensation

14.6.1 The preferred approach by both parties is that Supplemental Agreements will be paid on a lump sum basis, if the parties can agree on a lump sum amount. Lump sum prices shall be based on the original allocations of the Contract Sum to comparable activities. If reference to price allocations is inappropriate, or when requested by GDOT or the DB Team, negotiation for lump sum Supplemental Agreements shall be on an Open Book Basis and may be based as well on Subcontractors' bid prices.

14.6.2 If the parties cannot agree on a lump sum amount for Supplemental Agreements, the Supplemental Agreements will be paid as Force Account Supplemental Agreements described in Article 14.7 (Force Account Compensation).

14.6.3 Each lump sum and force account claim shall meet all applicable requirements of Article 13 (GDOT Changes; DB Team Changes; Directive Letters) and this Article 14.

14.7 Force Account Compensation

14.7.1 GDOT may at its discretion issue a Directive Letter or Force Account Supplemental Agreement whenever the Parties cannot agree to a lump sum Supplemental Agreement or GDOT determines that a Force Account Supplemental Agreement is advisable.

14.7.2 The Force Account shall instruct the DB Team to perform the Work, indicating expressly the intention to treat the items as changes in the Work, and setting forth the kind, character, and limits of the Work as far as they can be ascertained, the terms under which changes to the Contract Sum will be determined, and the estimated total change in the Contract Sum anticipated thereunder.

14.7.3 Force Account work is subject to the provisions of 109.05.B of the latest edition of GDOT Standard Specifications: Construction of Transportation Systems. No other direct or indirect compensation will be allowed, including for other miscellaneous costs for which no specific allowance is provided.

14.7.4 Upon final determination of the allowable costs, GDOT shall issue a modified Supplemental Agreement setting forth the final adjustment to the Contract Sum.

14.7.5 Force Account Records

14.7.5.1 Unless and until a lump sum Supplemental Agreement is issued, or in the case that a Directive Letter or Supplemental Agreement is issued directing work be performed under Force Account provisions, the DB Team shall maintain its records in such a manner as to provide a clear distinction between: (i) the direct cost of Work for which it is entitled (or for which it believes it is entitled) to an increase in the Contract Sum; and (ii) the costs of all other operations.

14.7.5.2 The DB Team shall contemporaneously collect, record in writing, segregate, and preserve: (a) all data necessary to determine the costs described in this Article 14.7 (Force Account Compensation) with respect to all Work which is the subject of a requested Supplemental Agreement, specifically including costs associated with Design Work (for which a negotiated Supplemental Agreement has not been issued); and (b) all data necessary to show the actual impact (if any) of any change on the Critical Path affecting a Completion Deadline with respect to all Work which is the subject of a Supplemental Agreement or a Proposed Supplemental Agreement, if the impact on the Critical Path affecting a Completion Deadline is in dispute.

14.7.5.3 Such data shall be provided on forms approved by GDOT. The cost of furnishing such reports is included in the DB Team's predetermined overhead and profit.

14.7.5.4 The DB Team shall furnish daily, on forms approved by GDOT, reports of all Force Account Work. The cost of furnishing such reports shall be included in the DB Team's overhead and profit percentages. The reports shall include:

(a) Name, classification, date, daily hours, total hours, rate, and extension for each laborer, equipment operator, and supervisor, excluding superintendents.

(b) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.

(c) Quantities of materials, prices and extensions.

(d) Transportation costs of materials, machinery, and equipment.

(e) Invoices for materials used and for transportation charges.

(f) Cost of property damage, liability, and worker's compensation insurance premiums, unemployment insurance contributions, and Social Security tax.

The reports shall also state the total costs to date for the Force Account Work.

14.7.5.5 Labor costs for Project management and administration, and construction field management above but not including the Superintendent, according to the DB Team's organization and standard work practices, are included in the markup as provided in Standard Specification 109.05.B.1.

14.7.5.6 The cost of labor for non-construction-related Work, whether provided by the DB Team or a Subcontractor, will equal the sum of the following: (i) actual wages (i.e. the base wage paid to the employee exclusive of any fringe benefits); plus (ii) an overhead based on the audited Federal Acquisition Regulations (FAR) field rates. The DB Team will also be paid for profit on non-construction labor of five percent of labor costs plus overhead.

14.7.5.7 If materials used on the Force Account Supplemental Agreement Work are not specifically purchased for the Work but are taken from the DB Team's stock, the DB Team shall furnish an affidavit certifying that such materials were taken from the DB Team's stock, that the quantity claimed was actually used, and that the price and transportation costs claimed represent actual costs to the DB Team.

14.7.5.8 All Force Account Supplemental Agreement reports shall be signed by the Project Manager. GDOT will compare its records with the DB Team's reports, make the necessary adjustments, and compile the costs of Force Account Supplemental Agreement Work. When such reports are agreed upon and signed by both parties, they will become the basis of payment and may be billed in the next Payment Request, but shall not preclude subsequent adjustment based on a later audit.

Article 15 REPRESENTATIONS AND COVENANTS

15.1 DB Team Representations and Covenants

DB Team hereby represents to and covenants with GDOT as follows:

15.1.1 During all periods necessary for the performance of the Work, DB Team and its Contractor(s) will maintain all required authority, license status, professional ability, skills and capacity to perform the Work.

15.1.2 As of the Effective Date, DB Team has evaluated the constraints affecting design and construction of the Project, including the Property, the Existing Right of Way and Required Right of Way limits as well as the conditions of the Environmental Documents, and has reasonable grounds for believing and does believe that the Project can be designed and built within such constraints.

15.1.3 Except as to parcels that GDOT lacked title or access to prior to the Effective Date, DB Team, in accordance with Good Industry Practice and the requirements of the DB Documents, shall have examined the Site and surrounding locations, performed appropriate field studies and geotechnical investigations of the Site, investigated and reviewed available public and private records, and undertook other activities sufficient to familiarize itself with surface conditions and subsurface conditions, including the presence of Utilities, Hazardous Materials, contaminated groundwater, archeological, paleontological and cultural resources, and Threatened or Endangered Species, affecting the Site or surrounding locations; and as a result of such review, inspection, examination and other activities DB Team is familiar with and accepts the physical requirements of the Work, subject to GDOT's obligations regarding Hazardous Materials under Article 7.8 (Hazardous Materials Management) and Exhibit 11 (Hazardous Materials Risk Allocation Terms) and DB Team's rights to seek relief under Article 14 (Relief Events).

15.1.4 DB Team has familiarized itself with the requirements of any and all applicable Laws, including with limitation O.C.G.A. §48-13-30, et. seq., and the conditions of any required Governmental Approvals prior to entering into this Agreement. Except as specifically permitted under Article 13 (GDOT Changes; DB Team Changes; Directive Letters) or Article 14 (Relief Events; Compensation Events), DB Team shall be responsible for complying with the foregoing at its sole cost and without any additional compensation or time extension on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the DB Documents. As of the Effective Date, DB Team has no reason to believe that any Governmental Approval required to be obtained by DB Team will not be granted in due course and thereafter remain in effect so as to enable the Work to proceed in accordance with the DB Documents.

15.1.5 All Work furnished by DB Team will be performed by or under the supervision of Persons who hold all necessary, valid licenses to practice in the State, by personnel who are skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the

Work in accordance with the DB Documents and who shall assume professional responsibility for the accuracy and completeness of the Design Documents, Construction Documents and other documents prepared or checked by them.

15.1.6 As of the Effective Date, DB Team is a [corporation] duly organized and validly existing under the laws of [Insert name of state], has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver the DB Documents, Principal Project Documents as and to the extent applicable, and to perform each and all of the obligations of DB Team provided for herein and therein. DB Team is duly qualified to do business, and is in good standing, in the State as of the Effective Date, and will remain duly qualified and in good standing throughout the term of this Agreement and for as long thereafter as any obligations remain outstanding under the DB Documents.

15.1.7 The execution, delivery and performance of the DB Documents, and all other Principal Project Documents to which DB Team is (or will be) a party have been (or will be) duly authorized by all necessary corporate action of DB Team; each Person executing the DB Documents and all other such Project related documents, on behalf of DB Team has been (or at the time of execution will be) duly authorized to execute and deliver each such document on behalf of DB Team; and the DB Documents, and all such other Project related documents have been (or will be) duly executed and delivered by DB Team.

15.1.8 Neither the execution and delivery by DB Team of the DB Documents and the Principal Project Documents to which DB Team is (or will be) a party, nor the consummation of the transactions contemplated hereby or thereby, is (or at the time of execution will be) in conflict with or has resulted or will result in a default under or a violation of the governing instruments of DB Team.

15.1.9 As of the Effective Date, each of the DB Documents, the Principal Project Documents to which DB Team is (or will be) a party constitutes (or at the time of execution and delivery will constitute) the legal, valid and binding obligation of DB Team, enforceable against DB Team and, if applicable, each member of DB Team, in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

15.1.10 As of the Effective Date, there is no action, suit, proceeding, investigation or litigation pending and served on DB Team which challenges DB Team's authority to execute, deliver or perform, or the validity or enforceability of, the DB Documents, and all other Project related documents to which DB Team is a party, or which challenges the authority of DB Team official executing the DB Documents, or the Principal Project Documents. DB Team has disclosed to GDOT prior to the Effective Date any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which DB Team is aware.

15.1.11 As of the Proposal Due Date, DB Team disclosed to GDOT in writing all organizational conflicts of interest of DB Team and its Contractors of which DB Team was actually aware; and between the Proposal Due Date and the Effective

Date, DB Team has not obtained knowledge of any additional organizational conflict of interest, and there have been no organizational changes to DB Team or its Contractors identified in its Proposal, which have not been accepted in writing by GDOT. For this purpose, organizational conflict of interest has the meaning set forth in Section 1.6 of the ITP.

15.1.12 To the extent the Design-Build Contractor is not the DB Team, DB Team represents and warrants, as of the effective date of the Design-Build Contract, as follows: (a) the Design-Build Contractor is duly organized, validly existing and in good standing under the laws of the state of its organization; (b) with respect to Persons that individually hold more than ten percent (10%) of the capital stock of the Design-Build Contractor (including options, warrants and other rights to acquire capital stock), such stock is owned by the Persons whom DB Team has set forth in a written certification delivered to GDOT prior to the Effective Date; (c) the Design-Build Contractor has the power and authority to do all acts and things and execute and deliver all other documents as are required to be done, observed or performed by it in connection with its engagement by DB Team; (d) the Design-Build Contractor has all necessary expertise, qualifications, experience, competence, skills and know-how to perform the design and construction of the Project in accordance with the DB Documents; and (e) the Design-Build Contractor is not in breach of any applicable Law that would have a material adverse effect on the design and construction of the Project.

15.1.13 The execution and delivery by DB Team of this Agreement and all other Project related documents to which DB Team is a party will not result, at the time of execution, in a default under any other agreement or instrument to which it is a party or by which it is bound.

15.1.14 The execution and delivery by DB Team of the DB Documents and performance by DB Team of its obligations thereunder will not conflict with any Laws applicable to DB Team that are valid and in effect on the Effective Date.

15.1.15 The Design-Build Contractor shall comply in full with the provisions of Code Sections 50-24-1 through 50-24-6 of the Official Code of Georgia Annotated, relating to the “Drug-free Workplace Act”.

15.1.16 No event which, with the passage of time or the giving of notice, would constitute a DB Team Default has occurred and has not yet been cured.

15.1.17 Reserved

15.1.18 DB Team certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State, including GDOT. For purposes of this Article 15.1.18, the term “principal” means an officer, director, owner, partner, Key Personnel, employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of DB Team.

15.1.19 DB Team represents, warrants and certifies by entering into this Agreement, that neither it nor its Affiliates is presently in arrears in payment of Taxes, permit fees or other statutory, regulatory or judicially required payments to GDOT or the State.

15.1.20 DB Team acknowledges and agrees, that as a requirement to enter into the DB Documents, the Proposal documents delivered pursuant to the RFP constitute all the information used in the preparation of the Proposal, and that no other Proposal preparation information will be considered in the resolution of Disputes. The DB Team also agrees that nothing in the Proposal documents delivered pursuant to the RFP shall change or modify the terms or conditions of the DB Documents.

15.2 GDOT Representations and Covenants

GDOT hereby represents to and covenants with DB Team as follows:

15.2.1 As of the Effective Date, GDOT has full power, right and authority to execute, deliver and perform the DB Documents and the Principal Project Documents to which GDOT is a party and to perform each and all of the obligations of GDOT provided for herein and therein.

15.2.2 As of the Effective Date, each of the DB Documents and the Principal Project Documents to which GDOT is (or will be) a party constitutes (or at the time of execution and delivery will constitute) the legal, valid and binding obligation of GDOT, enforceable against GDOT in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

15.2.3 The execution and delivery by GDOT of this Agreement and the Principal Project Documents to which GDOT is a party will not result, at the time of execution, in a default under any other agreement or instrument to which it is a party or by which it is bound.

15.2.4 The execution and delivery by GDOT of the DB Documents and performance by GDOT of its obligations thereunder will not conflict with any Laws applicable to GDOT that are valid and in effect on the Effective Date.

15.2.5 Reserved

15.2.6 As of the Effective Date, there is no action, suit, proceeding, investigation or litigation pending and properly served on GDOT, or, to GDOT's knowledge, without obligation to investigate, threatened, which challenges GDOT's authority to execute, deliver or perform, or the validity or enforceability of, the DB Documents, and all other Project related documents to which GDOT is a party.

15.3 Survival of Representations and Covenants

The representations and covenants of DB Team and GDOT contained herein shall survive expiration or earlier termination of this Agreement.

15.4 Special Remedies for Mutual Breach of Representations and Covenants

Notwithstanding any other provision of this Agreement, if there exists or occurs any circumstance or event that constitutes or results in a concurrent breach of any of the representations or covenants set forth in this Article 15 (DB Team Representations and Covenants) by both DB Team and GDOT but does not also constitute or result in any other breach or default by either Party, then such breaches shall not form the basis for a Compensation Event by the DB Team or damage claim by GDOT against DB Team. Instead, the only remedies shall be for the Parties to take action to rectify or mitigate the effects of such circumstance or event, to pursue severance and reformation of the DB Documents and Principal Project Documents as set forth in Article 24.13 (Severability), or Termination by Court Ruling as set forth in Article 19.11 and Exhibit 20 (Terms for Termination Compensation).

Article 16 INSURANCE; PERFORMANCE SECURITY; INDEMNITY

16.1 Insurance Policies and Coverage

16.1.1 Insurance Certificates and Additional Insured Endorsements Requirements

16.1.1.1 Certificates of Insurance. The DB Team shall procure the insurance coverages identified below at the DB Team's expense and shall furnish GDOT an insurance certificate listing GDOT as the certificate holder, and as an additional insured where required. Certificates of insurance shall be on a form approved for use in the State of Georgia by the Commissioner of Insurance that provides the following:

(a) Name and address of authorized insurance agent

(b) Name and address of insured

(c) Name of insurance company(ies)

(d) Description of policies

(e) Policy number(s)

(f) Policy Period(s)

(g) Limits of liability

(h) Name and address of GDOT as certificate holder

(i) Project Name and Number

(j) Signature of authorized insurance agent

(k) Telephone number and e-mail address of authorized insurance agent

(l) Mandatory 30 Day notice of cancellation or non-renewal (except 10 Days for non-payment) specifically to GDOT.

16.1.2 Insurer Qualifications, Insurance Requirements. Each of the insurance coverages required below (i) shall be issued by a company licensed or authorized 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 that hold a certificate of self-insurance with the appropriate agencies within the State of Georgia, 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:

16.1.2.1 The insurance company agrees that the policy shall not be canceled, reduced, or allowed to expire until 30 days, except 10 days for non-payment of premium, after GDOT 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 GDOT. Such notice shall be valid only as to the Project as shall have been designated by Project Number and Name in said notice.

16.1.2.2 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"), except Professional Liability (Errors and Omissions).

16.1.2.3 Each Insurer is hereby notified that the statutory requirement that the Attorney General shall represent and defend the Indemnified Parties 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 Indemnified Parties must be expressly approved by the Attorney General. The DB Team and its insurance carrier may retain, but are not obligated to retain, counsel to assist with the defense of the Indemnified Parties, in which case there will be mutual cooperation between the Attorney General and such counsel. See O.C.G.A. §45-15-12.

16.1.2.4 All deductibles shall be paid for by the DB Team.

16.1.2.5 The maximum deductible, except for Worker's Compensation qualified self-insurers or group self-insurers, in any policy shall not exceed $250,000.00 per claim, provided, however, that the maximum deductible requirement shall not apply to self-insurers or group self-insurers that hold a certificate of self-insurance with the appropriate agencies within the State of Georgia.

16.1.3 Required Insurance Coverages. The DB Team also agrees to purchase insurance and have the authorized agent state on the insurance certificate that

the DB Team has purchased the following types of insurance coverages, consistent with the policies and requirements of O.C.G.A. §50-21-37. The minimum required coverages and liability limits are as follows:

16.1.3.1 Workers' Compensation Insurance. The DB Team agrees to provide at a minimum Workers' Compensation coverage in accordance with the statutory limits as established by the General Assembly of the State of Georgia. A group insurer must submit a certificate of authority from the Insurance Commissioner approving the group insurance plan. A self-insurer must submit a certificate from the Georgia Board of Workers' Compensation stating the DB Team qualifies to pay its own workers' compensation claims. The DB Team shall require all Subcontractors performing work under this Agreement to obtain an insurance certificate showing proof of Workers' Compensation Coverage and shall submit a certificate on the letterhead of the DB Team in the following language:

This is to certify that all subcontractors performing work on this Project are covered by their own workers' compensation insurance or are covered by the DB Team's workers' compensation insurance. DB Team further certifies that additional subcontractors performing work on the Project will be covered by their own workers' compensation insurance or will be covered by the DB Team's workers' compensation insurance.

16.1.3.2 Employers' Liability Insurance. The DB Team shall also maintain Employer's Liability Insurance Coverage with limits of at least:

(a) Bodily Injury by Accident - $1,000,000 each accident; and

(b) Bodily Injury by Disease - $1,000,000 each employee.

The DB Team shall require all Subcontractors performing work under this Contract to obtain an insurance certificate showing proof of Employers Liability Insurance Coverage and shall submit a certificate on the letterhead of the DB Team in the following language:

This is to certify that all subcontractors performing work on this Project are covered by their own Employers Liability Insurance Coverage or are covered by the DB Team's Employers Liability Insurance Coverage. DB Team further certifies that additional subcontractors performing work on this Project will be covered by their own Employers Liability Insurance Coverage or will be covered by the DB Team's Employers Liability Insurance Coverage.

16.1.3.3 Commercial General Liability (CGL) Insurance. The DB Team shall provide Commercial General Liability Insurance (2004 ISO Occurrence Form or equivalent) that shall include, but need not be limited to, coverage for bodily injury and property damage arising from premises and operations liability, products and completed operations liability, blasting and explosion, collapse of structures, underground damage, personal injury liability and contractual liability. The CGL policy must include separate aggregate limits per Project and shall provide at a minimum the following limits:

Coverage	**Limit**
1. Premises and Operations	$ 1,000,000.00 per Occurrence
2. Products and Completed Operations	$ 1,000,000.00 per Occurrence
3. Personal Injury	$ 1,000,000.00 per Occurrence
4. Contractual	$ 1,000,000.00 per Occurrence
5. General Aggregate	$ 2,000,000.00 per Project

16.1.3.4 Commercial Business Automobile Liability Insurance. The DB Team shall provide Commercial Business Automobile Liability Insurance that shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned, or hired automobile. The Commercial Business Automobile Liability Insurance Policy shall provide not less than $1,000,000 Combined Single Limits for each occurrence.

16.1.3.5 Commercial Umbrella Liability Insurance. The DB Team shall provide a Commercial Umbrella Liability Insurance to provide excess coverage above the Commercial General Liability and Commercial Business Automobile Liability to satisfy the minimum limits set forth herein. The umbrella coverage shall follow form with the Umbrella limits required as follows:

Contract Amount	**Per Occurrence**	**Aggregate**
Less Than $5,000,000:	$ 2,000,000	$ 4,000,000
Equal to or Greater than $5,000,000 and Less than $30,000,000:	$ 2,000,000	$ 10,000,000
Greater than $30,000,000:	$ 4,000,000	$ 20,000,000

16.1.3.6 Additional Requirements for Commercial Policies in Article 16.1.3.3 (Commercial General Liability (CGL) Insurance) through Article 16.1.3.5 (Commercial Umbrella Liability Insurance):

(a) The DB Team shall cause its insurer to issue an Additional Insured Endorsement naming the officers, members, and employees of GDOT as additional Insureds.

(b) Each policy must be written on an “occurrence” basis.

16.1.3.7 Professional Liability (Errors and Omissions) Insurance. Limits shall not be less than the following:

(a) Reserved

(b) Professional Liability (Errors and Omissions): Insurance in an amount not less than one million dollars ($1,000,000.00) per claim or annual aggregate must be maintained or caused to be maintained during the agreement term with a retroactive date no later than the date that design services commenced, and must be maintained for a period of at least five years following Substantial Completion. Such policy or policies shall cover all the DB Team’s professional liabilities, whether occasioned by the DB Team, its employees, subconsultants, subcontractors or other agents arising

out of design and engineering services performed under or in accordance with this Agreement.

16.1.3.8 Reserved.

16.1.3.9 Disposition of Insurance Documents. Original certificate(s) of insurance with all required endorsements must be provided to GDOT evidencing the minimum insurance required. Renewal certificates for all required insurance must be provided to GDOT 30 days prior to the expiration/renewal date. If requested, copies of required insurance policies must be provided to GDOT within 10 business days.

16.1.4 Termination of Obligation to Insure. Unless otherwise expressly provided to the contrary, the obligation to insure as provided herein shall not terminate until GDOT shall have executed the certificate of Final Acceptance.

16.1.5 Failure of Insurers. The DB Team is responsible for any delay resulting from the failure of its insurance carriers to furnish proof of proper coverage in the prescribed form.

16.1.6 Inadequacy of Required Coverages. GDOT makes no representation that the scope of coverage and limits of liability specified for any Insurance Policy to be carried pursuant to this Agreement or approved variances therefrom are adequate to protect the DB Team or its Contractors against its undertakings under this Agreement to GDOT, or its liabilities to any third party. It is the responsibility of the DB Team and each Contractor to determine if any changes or additional coverages are required to adequately protect their interests. No such limits of liability or approved variances therefrom shall preclude GDOT from taking any actions as are available to it under the DB Documents, or otherwise at Law.

16.2 Performance and Payment Security

DB Team shall furnish Performance & Payment Bonds ("P&P Bonds") meeting the requirements of this Article 16.2 as performance and payment security for the Work.

16.2.1 P&P Bonds

16.2.1.1 The DB Team shall furnish, or cause the furnishing of, P&P Bonds. DB Team shall obtain and deliver P&P Bonds in such amount as required pursuant to the terms set forth in the Standard Specification Section 103.05, identifying DB Team as the P&P Obligor, securing DB Team's obligations to perform the Work and to ensure that payments owing to Claimants are made with respect to such Work.

16.2.1.2 The P&P Bonds shall be issued by a properly licensed and U.S. Treasury listed surety(ies) that have not less than "A" or better and Class VIII by A.M. Best and Company's Insurance Reports Key Rating Guide, and listed on Treasury Department Circular 570, and be on the list of companies approved by the State for at least three of the last five years from the date of the

proposed bond issuance. If P&P Bonds are issued by more than one surety, such P&P Bonds shall be executed on a joint and several basis.

16.3 Prosecution of Claims

16.3.1 Unless otherwise directed by GDOT in writing with respect to GDOT's insurance claims and subject to the requirements of Article 16.5 (Indemnity by DB Team) and Article 16.6 (Defense and Indemnification Procedures) below, DB Team shall be responsible for reporting and processing all potential claims by GDOT or DB Team against the Insurance Policies required hereunder. DB Team agrees to report timely to the insurer(s) under such Insurance Policies any and all matters which may give rise to an insurance claim by DB Team or GDOT or another Indemnified Party and to promptly and diligently pursue such insurance claims in accordance with the claims procedures specified in such Insurance Policies, whether for defense or indemnity or both. DB Team shall enforce all legal rights against the insurer under the applicable Insurance Policies and applicable Laws in order to collect thereon, including pursuing necessary litigation and enforcement of judgments, provided that DB Team shall be deemed to have satisfied this obligation if a judgment is not collectible through the exercise of lawful and diligent means.

16.3.2 GDOT agrees to promptly notify DB Team of GDOT's incidents, potential claims against GDOT, and matters which may give rise to an insurance claim against GDOT, to tender to the insurer GDOT's defense of the claim under such Insurance Policies, and to cooperate with DB Team as necessary for DB Team to fulfill its duties hereunder.

16.3.3 If in any instance DB Team has not performed its obligations respecting insurance coverage set forth in the DB Documents or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the Insurance Policies or to prosecute claims diligently, then for purposes of determining DB Team's liability and the limits thereon or determining reductions in compensation due from GDOT to DB Team on account of available insurance, DB Team shall be treated as if it has elected to self-insure up to the full amount of insurance coverage which would have been available had DB Team performed such obligations and not committed such failure. Nothing in this Article 16.3.3 or elsewhere in this Article 16.3 (Prosecution of Claims) shall be construed to treat DB Team as electing to self-insure where DB Team is unable to collect due to the bankruptcy or insolvency of any insurer which at the time the Insurance Policy is written meets the rating qualifications set forth in this Article 16.3.

16.3.4 DB Team shall not settle or accept any settlement of any insurance claim which is in excess of $100,000 or which involves any claim that has been asserted against GDOT, the State, or any agency or department thereof, without prior written approval of GDOT, provided that DB Team shall not be required to obtain GDOT approval for workers compensation claims.

16.3.5 If in any instance DB Team has not promptly performed its obligation to report to applicable insurers and process any potential insurance claim tendered by GDOT or another Indemnified Party, then GDOT or the other Indemnified

Party may, but is not obligated to, (a) notify DB Team in writing of GDOT's intent to report the claim directly with the insurer and thereafter process the claim, and (b) proceed with reporting and processing the claim if GDOT or the other Indemnified Party does not receive from DB Team, within 10 days after so notifying DB Team, written proof that DB Team has reported the claim directly to the insurer. GDOT or the other Indemnified Party may dispense with such notice to DB Team if GDOT or the other Indemnified Party has a good faith belief that more rapid reporting is needed to preserve the claim.

16.4 Reserved

16.5 Indemnity by DB Team

16.5.1 Subject to Article 16.5.2, DB Team shall release, protect, defend, indemnify and hold harmless the Indemnified Parties from and against any and all Third-Party Claims and Third-Party Losses arising out of, relating to or resulting from:

16.5.1.1 The breach or alleged breach of the DB Documents by DB Team;

16.5.1.2 The failure or alleged failure by any DB Team-Related Entity to comply with the Governmental Approvals, any applicable Environmental Laws or other Laws (including Laws regarding Hazardous Materials Management);

16.5.1.3 Any alleged patent or copyright infringement or other allegedly improper appropriation or use by any DB Team-Related Entity of trade secrets, patents, proprietary information, know-how, copyright rights or inventions in performance of the Work, or arising out of any use in connection with the Project of methods, processes, designs, information, or other items furnished or communicated to GDOT or another Indemnified Party pursuant to the DB Documents; provided that this indemnity shall not apply to any infringement resulting from GDOT's failure to comply with specific written instructions regarding use provided to GDOT by DB Team;

16.5.1.4 The actual or alleged culpable act or omission, culpable error or misconduct of any DB Team-Related Entity in or associated with performance of the Work;

16.5.1.5 Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any DB Team-Related Entity with respect to any payment for the Work made to or earned by any DB Team-Related Entity;

16.5.1.6 Any and all stop notices, liens and claims filed in connection with the Work, including all expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any stop notice, lien or claim, and any other liability to Contractors, laborers and Suppliers for failure to pay sums due for their work, services, materials, goods, equipment or supplies, including interest and attorney's fees, provided that GDOT is not in default in payments owing (if any) to DB Team with respect to such Work;

16.5.1.7 Any actual or threatened DB Team Release of Hazardous Materials;

16.5.1.8 The claim or assertion by any other developer or contractor that any DB Team-Related Entity interfered with or hindered the progress or completion of work being performed by the other contractor or developer, or failed to cooperate reasonably with the other developer or contractor, so as to cause inconvenience, disruption, delay or loss, except where the DB Team-Related Entity was not in any manner engaged in the management, prosecution, protection or performance of the Work;

16.5.1.9 Any dispute or claim by a Utility Owner related to any DB Team-Related Entity's performance of, or failure to perform, the obligations under any Standard Utility Agreement;

16.5.1.10 (a) Any DB Team breach of or failure to perform an obligation that GDOT owes to a third Person, including, but not limited to, Governmental Entities, under Law or under any agreement between GDOT and a third Person, where GDOT has delegated performance of the obligation to DB Team pursuant to the terms of the DB Documents, or (b) the negligent or willful acts or omissions of any DB Team-Related Entities which render GDOT unable to perform or abide by an obligation that GDOT owes to a third Person, including, but not limited to, Governmental Entities, under any agreement between GDOT and a third Person, where the agreement is previously disclosed or known to DB Team;

16.5.1.11 The fraud, bad faith, arbitrary or capricious acts, willful misconduct, negligence or violation of Law or contract by DB Team or Design-Build Contractor or any Affiliate of either in connection with DB Team's performance of real property acquisition services under the DB Documents;

16.5.1.12 Inverse condemnation, trespass, nuisance, interference with use and enjoyment of property or similar taking of or harm to real property by reason of (a) the failure of any DB Team-Related Entity to comply with Good Industry Practice, requirements of the DB Documents, Management Plans or Governmental Approvals, (b) the intentional misconduct or negligence of any DB Team-Related Entity, or (c) the entry onto or encroachment upon another's property by any DB Team-Related Entity;

16.5.1.13 If applicable, any violation of any federal or state securities or similar law by any DB Team-Related Entity;

16.5.1.14 Errors, inconsistencies or other defects in the design or construction of the Project and/or of Utility Adjustments, or the Work, included in the Design Work and/or Construction Work; or

16.5.1.15 Any claim asserted or alleged against GDOT in contradiction of Article 4.8.1.

16.5.2 Subject to the releases and disclaimers herein, including all the provisions set forth in Article 4.4 (Limitations on DB Team's Right to Rely), DB

Team's indemnity obligation shall not extend to any Third-Party Claims and Third-Party Losses to the extent caused or contributed to by:

16.5.2.1 The sole negligence, recklessness or willful misconduct, bad faith or fraud of the Indemnified Party;

16.5.2.2 GDOT's breach of any of obligations under the DB Documents; or

16.5.2.3 An Indemnified Party's violation of any Laws or Governmental Approvals;

16.5.2.4 Any material defect inherent in a prescriptive design, or construction specification included in the DB Documents that was not drafted or provided by DB Team under this Agreement, but only where prior to occurrence of the Third-Party Loss DB Team complied with such specification and did not actually know, or would not reasonably have known, while exercising reasonable diligence, that it was deficient or, if DB Team actually knew of the deficiency, unsuccessfully sought GDOT's waiver or acceptance of a Change Request from such specification; or

16.5.2.5 Any Compensation Event or Relief Event.

16.5.3 In claims by an employee of DB Team, a Contractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Article 16.5 (Indemnity by DB Team) shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for DB Team or a Contractor under workers' compensation, disability benefit or other employee benefits laws.

16.5.4 For purposes of this Article 16.5 (Indemnity by DB Team), "Third-Party Claim" includes a claim, dispute, disagreement, cause of action, demand, suit, action, judgment, investigation, or legal or administrative proceeding which (a) is asserted, initiated or brought by any Indemnified Party's employee, agent or contractor against an Indemnified Party, (b) is within the scope of the indemnities and (c) is not covered by the Indemnified Party's worker's compensation program. For purposes of this Article 16.5, "Third-Party Loss" includes any actual or alleged Loss sustained or incurred by such employee, agent or contractor.

16.6 Defense and Indemnification Procedures

16.6.1 If any of the Indemnified Parties receives notice of a claim that it believes is within the scope of the indemnities under Article 16.5 (Indemnity by DB Team), GDOT shall by writing as soon as practicable after receipt of the claim, (a) inform DB Team of the claim, (b) send to DB Team a copy of all written materials GDOT has received asserting such claim and (c) notify DB Team that should no insurer accept defense of the claim, the Indemnified Party will conduct its own defense unless DB Team accepts the tender of the claim in accordance with Article 16.6.3. As soon as practicable after DB Team receives notice of a claim or otherwise has actual knowledge of a claim, it shall tender the claim in

writing to the insurers under all potentially applicable Insurance Policies and comply with all notice requirements contained in such Insurance Policies. GDOT and other Indemnified Parties also shall have the right to tender such claims to such insurers.

16.6.2 Subject to Article 16.6.4, if the insurer under any applicable Insurance Policy accepts the tender of defense, GDOT and DB Team shall cooperate in the defense as required by the Insurance Policy. If no insurer under potentially applicable Insurance Policies provides defense, then Article 16.6.3 shall apply.

16.6.3 If the defense is tendered to DB Team, then within 30 days after receipt of the tender it shall notify the Indemnified Party whether it has tendered the matter to an insurer and (if not tendered to an insurer or if the insurer has rejected the tender) shall deliver a written notice stating that DB Team:

16.6.3.1 Accepts the tender of defense and confirms that the claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter;

16.6.3.2 Accepts the tender of defense but with a "reservation of rights" in whole or in part, with a detailed statement as to the reasons for the "reservation of rights"; or

16.6.3.3 Rejects the tender of defense based on a determination that it is not required to indemnify against the claim under the terms of this Agreement, with a detailed statement as to the reasons for the denial.

16.6.4 If DB Team accepts the tender of defense under Article 16.6.3.1, DB Team acknowledges and agrees (and has caused the insurer to be so notified of the statutory requirements) that the Attorney General shall represent and defend the State, GDOT, and any officer, director, commissioner or employee of such Indemnified Parties; but GDOT will request that the Attorney General, without limiting the authority of the Attorney General, consider attorneys recommended by DB Team for appointment as Special Assistant Attorney General to represent and defend the referenced Indemnified Parties. DB Team may, at the option of the Attorney General, have the right to participate in the defense of the Indemnified Parties. In the event of litigation, any settlement on behalf of the Indemnified Parties must be expressly approved by the Attorney General. The foregoing shall not relieve DB Team's obligation to bear the fees and costs of defending and settling such claim. During such defense:

16.6.4.1 DB Team shall fully and regularly inform the Indemnified Party and the Attorney General of the progress of the defense and of any settlement discussions; and

16.6.4.2 Each Indemnified Party shall fully cooperate in said defense, provide to DB Team all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to the Indemnified Party, and maintain the confidentiality of all communications between it and DB Team concerning such defense.

16.6.5 If DB Team responds to the tender of defense as specified in Article 16.6.3.2 or Article 16.6.3.3, such Indemnified Parties shall also be represented by the Attorney General who shall otherwise control the defense of such claim, including settlement. The foregoing shall not relieve DB Team from its obligations to bear the fees and costs of defending and settling such claim.

16.6.6 Even if the Attorney General has appointed counsel selected by DB Team to represent any of the Indemnified Parties, the Attorney General may assume the defense of the applicable Indemnified Parties by delivering to DB Team written notice of such election and the reasons therefor, if the Indemnified Parties, at the time it gives notice of the claim or at any time thereafter, reasonably determines that:

16.6.6.1 A conflict exists between it and DB Team which prevents or potentially prevents DB Team from presenting a full and effective defense;

16.6.6.2 DB Team is otherwise not providing an effective defense in connection with the claim; or

16.6.6.3 DB Team lacks the financial capacity to satisfy potential liability or to provide an effective defense.

16.6.7 If any of the Indemnified Parties is entitled and elects to conduct its own defense pursuant hereto of a claim for which it is entitled to indemnification, DB Team shall reimburse on a current basis all reasonable costs and expenses any such Indemnified Parties incurs in investigating and defending, including, but not limited to, attorney's fees. In the event the Indemnified Parties are entitled to and elect to conduct their own defense, then:

16.6.7.1 In the case of a defense conducted under Article 16.6.3.1, it shall have the right to settle or compromise the claim with DB Team's prior written consent, which shall not be unreasonably withheld or delayed;

16.6.7.2 In the case of a defense conducted under Article 16.6.3.2, it shall have the right to settle or compromise the claim with DB Team's prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court following reasonable notice to DB Team and opportunity to be heard and without prejudice to the Indemnified Party's rights to be indemnified by DB Team; and

16.6.7.3 In the case of a defense conducted under Article 16.6.3.3, it shall have the right to settle or compromise the claim without DB Team's prior written consent and without prejudice to its rights to be indemnified by DB Team.

16.6.8 A refusal of, or failure to accept, a tender of defense, as well as any Dispute over whether an Indemnified Party which has assumed control of defense is entitled to do so under Article 16.6.6, shall be submitted in accordance with the Dispute Resolution Procedures. DB Team shall be entitled to contest an indemnification claim and pursue, through the Dispute Resolution Procedures, recovery of defense and indemnity payments it has made to or on behalf of the Indemnified Party.

16.6.9 In determining responsibilities and obligations for defending suits pursuant to this Article 16.6 (Defense and Indemnification Procedures), specific consideration shall be given by the Parties to the following factors: (a) the party performing the activity in question; (b) the location of the activity and Incident; (c) contractual arrangements then governing the performance of the activity; and (d) allegations of respective fault contained in the claim.

16.6.10 Notwithstanding anything to the contrary set forth in Article 16.5 (Indemnity by DB Team) or this Article 16.6 (Defense and Indemnification Procedures), the Attorney General is the only counsel authorized to represent GDOT or any State affiliated agencies or departments. In the event that there is any potential conflict of interest that could reasonably arise in the representation of any Indemnified Party and DB Team in the defense of any action, suit or proceeding pursuant to Article 16.5 above or in the event that state or local law requires the use of specific counsel, (i) such Indemnified Party may elect in its sole and absolute discretion whether to waive such conflict of interest, and (ii) unless such Indemnified Party elects to waive such conflict of interest, or in any event if required by state or local law, then the counsel designated by the Indemnified Party shall solely represent such Indemnified Party and, if applicable, DB Team shall retain its own separate counsel, each at DB Team's sole cost and expense. The Attorney General will consider counsel recommended by DB Team for appointment as a Special Assistant Attorney General.

16.6.11 If a suit or proceeding based on a claimed infringement of a patent or copyright is brought against any of the Indemnified Parties, DB Team shall, at its own expense, defend or settle any such suit or proceeding if authorized to do so in writing by the Attorney General subject to the obligations of indemnification as set forth in Article 16.5 (Indemnity by DB Team).

16.6.12 DB Team, subject to this Article 16.6 (Defense and Indemnification Procedures), may settle the claim without the consent or agreement of the Indemnified Parties, unless the settlement (i) would result in injunctive relief or other equitable remedies or otherwise require the Indemnified Parties to comply with restrictions or limitations that adversely affect or materially impair the reputation and standing of the Indemnified Parties, (ii) would require the Indemnified Parties to pay amounts that DB Team or its insurer does not fund in full, (iii) would not result in the Indemnified Parties full and complete release from all liability to the plaintiffs or Claimants who are parties to or otherwise bound by the settlement, or (iv) directly involves any such Indemnified Parties (in which case the Attorney General shall be the only counsel authorized to represent such parties with respect to any such settlement).

Article 17 DEFAULT; REMEDIES; CLAIM FOR ADJUSTMENTS AND DISPUTES

17.1 Default by DB Team; Cure Periods

17.1.1 DB Team Default

Subject to relief from its performance obligations pursuant to Article 14.1.2.1 and Article 13.3.2.4, DB Team shall be in breach under this Agreement upon the occurrence of any one or more of the following events or conditions (each a "DB Team Default"):

17.1.1.1 DB Team (a) fails to begin the applicable Work within 30 days following issuance of NTP 1; (b) fails to satisfy all conditions to issuance of NTP 3 under Article 3.3.1 by the NTP 3 Conditions Deadline; or (c) fails to satisfy all conditions to commencement of the applicable Construction Work, and fails to commence such Construction Work with diligence and continuity, as the same may be extended pursuant to this Agreement;

17.1.1.2 An Abandonment;

17.1.1.3 DB Team fails to achieve Substantial Completion by the Substantial Completion Deadline, as the same may be extended pursuant to this Agreement;

17.1.1.4 DB Team fails to achieve Final Acceptance by the Final Acceptance Deadline, or fails to achieve such required Elements of the Work by any applicable Milestone Deadline, as any such dates may be extended pursuant to this Agreement;

17.1.1.5 Any representation or covenant in the DB Documents made by DB Team, or any certificate, schedule, report, instrument or other document delivered by or on behalf of DB Team to GDOT pursuant to the DB Documents is materially false, materially misleading or materially inaccurate when made or omits material information when made;

17.1.1.6 DB Team fails to obtain, provide and maintain any insurance, bonds, or other performance security as and when required under this Agreement for the benefit of relevant parties, or fails to comply with any requirement of this Agreement pertaining to the amount, terms or coverage of the same;

17.1.1.7 DB Team makes or attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of this Agreement, the Project or DB Team's Interest, or there occurs a Change of Control, in violation of Article 21;

17.1.1.8 DB Team materially fails to timely observe or perform or cause to be observed or performed any other material covenant, agreement, obligation, term or condition required to be observed or performed by DB Team under the DB Documents (including material failure to perform the Design Work, Construction Work, or any material portion thereof in accordance with the DB Documents); provided that this Article 17.1.1.8 shall not apply to DB Team

Defaults specifically addressed by other provisions of Article 17.1.1 (DB Team Default);

17.1.1.9 After exhaustion of all rights of appeal, there occurs any debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, from bidding, proposing or contracting with any federal department or agency of (a) DB Team, (b) any member of DB Team with a material financial obligation owing to DB Team for equity or shareholder loan contributions, (c) any Affiliate of DB Team for whom transfer of ownership would constitute a Change of Control, or (d) any Key Contractor whose work is not completed;

17.1.1.10 DB Team fails to (a) deliver to GDOT any remedial plan as may be required pursuant to Article 17.3.5 (Remedial Action Plan Delivery and Implementation) or (b) otherwise fails to fully comply with the schedule or specific elements of, or actions required under, any such accepted remedial plan;

17.1.1.11 DB Team (a) commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect, (b) seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; (c) becomes insolvent, or generally does not pay its debts as they become due; (d) admits in writing its inability to pay its debts; (e) makes an assignment for the benefit of creditors; or (f) takes any action to authorize any of the foregoing; or

17.1.1.12 An involuntary case is commenced against DB Team (a) seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to DB Team or DB Team's debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect; (b) seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of DB Team or any substantial part of DB Team's assets; (c) seeking the issuance of a writ of attachment, execution, or similar process; or (d) seeking like relief; and such involuntary case shall not be contested by DB Team in good faith or shall remain undismissed and unstayed for a period of 60 days.

17.1.2 Forbearance and Cure Periods

For the purpose of GDOT's exercise of other remedies, subject to Article 17.2.2 (Effect of Warning Notice on DB Team Cure Period) and subject to remedies that this Article 17 expressly states may be exercised before lapse of a cure period, DB Team shall have the following cure periods with respect to the following DB Team Defaults:

17.1.2.1 Respecting a DB Team Default under Article 17.1.1.10, a period of five days after GDOT delivers to DB Team written notice of the DB Team Default;

17.1.2.2 Respecting a DB Team Default under Article 17.1.1.6 or Article 17.1.1.7, a period of 15 days after GDOT delivers to DB Team written notice of the DB Team Default; provided that GDOT shall have the right, but not the

obligation, to effect cure, at DB Team's expense, if a DB Team Default under Article 17.1.1.6 continues beyond five days after such notice is delivered;

17.1.2.3 Respecting a DB Team Default under Article 17.1.1.1 or Article 17.1.1.2, a period of 30 days after GDOT delivers to DB Team written notice of the DB Team Default; provided that as to a DB Team Default under Article 17.1.1.1, such cure period shall not preclude or delay GDOT's immediate exercise, without notice or demand, of its right, but not the obligation, to effect cure, at DB Team's expense;

17.1.2.4 Respecting a DB Team Default under Article 17.1.1.5, Article 17.1.1.8 or Article 17.1.1.9, a period of 30 days after GDOT delivers to DB Team written notice of the DB Team Default; provided that (a) if the DB Team Default is of such a nature that the cure cannot with diligence be completed within such time period and DB Team has commenced meaningful steps to cure immediately after receiving the default notice, DB Team shall have such additional period of time, up to a maximum cure period of 180 days, as is reasonably necessary to diligently effect cure, (b) as to Article 17.1.1.5, cure will be regarded as complete when the adverse effects of the breach are cured, and (c) as to Article 17.1.1.9, if the debarred or suspended Person is a managing member, general partner or controlling investor of DB Team, cure will be regarded as complete when DB Team proves it has removed such Person from any position or ability to manage, direct or control the decisions of DB Team or to perform Work;

17.1.2.5 Respecting a DB Team Default under Article 17.1.1.11 or Article 17.1.1.12, no cure period, and there shall be no right to notice of a DB Team Default under Article 17.1.1.11 or Article 17.1.1.12; and

17.1.2.6 Respecting a DB Team Default arising from DB Team's failure to achieve any Milestone Deadline other than the Substantial Completion Deadline or Final Acceptance Deadline, a forbearance period of 30 days from the date of such DB Team Default shall apply, provided that DB Team shall, as a condition to such forbearance period, be required to (a) deliver to GDOT a remedial action plan within 10 days after written notice of such DB Team Default, pursuant to Article 17.3.5 (Remedial Action Plan Delivery and Implementation) (without further demand or notice by GDOT), and (b) with the delivery of such remedial action plan, acknowledge any associated Liquidated Damages that are accruing. Where such remedial action plan has been accepted by GDOT in writing, then such forbearance period as provided herein shall be extended or abbreviated as required by such remedial action plan, subject to DB Team's diligent prosecution of the Work in accordance therewith. Any such DB Team Default shall be deemed cured upon satisfaction of the conditions set forth in such accepted remedial action plan and any Liquidated Damages shall cease to accrue upon the date of such satisfaction. Notwithstanding anything to the contrary herein, Liquidated Damages accruing during such forbearance period, as may be extended, shall not be waived by this Article 17.1.2.6 and shall be payable pursuant to the terms of this Agreement.

17.1.3 Certain Curative Actions; Status Report

17.1.3.1 If the DB Team Default consists of failure to give GDOT a required prior notice and opportunity to complete an applicable review and comment or acceptance procedure under Article 6.3 before action is taken by DB Team, such DB Team Default shall be curable only by reversing or suspending the action until the notice and review and comment or acceptance procedures are followed and completed, unless DB Team finished the action before receiving the notice of DB Team Default or unless waived by GDOT.

17.1.3.2 If the DB Team Default consists of any DB Team activity or failure to act which constitutes a change from DB Team's activities immediately prior to the DB Team Default, such DB Team Default shall be curable only by reinstating the activity as it was being performed immediately prior to the DB Team Default.

17.1.3.3 For any DB Team Default for which a Warning Notice has been delivered by GDOT to DB Team, DB Team may request from GDOT a status report as to DB Team's progress in effecting a cure, by delivering to GDOT a written request accompanied by DB Team's own report as to its progress in effecting a cure. GDOT shall provide its response within 10 Business Days after receipt of DB Team's written request and report. The response shall be provided solely for purposes of informing DB Team as to GDOT's view of the progress in effecting a cure for the DB Team Default, shall not constitute an admission of any fact, shall not be admissible in evidence for any purpose, shall not form the basis for any Dispute, and shall not limit in any way GDOT's right to terminate this Agreement in accordance with Article 19.3 should cure not be affected within the relevant period.

17.2 Warning Notices

17.2.1 Warning Notice Events

Without prejudice to any other right or remedy available to GDOT, GDOT may, but in no case shall be required to, deliver a written notice (a "Warning Notice") to DB Team, stating explicitly that it is a "Warning Notice" and stating in reasonable detail the matter or matters giving rise to the notice and, if applicable, amounts due from DB Team, and reminding DB Team of the implications of such notice, whenever there occurs any of the following:

17.2.1.1 Any DB Team Default under Article 17.1.1.1, 17.1.1.2, 17.1.1.7, 17.1.1.8, or 17.1.1.10;

17.2.1.2 Delay or failure to achieve any Milestone Deadline; or

17.2.1.3 Any other material DB Team Default.

17.2.2 Effect of Warning Notice on DB Team Cure Period

17.2.2.1 Any notice of a DB Team Default issued under Article 17.1 (Default by DB Team; Cure Periods) may, if it concerns a matter under

Article 17.2.1 (Warning Notices Events), also be issued as a Warning Notice. In such case, the cure period available to DB Team, if any, shall be as set forth in Article 17.1.2 (Forbearance and Cure Periods).

17.2.2.2 If GDOT issues a Warning Notice under Article 17.2.1 (Warning Notices Events) for any DB Team Default after it issues a notice of such DB Team Default, then the cure period available to DB Team, if any, for such DB Team Default before GDOT may seek to appoint a receiver for DB Team, remove DB Team or terminate this Agreement on account of such DB Team Default shall be extended by the time period between the date the notice of such DB Team Default was issued and the date the Warning Notice is issued. No later issuance of a Warning Notice shall extend the time when GDOT may exercise any other remedy respecting such DB Team Default.

17.2.3 Other Effects of Warning Notice

17.2.3.1 The issuance of a Warning Notice shall entitle GDOT to increase the level of oversight as provided in Article 17.3.8 (Increased Oversight, Testing, and Inspection).

17.2.3.2 The issuance of a Warning Notice may trigger a Default Termination Event as provided in Article 19.3 (Termination for DB Team Default).

17.3 Remedies for DB Team Default

17.3.1 Termination

In the event of any DB Team Default that is or becomes a Default Termination Event set forth in Article 19.3.1, GDOT may terminate this Agreement and GDOT thereupon may take control of the Work, which termination shall, among other things, automatically terminate all of DB Team's rights under Article 2 (Grant of Authority and Right of Way), whereupon DB Team shall take all action required to be taken by DB Team under Article 19.5 (Termination Procedures and Duties).

17.3.2 Remedies for Failure to Meet Safety Standards or Perform Safety Compliance

17.3.2.1 Subject to Article 17.3.2.4 (DB Team Defaults Triggering GDOT Termination Rights), if at any time DB Team fails to meet any Safety Standard or timely perform Safety Compliance or GDOT and DB Team cannot reach an agreement regarding the interpretation or application of a Safety Standard or the valid issuance of a Safety Compliance Order within a period of time acceptable to GDOT, acting reasonably, GDOT shall have the absolute right and entitlement to undertake or direct DB Team to undertake any work required to ensure implementation of and compliance with Safety Standards as interpreted or applied by GDOT or with the Safety Compliance Order.

17.3.2.2 To the extent that any work done pursuant to Article 17.3.2.1 is undertaken by GDOT and is reasonably necessary to comply with Safety Standards or perform validly issued Safety Compliance Orders, DB Team shall pay to GDOT on demand GDOT Recoverable Costs in connection with such

work, and GDOT (whether it undertakes the work or has directed DB Team to undertake the work) shall have no obligation or liability to compensate DB Team for any Losses DB Team suffers or incurs as a result thereof.

17.3.2.3 To the extent that any work done pursuant to Article 17.3.2.1 is undertaken by GDOT and is not reasonably necessary to comply with Safety Standards or perform validly issued Safety Compliance Orders, GDOT shall compensate DB Team only for Losses DB Team suffers or incurs as a direct result thereof.

17.3.2.4 To the extent that any Safety Compliance Order work pursuant to Article 17.3.2.1 is undertaken by DB Team under written protest delivered prior to starting the work and it is finally determined that the Safety Compliance work was not necessary, the unnecessary work under the Safety Compliance Order shall be treated as a GDOT Change.

17.3.2.5 Notwithstanding anything to the contrary contained in the DB Documents, if in the good faith judgment of GDOT, DB Team has failed to meet any Safety Standards or perform Safety Compliance and the failure results in an Emergency or danger to persons or property, and if DB Team is not then diligently taking all necessary steps to rectify or deal with such Emergency or danger, GDOT may, without notice and without awaiting lapse of the period to cure any breach, and in addition and without prejudice to its other remedies, (but is not obligated to) (a) immediately take such action as may be reasonably necessary to rectify the Emergency or danger, in which event DB Team shall pay to GDOT on demand the cost of such action, including GDOT Recoverable Costs, or (b) suspend Construction Work and/or close or cause to be closed any and all portions of the Project affected by the Emergency or danger. So long as GDOT undertakes such action in good faith, even if under a mistaken belief in the occurrence of such failure or existence of an Emergency or danger as a result thereof, such action shall not be deemed unlawful or a breach of this Agreement, shall not expose GDOT to any liability to DB Team and shall not entitle DB Team to any other remedy, it being acknowledged that GDOT has a high priority, paramount public interest in protecting public and worker safety at the Project and adjacent and connecting areas. GDOT's good faith determination of the existence of such a failure, Emergency or danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary. Immediately following rectification of such Emergency or danger, as determined by GDOT, acting reasonably, GDOT shall allow the Construction Work to continue or such portions of the Project to reopen, as the case may be. The foregoing shall not, however, protect GDOT from DB Team's lawful claims to indemnity or contribution for third-party bodily injury or property damage arising out of any such GDOT action, if and to the extent (i) GDOT was mistaken in believing such a DB Team Default occurred, (ii) the third-party liability is not insured and not required to be insured under the DB Documents, and (iii) such injury or property damage was caused by GDOT's negligence, recklessness or intentional misconduct.

17.3.3 Step-in Rights

Upon the occurrence of a DB Team Default and expiration, without full and complete cure, of the cure period, if any, available to DB Team, without necessity for a Warning Notice, and without waiving or releasing DB Team from any obligations, GDOT shall have the right, but not the obligation, for so long as such DB Team Default remains uncured by GDOT or DB Team, to pay and perform all or any portion of DB Team's obligations and the Work that are the subject of such DB Team Defaults, as well as any other then-existing breaches or failures to perform for which DB Team received prior written notice from GDOT but has not commenced diligent efforts to cure provided, that (i) except with respect to DB Team's lawful claims for third-party bodily injury or property damage arising out of such GDOT action, GDOT will not incur any liability to DB Team for any act or omission of GDOT or any other Person in the course of remedying or attempting to remedy any DB Team Default and (ii) GDOT's cure of any DB Team Default will not waive or affect GDOT's rights against DB Team by reason of the DB Team Default.

17.3.3.1 In connection with such action, GDOT may, to the extent and only to the extent reasonably required for or incident to curing the DB Team Default or such other breaches or failures to perform for which DB Team received prior written notice from GDOT but has not commenced and continued diligent efforts to cure:

(a) Employ security guards and other safeguards to protect the Project;

(b) Spend such sums as are reasonably necessary to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required, without obligation or liability to DB Team or any Contractors for loss of opportunity to perform the same Work or supply the same materials and equipment;

(c) Draw on and use proceeds from payment and performance bonds and other performance security to the extent available under the terms thereof to pay such sums;

(d) Execute all applications, certificates and other documents as may be required;

(e) Make decisions respecting, assume control over and continue Work as may be reasonably required;

(f) Meet with, coordinate with, direct and instruct contractors and suppliers, process invoices and applications for payment from contractors and suppliers, pay contractors and suppliers, and resolve claims of contractors, subcontractors and suppliers, and for this purpose DB Team irrevocably appoints GDOT as its attorney-in-fact with full power and authority to act for and bind DB Team in its place and stead;

(g) Take any and all other actions as may be reasonably required or incident to curing; and

(h) Prosecute and defend any action or proceeding incident to the Work undertaken.

17.3.3.2 DB Team shall reimburse GDOT on demand, GDOT Recoverable Costs in connection with the performance of any act or Work authorized by this Article 17.3.3 (Step-in Rights).

17.3.3.3 GDOT and any of their Authorized Representatives, contractors, subcontractors, vendors and employees shall not be liable to DB Team in any manner for any inconvenience or disturbance arising out of its entry onto the Project or Project Specific Locations in order to perform under this Article 17.3.3 (Step-in Rights), unless caused by the gross negligence, recklessness, willful misconduct or bad faith of such Person. If any Person exercises any right to pay or perform under this Article 17.3.3 (Step-in Rights), it nevertheless shall have no liability to DB Team for the sufficiency or adequacy of any such payment or performance, or for the manner or quality of design, or construction unless caused by the gross negligence, recklessness, willful misconduct or bad faith of such Person.

17.3.3.4 The rights under this Article 17.3.3 (Step-in Rights) are subject to the right of any Surety under payment and performance bonds to assume performance and completion of all bonded work.

17.3.3.5 In the event GDOT takes action described in this Article 17.3.3 (Step-in Rights) and it is later finally determined that GDOT lacked the right to do so because there did not occur a DB Team Default and expiration, without full and complete cure, of the cure period, if any, available to DB Team, then GDOT's action shall be treated as a Directive Letter for a GDOT Change.

17.3.4 Damages; Offset

17.3.4.1 Subject to Article 17.3.10 (Cumulative, Non-Exclusive Remedies) and Article 17.3.11 (Limitation on Consequential Damages) and the provisions on Liquidated Damages set forth in Article 17.4 (Liquidated Damages and Nonrefundable Deductions), GDOT shall be entitled to recover any and all damages available at Law (subject to the duty at Law to mitigate damages and without duplicate recovery) on account of the occurrence of a DB Team Default, including, to the extent available at Law, (a) loss of any compensation due GDOT under the DB Documents proximately caused by the DB Team Default, (b) actual and projected costs to remedy any defective part of the Work, (c) actual and projected costs to rectify any breach or failure to perform by DB Team and/or to bring the condition of the Project to the standard it would have been in if DB Team had complied with its obligations to carry out and complete the Work in accordance with the DB Documents, (d) actual and projected costs to GDOT to terminate, take over the Project, re-procure and replace DB Team, and (e) actual and projected increases in costs to GDOT to complete the Project if not completed, together with interest thereon at the Default Interest Rate commencing from the date any amount becomes due to GDOT until paid. DB

Team shall owe any such damages that accrue after the occurrence of the DB Team Default and the delivery of notice thereof, if any, required by this Agreement regardless of whether the DB Team Default is subsequently cured.

17.3.4.2 GDOT may deduct and offset any claim amount owing to it, provided such claim amount has been liquidated through Dispute Resolution Procedures or otherwise, from and against any amounts GDOT may owe to DB Team or any Affiliate pursuant to this Agreement; provided that GDOT shall first draw on all amounts held in respect of the claim in the GDOT Claims Account.

17.3.4.3 If the claim amount is not liquidated, GDOT may elect to exercise its right to direct a payment from DB Team up to the disputed portion of the claim which payment shall be deposited into the GDOT Claims Account. Upon liquidation, the disputed portion of the claim shall be satisfied first from the amounts held in the GDOT Claims Account, and then through GDOT's right of offset with respect to the liquidated claim amounts.

17.3.5 Remedial Action Plan Delivery and Implementation

17.3.5.1 Upon the occurrence of a DB Team Default, GDOT shall have the right, but is not obligated, to demand that DB Team shall, within 10 days after written notice of such DB Team Default, be required to prepare and submit a remedial action plan for GDOT approval.

17.3.5.2 The remedial action plan shall set forth a schedule and specific actions to be taken by DB Team to improve its performance and cure the DB Team Default. Such actions may include improvements to DB Team's quality management practices, plans and procedures, revising and restating components of the Management Plans, changes in organizational and management structure, increased monitoring and inspections, changes in Key Personnel and other important personnel, replacement of Contractors, corrective measures necessary to expedite the progress of construction and to demonstrate ability to achieve any Milestone Deadline including, without limitation, (i) working additional shifts or overtime and/or (ii) supplying additional manpower, equipment and facilities, and delivery of security to GDOT.

17.3.5.3 DB Team's failure to diligently prosecute the Work in accordance with any such approved remedial action plan shall be deemed a further DB Team Default.

17.3.6 Performance Security

17.3.6.1 Upon the occurrence of a DB Team Default and expiration, without full and complete cure, of the applicable cure period, if any, under Article 17.1.2 (Forbearance and Cure Periods), without necessity for a Warning Notice, and without waiving or releasing DB Team from any obligations, and subject to Article 16 (Insurance; Performance Security; Indemnity) as applicable, GDOT shall be entitled to make demand upon and enforce any bond, and make demand upon, draw on and enforce and collect any guaranty or other payment or performance security available to GDOT under this Agreement with respect to the DB Team Default in question in any order in GDOT's sole discretion. Where

access to a bond or other payment or performance security is to satisfy damages owing, GDOT shall be entitled to make demand, draw, enforce and collect regardless of whether the DB Team Default is cured subsequent to such draw. GDOT will apply the proceeds of any such action to the satisfaction of DB Team's obligations under the DB Documents, including payment of amounts due GDOT. The foregoing does not limit or affect any other right of GDOT to make demand upon and enforce any bond, and make demand upon, draw on and enforce and collect any guaranty or other payment or performance security, immediately after GDOT are entitled to do so under the bond, guaranty or other payment or performance security.

17.3.7 Suspension of Work

17.3.7.1 Upon GDOT's delivery of notice of DB Team Default for any of the following breaches or failures to perform and DB Team's failure to fully cure and correct, within the applicable cure period, if any, available to DB Team under Article 17.1.2 (Forbearance and Cure Periods), GDOT shall have the right and authority to suspend any affected portion of the Work by written order to DB Team:

(a) Performance of Nonconforming Work;

(b) Failure to comply with any Law or Governmental Approval (including failure to handle, preserve and protect archeological, paleontological or historic resources, or failure to handle Hazardous Materials, in accordance with applicable Laws and Governmental Approvals);

(c) Certain failures to remove and replace personnel as set forth in Article 10.6.3;

(d) Failure to provide proof of required insurance coverage as set forth in Article 16.1.1.1 (Certificates of Insurance);

(e) Failure to carry out and comply with Directive Letters;

(f) Failure to satisfy any condition to commencement of construction set forth in Article 7.6 (Conditions to Commencement of Construction Work); and

(g) Failure to maintain, extend or replace performance and payment security required under the Agreement, including any P&P Bonds, unless a drawing has been made under same in the amount of the required coverage provided for in Article 16.2 (Performance and Payment Security) and the proceeds of such drawing are held by GDOT.

GDOT will lift the suspension order promptly after DB Team fully cures and corrects the applicable breach or failure to perform.

17.3.7.2 In addition, GDOT shall have the right and authority to suspend any affected portion of the Work by written notice to DB Team for the following reasons:

(a) To comply with any court order or judgment (although it may qualify as a Compensation Event under Article 14.2.1(g) or a Relief Event under Article 14.1.1(l));

(b) GDOT's performance of data recovery respecting archeological, paleontological or cultural resources (although it may qualify as a Relief Event under Article 14.1.1(i));

(c) The existence of conditions unsafe for workers, other Project personnel or the general public, including certain failures to comply with Safety Standards or perform Safety Compliance as set forth in Article 17.3.2.5; or

(d) DB Team has failed to (i) pay in full when due sums owing any Contractor for services, materials or equipment, except only for amounts in dispute, or (ii) deliver any certificate, release, certified payroll or affidavit of wages paid required with any Payment Request or required under this Agreement.

17.3.7.3 DB Team shall promptly comply with any such written suspension order, even if DB Team disputes the grounds for suspension. DB Team shall promptly recommence the Work upon receipt of written notice from GDOT directing DB Team to resume Work.

17.3.7.4 In addition to the protections from liability under Article 17.3.2.5, neither GDOT shall not have any liability to DB Team, and DB Team shall have no right to a Relief Event or Compensation Event, in connection with any suspension properly founded on any of the other grounds set forth in this Article 17.3.7 (Suspension of Work) (except potential Relief Events or Compensation Events in the case of suspensions under Articles 17.3.7.2(a) and 17.3.7.2(b)). If GDOT orders suspension of Work on one of the foregoing grounds but it is finally determined under the process set forth under Dispute Resolution Procedures that such grounds did not exist, or if GDOT orders suspension of Work for any other reason, it shall be treated as a Directive Letter for a GDOT Change, except as provided in Article 17.3.2.5.

17.3.8 Increased Oversight, Testing, and Inspection

17.3.8.1 Upon GDOT's delivery of notice of DB Team Default for any of the following breaches or failures to perform and DB Team's failure to fully cure and correct, within the applicable cure period, if any, available to DB Team under Article 17.1.2 (Forbearance and Cure Periods), GDOT shall have the right and authority to suspend any affected portion of the Work by written order to DB Team.

17.3.8.2 If GDOT cannot confirm that a portion of the Design Work or the Construction Work is in accordance with the requirements of the DB

Documents, GDOT shall have the right but not the obligation to provide increased monitoring, inspection, sampling, measuring, testing and oversight. If the increased monitoring, inspection, sampling, measuring, testing and oversight reveal: (i) a failure to perform such Work in accordance with the Quality Management Plan, (ii) that the Quality Management Plan does not comply with the DB Documents, or (iii) that such Work is not in accordance with the DB Documents, DB Team shall be responsible for the costs of such increased monitoring, inspection, sampling, measuring, testing and oversight as described in this Article 17.3.8 (Increased Oversight, Testing, and Inspection). DB Team shall correct such deficiencies and the increased monitoring, inspection, sampling, measuring, testing and oversight will continue until those deficiencies have been corrected. If such Work was performed in accordance with the DB Documents, the costs of the increased monitoring, inspection, sampling, measuring, testing and oversight shall be borne by GDOT.

17.3.8.3 If GDOT increases the level of monitoring, inspection, sampling, measuring, testing, auditing and oversight under Article 17.3.8.2 and Liquidated Damages are not provided for under this Agreement in connection with such action, then DB Team shall pay and reimburse GDOT within 30 days after receipt of written demand and reasonable supporting documentation for all increased costs and fees GDOT incurs in connection with such action, including GDOT Recoverable Costs.

17.3.8.4 The foregoing does not preclude GDOT, at its sole discretion and expense, from increasing its level of monitoring, inspection, sampling, measuring, testing, auditing and oversight at other times.

17.3.9 Other Rights and Remedies

Subject to Article 17.3.11 (Limitation on Consequential Damages), Article 17.4.5.2 and Article 19.9 (Exclusive Termination Rights), GDOT shall also be entitled to exercise any other rights and remedies available under this Agreement or any other DB Documents, or available at law or in equity.

17.3.10 Cumulative, Non-Exclusive Remedies

Subject to Articles 17.3.11 (Limitation on Consequential Damages), 17.4.5.2 and 19.9 (Exclusive Termination Rights), each right and remedy of GDOT hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at Law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by GDOT of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by GDOT of any or all other such rights or remedies.

17.3.11 Limitation on Consequential Damages

17.3.11.1 Notwithstanding any other provision of the DB Documents and except as set forth in Article 17.3.11.2, to the extent permitted by applicable Law, DB Team shall not be liable for punitive damages or special, indirect or incidental, or consequential damages, whether arising out of breach of this Agreement, tort (including negligence) or any other theory of liability, and GDOT

releases DB Team from any such liability, other than for Liquidated Damages for delay, as provided pursuant to this Agreement or otherwise to the extent recoverable from insurance.

17.3.11.2 The foregoing limitation on DB Team's liability for consequential damages shall not apply to or limit any right of recovery GDOT may have respecting the following:

(a) Losses (including defense costs) to the extent (i) covered by the proceeds of insurance required to be carried pursuant to Article 16.1 (Insurance Policies and Coverage), (ii) covered by the proceeds of insurance actually carried by or insuring DB Team under policies solely with respect to the Project and the Work, regardless of whether required to be carried pursuant to Article 16.1, or (iii) DB Team is deemed to have self-insured the Loss pursuant to Article 16.3.3;

(b) Losses arising out of fraud, criminal conduct, intentional misconduct (which does not include any intentional DB Team Default), recklessness, bad faith or gross negligence on the part of DB Team or Contractor or any Affiliate of either;

(c) DB Team's obligation to pay Liquidated Damages in accordance with Article 17.4 (Liquidated Damages and Nonrefundable Deductions) or any other provision of the DB Documents;

(d) Losses arising out of DB Team Releases of Hazardous Materials;

(e) Reserved;

(f) Amounts DB Team may be obligated to reimburse to GDOT or that are otherwise due from DB Team to GDOT under the express provisions of the DB Documents, including GDOT Recoverable Costs;

(g) Interest, late charges, fees, transaction fees and charges, penalties and similar charges that the DB Documents expressly state are due from DB Team to GDOT; and

(h) Any credits, deductions or offsets that the DB Documents expressly provide to GDOT against amounts owing DB Team.

17.4 Liquidated Damages and Nonrefundable Deductions

17.4.1 Liquidated Damages for Substantial Completion Deadline, or Final Acceptance; Incident Based Liquidated Damages

17.4.1.1 DB Team shall be liable for and pay to GDOT Liquidated Damages with respect to any failure to achieve Substantial Completion by the Substantial Completion Deadline or any failure to achieve Final Acceptance by the Final Acceptance Deadline, as the same may be extended pursuant to this

Agreement, or for any other breach of the requirements of the DB Documents as set forth pursuant to Section 1.1 of Exhibit 18 (Measures of Liquidated Damages and Nonrefundable Deductions). Such liability shall apply even though (a) a cure period remains available to DB Team under Article 17.1.2 (Forbearance and Cure Periods) or (b) cure occurs. The amounts of such Liquidated Damages are set forth in Exhibit 18. Such Liquidated Damages shall commence on the Substantial Completion Deadline or the Final Acceptance Deadline, as applicable, or upon the date of breach for each such incident based default pursuant to Section 1.2 of Exhibit 18, as the same may be extended pursuant to this Agreement, and shall continue to accrue until the date of Substantial Completion, the date of Final Acceptance, the cure of any such incident based breach, all as applicable, or until termination of this Agreement.

17.4.1.2 Reserved

17.4.2 Incident Based Nonrefundable Deductions

17.4.2.1 DB Team shall be liable for and pay to GDOT Nonrefundable Deductions with respect to the occurrence of the incidents listed or other breach of the requirements of the DB Documents as set forth pursuant to Section 1.3 of Exhibit 18 (Measures of Liquidated Damages and Nonrefundable Deductions). Unless otherwise stated in this Article 17.4 (Liquidated Damages and Nonrefundable Deductions) nonrefundable deductions shall be applied at the time of the incident. The amounts of such Incident Based Nonrefundable Deductions are set forth in Exhibit 18.

17.4.2.2 Within 10 Business Days prior to GDOT issuing any nonrefundable deductions as set forth pursuant to Section 1.3 and excluding Section 1.3.1 of Exhibit 18 (Measures of Liquidated Damages and Nonrefundable Deductions), GDOT shall execute the following:

(a) Issuance of a warning via e-mail to the DB Team to correct the incident within seven days of receipt of the e-mail; and

(b) Issuance of a formal written warning to the DB Team to correct the incident within three days after the issuance of the warning in subsection (a). If the DB Team has failed to comply with subsection (a) and (b) to correct the incident at the end of the third day then DB Team shall be liable for and shall pay GDOT the Nonrefundable Deduction.

17.4.3 Acknowledgements Regarding Liquidated Damages

DB Team further agrees and acknowledges that:

17.4.3.1 In the event that DB Team fails to achieve Substantial Completion by the Substantial Completion Deadline or Final Acceptance by the Final Acceptance Deadline, GDOT will incur substantial damages;

17.4.3.2 In the event that DB Team causes occurrence of the incidents listed pursuant to Sections 1.2 and 1.3 of Exhibit 18 (Measures of Liquidated Damages and Nonrefundable Deductions), GDOT will incur substantial damages;

17.4.3.3 Such damages are incapable of accurate measurement and difficult to prove for the reasons stated in this Article 17.4 (Liquidated Damages and Nonrefundable Deductions);

17.4.3.4 As of the Effective Date, the amounts of Liquidated Damages under this Article 17.4 (Liquidated Damages and Nonrefundable Deductions) represent good faith estimates and evaluations by the Parties as to the actual potential damages that GDOT would incur as a result of late Substantial Completion or late Final Acceptance or should the incidents listed occur, and do not constitute a penalty or to otherwise operate as a deterrent for the breach of any obligations of DB Team under this Agreement;

17.4.3.5 The Parties have agreed to such Liquidated Damages in order to fix and limit DB Team's costs and to avoid later Disputes over what amounts of damages are properly chargeable to DB Team;

17.4.3.6 Such sums are reasonable in light of the anticipated or actual harm caused by delayed Substantial Completion or delayed Final Acceptance or should the incidents listed occur, the difficulties of the proof of loss, and the inconvenience or infeasibility of otherwise obtaining an adequate remedy;

17.4.3.7 DB Team acknowledges that such Liquidated Damages are reasonable, as determined as of the Effective Date, in light of the respective injuries and damages that may be caused by DB Team's breach and given that such injuries and damages, which include but shall not be limited to, public inconvenience, increased administration and oversight by GDOT (and any other related agencies), and other damages to the general public, GDOT (and other related agencies); and

17.4.3.8 Such Liquidated Damages are not intended to, and do not, liquidate DB Team's liability under the indemnification provisions of Article 16.5 (Indemnity by DB Team), even though Third-Party Claims against Indemnified Parties may arise out of the same event, breach or failure that gives rise to such Liquidated Damages.

17.4.4 Payment; Satisfaction; Waiver

17.4.4.1 GDOT shall withhold Liquidated Damages owing under this Article 17.4 (Liquidated Damages and Nonrefundable Deductions) from the subsequent DB Team pay application. Liquidated damages shall be withheld by GDOT without right of offset, deduction, reduction or other charge, except as provided in Article 17.6.3 (Offset Rights).

17.4.4.2 GDOT shall have the right to deduct and offset Liquidated Damages from any amounts owing DB Team to the extent provided in Article 17.3.4 (Damages; Offset). GDOT also shall have the right to draw on any bond, certificate of deposit, or other security provided by DB Team pursuant to this Agreement, to satisfy Liquidated Damages not paid when due.

17.4.4.3 Permitting or requiring DB Team to continue and finish the Work or any part thereof after the Substantial Completion Deadline or Final

Acceptance Deadline shall not act as a waiver of GDOT's right to receive Liquidated Damages hereunder or any rights or remedies otherwise available to GDOT.

17.4.5 Non-Exclusive Remedy

17.4.5.1 Each item of Liquidated Damages provided under this Article 17.4 (Liquidated Damages and Nonrefundable Deductions) is in addition to, and not in substitution for, any other item of Liquidated Damages assessed under this Article 17.4.

17.4.5.2 GDOT's right to, and imposition of, Liquidated Damages are in addition, and without prejudice, to any other rights and remedies available to GDOT under the DB Documents, at law or in equity respecting the breach, failure to perform or DB Team Default that is the basis for the Liquidated Damages or any other breach, failure to perform or DB Team Default, except for recovery of the monetary damage for delay that the Liquidated Damages are intended to compensate and for which Liquidated Damaged shall be the only amount recoverable on account of delay damages.

17.5 Default by GDOT; Cure Periods

17.5.1 GDOT Default

GDOT shall, subject to any applicable cure period as set forth in Article 17.5.2 (Cure Periods) below, be in breach under this Agreement upon the occurrence of any one or more of the following events or conditions (each a "GDOT Default"):

17.5.1.1 GDOT fails to make any payment due DB Team under this Agreement within 30 days of the date that any such payment shall be due;

17.5.1.2 Any representation or covenant made by GDOT in this Agreement is false or materially misleading or materially inaccurate when made or omits material information when made;

17.5.1.3 GDOT fails to observe or perform any covenant, agreement, term or condition required to be observed or performed by GDOT under the DB Documents;

17.5.1.4 GDOT makes an assignment other than as permitted pursuant to Article 21.3; or

17.5.1.5 GDOT or other State Governmental Entity confiscates or appropriates the Project or any other material part of DB Team's Interest, excluding a Termination for Convenience or any other exercise of a right of termination set forth in this Agreement.

17.5.2 Cure Periods

GDOT shall have the following cure periods with respect to the any of the conditions set forth in Article 17.5.1 (GDOT Default) above:

17.5.2.1 Respecting a GDOT Default under Article 17.5.1.1, a period of 30 days after DB Team delivers to GDOT written notice of the GDOT Default;

17.5.2.2 Respecting a GDOT Default under Article 17.5.1.2 or Article 17.5.1.3, a period of 60 days after DB Team delivers to GDOT written notice of the GDOT Default; provided that (a) if the GDOT Default is of such a nature that the cure cannot with diligence be completed within such time period and GDOT has commenced meaningful steps to cure immediately after receiving the default notice, GDOT shall have such additional period of time, up to a maximum cure period of 180 days, as is reasonably necessary to diligently effect cure, and (b) as to Article 17.5.1.2, cure will be regarded as complete when the adverse effects of the breach are cured;

17.5.2.3 Respecting a GDOT Default under Article 17.5.1.4, a period of 45 days after DB Team delivers to GDOT written notice of the GDOT Default; and

17.5.2.4 Respecting a GDOT Default under Article 17.5.1.5, a period of 30 days after DB Team delivers to GDOT written notice of the GDOT Default; provided that if the GDOT Default is of such a nature that the cure cannot with diligence be completed within such time period and GDOT has commenced meaningful steps to cure immediately after receiving the default notice, GDOT shall have such additional period of time, up to a maximum cure period of 120 days, as is reasonably necessary to diligently effect cure.

17.6 DB Team Remedies for GDOT Default

17.6.1 Termination and Suspension

17.6.1.1 Subject to Article 19.9 (Exclusive Termination Rights), DB Team will have the right to suspend performance of the Work on account of a GDOT Default subject to any applicable notice and cure periods as set forth in Article 17.5.2 (Cure Periods).

17.6.1.2 Further, DB Team may upon written notice of not less than 15 days to GDOT following expiration of such applicable cure period, where such GDOT Default is continuing, exercise the right to terminate this Agreement and recover termination damages as more particularly set forth in, and subject to the terms and conditions of, Article 19.4 (Termination for GDOT Default, Suspension of Work, Force Majeure Event, or Materially Delayed Notice to Proceed).

17.6.2 Damages and Other Remedies

DB Team shall have and may exercise the following remedies upon the occurrence of a GDOT Default and expiration, without cure, of the applicable cure period:

17.6.2.1 If DB Team does not terminate this Agreement, then, subject to Article 17.6.4 (Limitations on Remedies), DB Team may treat the GDOT Default as a Compensation Event on the terms and conditions set forth in Article 14.2 (Compensation Events) and GDOT shall pay the full Compensation

Amount and interest in accordance with Articles 14.2.7 and 14.2.8 (Limitations on Acceleration Costs;

17.6.2.2 If the GDOT Default is a failure to pay when due any undisputed portion of a progress payment owing under a Supplemental Agreement and GDOT fails to cure such GDOT Default within 30 days after receiving from DB Team written notice thereof, DB Team shall be entitled to suspend the Work under the Supplemental Agreement until the default is cured; and

17.6.2.3 Subject to Article 17.6.4 (Limitations on Remedies) and Article 19.9 (Exclusive Termination Rights), DB Team also shall be entitled to exercise any other remedies available under this Agreement or at Law or in equity, including offset rights to the extent and only to the extent available under Article 17.6.3 (Offset Rights). Subject to Article 17.6.4 (Limitations on Remedies) and Article 19.9 (Exclusive Termination Rights), each right and remedy of DB Team hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at Law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by DB Team of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by DB Team of any or all other such rights or remedies.

17.6.3 Offset Rights

DB Team may deduct and offset any claim amount owing to it, provided such claim amount has been liquidated through the Dispute Resolution Procedures, as provided in Article 17.7 (Dispute Resolution Procedures) or otherwise, from and against any amounts DB Team may owe to GDOT pursuant hereto.

17.6.4 Limitations on Remedies

17.6.4.1 Notwithstanding any other provision of the DB Documents and except as forth in Article 17.6.4.2, to the extent permitted by applicable Law, GDOT shall not be liable for punitive damages or any indirect, incidental or consequential damages, whether arising out of breach of this Agreement or any DB Documents, tort (including negligence) or any other theory of liability, and DB Team releases GDOT from any such liability.

17.6.4.2 The foregoing limitation on GDOT's liability for consequential damages shall not apply to or limit any right of recovery DB Team may have respecting the following:

(a) Losses arising out of fraud, criminal conduct, intentional misconduct (which does not include any intentional GDOT Default), recklessness, bad faith or gross negligence on the part of GDOT;

(b) Losses arising out of GDOT Release(s) of Hazardous Materials or Pre-Existing Hazardous Materials;

(c) Any amounts GDOT may owe or be obligated to reimburse under the express provisions of this Agreement for Compensation Events or events of termination;

(d) Any other specified amounts GDOT may owe or be obligated to reimburse to DB Team under the express provisions of the DB Documents;

(e) Interest and charges that the DB Documents expressly state are due from GDOT to DB Team; and

(f) Any credits, deductions or offsets that the DB Documents expressly provide to DB Team against amounts owing GDOT.

17.6.4.3 The measure of compensation available to DB Team as set forth in this Agreement for a Compensation Event or an event of termination shall constitute the sole and exclusive monetary relief and damages available to DB Team from the State or GDOT arising out of or relating to such event; and DB Team irrevocably waives and releases any right to any other or additional damages or compensation from the State or GDOT. No award of compensation or damages shall be duplicative.

17.6.4.4 Without limiting the effect of Article 17.6.4.3, in the event GDOT wrongfully withholds an acceptance or consent required under this Agreement, or wrongfully issues an objection to or disapproval of a Submittal or other matter under this Agreement, DB Team's sole remedies against GDOT shall be extensions of time to the extent provided in Article 14.1 for a Relief Event and damages to the extent provided in Article 14.2 for a Compensation Event.

17.6.5 Procedure for Payment of Judgments

Promptly after any final, non-appealable order or judgment awarding compensation or damages to DB Team, GDOT shall institute payment procedures as set forth in applicable Law.

17.7 Dispute Resolution Procedures

17.7.1 The Parties shall endeavor to resolve any Dispute that may arise between them through good faith negotiations. If the Dispute is not resolved to the mutual satisfaction of all Parties within 30 days after written notification of such Dispute, or such longer time as is mutually agreed, the dispute shall next be submitted in accordance with Article 17.7.2.

17.7.2 If, despite good faith negotiations between the Parties, any Disputes are not resolved within 30 days after written notification of such Dispute, then the Dispute shall be submitted administratively to mediation as set forth below.

17.7.2.1 The Parties shall mutually select a private mediator to formally mediate the Disputes. If the Parties cannot mutually select a private mediator, GDOT shall select a mediator. Mediation shall normally be scheduled within 45 Calendar Days of notification of the decision by either party to submit the Dispute

to mediation. GDOT and DB Team shall each pay one-half of the fees and administrative costs charged by the selected mediator.

17.7.2.2 The Parties, to provide economies of scale, may mutually agree in writing to submit one or more Disputes, whether or not factually related, to a single mediation. In such event, time periods may be extended by mutual written agreement to facilitate preparation for the mediation.

17.7.2.3 If the Dispute has not been settled within 45 Calendar Days following written notification of the Dispute to mediation or within such other period that the Parties may agree in writing, such Dispute may be submitted to litigation by either party in accordance with Article 17.7.4.

17.7.3 No litigation may be filed by either Party concerning any Dispute prior to using the procedure described in Article 17.7.2. This procedure is a condition precedent for any Party to commence a civil action for resolution of a Dispute.

17.7.4 All litigation between the Parties arising out of or pertaining to this Agreement or its breach shall be filed, heard and decided in the Superior Court of Fulton County, Georgia, which shall have exclusive jurisdiction and venue pursuant to O.C.G.A. § 50-21-1. Each Party shall bear its own attorney's fees and costs in any dispute or litigation arising out of or pertaining to this Agreement, and no Party shall seek or accept an award of attorney's fees or costs.

Article 18 RESERVED

Article 19 TERMINATION

19.1 Termination for Convenience

19.1.1 GDOT may terminate this Agreement, if GDOT determines, in its sole discretion, that a termination is in GDOT's best interest (a "Termination for Convenience"). Termination of this Agreement shall not relieve GDOT, DB Team or any Guarantor or Surety of its obligation for any claims arising prior to termination.

19.1.2 GDOT may exercise Termination for Convenience by delivering to DB Team a written notice of termination for Convenience specifying the election to terminate. Termination for Convenience shall be effective as and when provided in Exhibit 20 (Terms for Termination Compensation).

19.1.3 In the event of a Termination for Convenience, DB Team will be entitled to compensation determined in accordance with Exhibit 20. Payment will be due and payable as and when provided in Exhibit 20.

19.1.4 If GDOT terminates this Agreement on grounds or in circumstances beyond GDOT's termination rights specifically set forth in this Agreement, such termination shall be deemed a Termination for Convenience for the purpose of determining the Termination Compensation due.

19.2 Reserved

19.3 Termination for DB Team Default

19.3.1 DB Team Defaults Triggering GDOT Termination Rights

The following DB Team Defaults (each a "Default Termination Event"), and no other DB Team Defaults, shall entitle GDOT, at its sole election, to terminate this Agreement, effective immediately upon delivery of written notice of termination to DB Team. DB Team agrees and acknowledges and stipulates that any of the following DB Team Defaults would result in material and substantial harm to GDOT's rights and interests under this Agreement and therefore constitute a material DB Team Default justifying termination if not cured within the applicable cure period, if any.

19.3.1.1 The DB Team fails to achieve Substantial Completion by the Substantial Completion Deadline, as the same may be extended pursuant to this Agreement;

19.3.1.2 There occurs any other DB Team Default for which GDOT issues a Warning Notice under Article 17.2 (Warning Notice) or Article 17.3 (Other Effects of Warning Notice), and such DB Team Default is not fully and completely cured within the applicable cure period, if any, set forth in Article 17.2.2.1 or 17.3;

19.3.1.3 There occurs any DB Team Default under Article 17.1.1.11 or 17.1.1.12; or

19.3.1.4 The DB Team fails to diligently prosecute and adhere to the requirements of any remedial action plan as provided and accepted by GDOT pursuant to Article 17.3.5 (Remedial Action Plan Delivery and Implementation).

19.3.2 Compensation to DB Team

If GDOT issues notice of termination of this Agreement due to a Default Termination Event, or if DB Team terminates this Agreement on grounds or in circumstances beyond DB Team's termination rights specifically set forth in this Agreement, DB Team will be entitled to compensation to the extent, and only to the extent, provided in Exhibit 20 (Terms for Termination Compensation). Payment shall be due and payable as and when provided in Exhibit 20.

19.3.3 Finality

If GDOT issues notice of termination of this Agreement due to a Default Termination Event, termination shall be effective and final immediately upon delivery of written notice as provided in Article 19.3.1 (DB Team Defaults Triggering GDOT Termination Rights) regardless of whether GDOT is correct in determining that GDOT has the right to terminate for DB Team Default. In the event it is determined that GDOT lacked such right, then such termination shall be treated as a Termination for Convenience as provided in Article 19.1.4 for the purpose of determining the Termination Compensation due.

19.4 Termination for GDOT Default, Suspension of Work, Force Majeure Event, or Materially Delayed Notice to Proceed

19.4.1 In the event of a material GDOT Default under Article 17.5.1.1 (failure to pay money due) that remains uncured following notice and expiration of the applicable cure period under Article 17.5.2 (Cure Periods), DB Team may deliver to GDOT a further written notice setting forth such GDOT Default and warning GDOT that DB Team may elect to terminate this Agreement and if GDOT does not cure such GDOT Default within 60 days after the delivery of such notice with respect to a GDOT Default under Article 17.5.1.1. GDOT may avoid termination by effecting cure within such 60-day period. Failing such cure, DB Team shall have the right to terminate this Agreement, effective immediately upon delivery of written notice of termination to GDOT. In the event of such termination, DB Team will be entitled to compensation determined in accordance with Exhibit 20. Payment shall be due and payable as and when provided in Exhibit 20. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures.

19.4.2 In the event (i) GDOT orders DB Team to suspend Work on all or any material portion of the Project for a reason other than those set forth in Article 17.3.7.1, or (ii) as a result of a Force Majeure Event, and such suspension of Work continues for a period of 180 consecutive days or more, DB Team shall have the right to terminate this Agreement, effective immediately upon delivery of written notice of termination to GDOT. In the event of such termination, DB Team will be entitled to compensation determined in accordance with Exhibit 20 (Terms for Termination Compensation). Payment shall be due and payable as and when provided in Exhibit 20. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures.

19.4.3 In the event GDOT, due to no fault of a DB Team-Related Entity or other than because the NEPA Finality Date has not occurred, does not issue NTP 1, NTP 2, or NTP 3 within 365 days after the anticipated issuance date set forth in Article 3.3 (Contract Time, Date of Commencement, and Notice to Proceed), DB Team shall have the right to terminate this Agreement, effective immediately upon delivery of written notice of termination to GDOT. In the event of such termination, DB Team will be entitled to compensation determined in accordance with Exhibit 20. Payment shall be due and payable as and when provided in Exhibit 20. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures.

19.4.4 If DB Team issues notice of termination of this Agreement due to a material GDOT Default under Article 17.5.1.1, termination shall be effective and final immediately upon delivery as provided in Article 19.4.1 regardless of whether DB Team is correct in determining that it has the right to terminate for such GDOT Default. In the event it is determined that DB Team lacked such right, then such termination shall be treated as a termination due to material DB Team Default and Article 19.3.2 (Compensation to DB Team) shall govern the measure of the Termination Compensation.

19.5 Termination Procedures and Duties

19.5.1 Upon expiration of the Term or any earlier termination of this Agreement for any reason, including due to GDOT Default, the provisions of this Article 19.5 shall apply. DB Team shall timely comply with such provisions independently of, and without regard to, the timing for determining, adjusting, settling and paying any amounts due DB Team or GDOT on account of termination.

19.5.2 In any case where notice of termination precedes the effective Early Termination Date:

19.5.2.1 DB Team shall continue performing the Work in accordance with, and without excuse from, all the standards, requirements and provisions of the DB Documents, and without curtailment of services, quality and performance;

19.5.2.2 Reserved

19.5.2.3 At GDOT's option, GDOT may increase the level of its monitoring, inspection, sampling, measuring, testing, auditing and oversight of the Project and DB Team's compliance with the obligations under the DB Documents, to such level as GDOT reasonably sees fit to protect against curtailment of services, quality and performance; and

19.5.2.4 Within three days after receipt of a notice of termination, DB Team shall meet and confer with GDOT for the purpose of developing an interim transition plan for the orderly transition of Work, demobilization and transfer of the Project control to GDOT. The Parties shall use diligent efforts to complete preparation of the interim transition plan within 15 days after the date DB Team receives the notice of termination. The Parties shall use diligent efforts to complete a final transition plan within 30 days after such date. The transition plan shall be in form and substance acceptable to GDOT in its good faith discretion and shall include and be consistent with the other provisions and procedures set forth in this Article 19.5 (Termination Procedures and Duties), all of which procedures DB Team shall immediately follow, regardless of any delay in preparation or acceptance of the transition plan.

19.5.3 On the Termination Date, or as soon thereafter as is possible, DB Team shall relinquish and surrender full control and possession of the Project to GDOT, and shall cause all persons and entities claiming under or through DB Team to do likewise, in at least the condition required by the Termination turnover requirements.

19.5.4 On the later of the Termination Date or the date DB Team relinquishes full control and possession, GDOT shall assume responsibility, at its expense, for the Project, subject to any rights to damages that GDOT has against DB Team where the termination is due to a Default Termination Event.

19.5.5 Reserved

19.5.6 Reserved

19.5.7 Within 30 days after notice of termination is delivered, DB Team shall provide GDOT with a true and complete list of all materials, goods, machinery, equipment, parts, supplies and other property in inventory or storage (whether held by DB Team or any Person or entity on behalf of or for the account of DB Team) for use in or respecting the Work or the Project, or on order or previously completed but not yet delivered from Suppliers for use in or respecting the Work or the Project. In addition, on or about the Termination Date, DB Team shall transfer title and deliver to GDOT or GDOT's Authorized Representative, through bills of sale or other documents of title, as directed by GDOT, all such materials, goods, machinery, equipment, parts, supplies and other property.

19.5.8 DB Team shall take all action that may be necessary, or that GDOT may direct, for the protection and preservation of the Project, the Work and such materials, goods, machinery, equipment, parts, supplies and other property.

19.5.9 On or about the Termination Date, DB Team shall execute and deliver to GDOT the following, together with an executed bill of sale or other written instrument, in form and substance acceptable to GDOT, acting reasonably, assigning and transferring to GDOT all of DB Team's right, title and interest in and to the following:

19.5.9.1 All completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, designs, Design Documents, Record Drawings, surveys, and other documents and information pertaining to the design or construction of the Project or the Utility Adjustments;

19.5.9.2 All samples, borings, boring logs, geotechnical data and similar data and information relating to the Project;

19.5.9.3 All books, records, reports, test reports, studies and other documents of a similar nature relating to the Work, the Project;

19.5.9.4 All data and information relating to the use of the Project, including all studies, reports, and other information provided that the transfer of any Intellectual Property shall be subject to Article 22.4 (Intellectual Property); and

19.5.9.5 All other work product and Intellectual Property used or owned by DB Team or any Affiliate relating to the Work, the Project, provided that the transfer of any Intellectual Property shall be subject to Article 22.4 (Intellectual Property).

19.5.10 Reserved

19.5.11 On or about the Termination Date, DB Team shall execute and deliver to GDOT a written assignment, in form and substance acceptable to GDOT, acting reasonably, of all DB Team's right, title and interest in and to all warranties, claims and causes of action held by DB Team against third parties in connection with the Project or the Work.

19.5.12 DB Team shall otherwise assist GDOT in such manner as GDOT may require prior to and for a reasonable period following the Termination Date to ensure the orderly transition of the Project and its management to GDOT.

19.6 Reserved

19.7 Contracts and Agreements

19.7.1 Regardless of GDOT's prior actual or constructive knowledge thereof, no contract or agreement to which DB Team is a party (unless GDOT is also a party thereto) as of the Termination Date shall bind GDOT, unless GDOT elects to assume such contract or agreement in writing. Except in the case of GDOT's express written assumption, no such contract or agreement shall entitle the contracting party to continue performance of work or services respecting the Project following DB Team's relinquishment to GDOT of possession and control of the Project, or to any claim, legal or equitable, against GDOT.

19.8 Liability After Termination; Final Release

19.8.1 No termination of this Agreement shall excuse either Party from any liability arising out of any default as provided in this Agreement that occurred prior to termination. Notwithstanding the foregoing, any termination of this Agreement shall automatically extinguish any claim of DB Team to payment of Compensation Amounts for adverse cost and revenue impacts accruing after the Early Termination Date from Compensation Events that occurred prior to termination.

19.8.2 If this Agreement is terminated under Article 19.1 (Termination for Convenience), 19.3.1 (DB Team Defaults Triggering GDOT Termination Rights), 19.4 (Termination for GDOT Default, Suspension of Work, Force Majeure Event, or Materially Delayed Notice to Proceed), or 19.11 (Termination by Court Ruling), then GDOT's payment to DB Team of the amounts required thereunder (if any) shall constitute full and final satisfaction of, and upon payment GDOT shall be forever released and discharged from, any and all claims, causes of action, suits, demands and Losses, known or unknown, suspected or unsuspected, that DB Team may have against GDOT arising out of or relating to this Agreement or termination thereof, or the Project, are unresolved at the time of such payment and are not related to termination or Termination Compensation. Upon such payment, DB Team shall execute and deliver to GDOT all such releases and discharges as GDOT may reasonably require to confirm the foregoing, but no such written release and discharge shall be necessary to give effect to the foregoing satisfaction and release.

19.9 Exclusive Termination Rights

This Article 19 (Termination), together with the express provisions on termination set forth in Articles 17.3.1 (Termination) and 17.6.1 (Termination & Suspension), contain the entire and exclusive provisions and rights of GDOT and DB Team regarding termination of this Agreement, and any and all other rights to terminate at law or in equity are hereby waived to the maximum extent permitted by Law.

19.10 Access to Information

DB Team shall conduct all discussions and negotiations to determine any Termination Compensation, and shall share with GDOT all data, documents and information pertaining thereto, on an Open Book Basis.

19.11 Termination by Court Ruling

19.11.1 Except in the circumstances described in Exhibit 20 (Terms for Termination Compensation), Termination by Court Ruling means, and becomes effective upon, (a) issuance of a final order by a court of competent jurisdiction to the effect that this Agreement is void and/or unenforceable or impossible to perform in its entirety, (b) issuance of a final order by a court of competent jurisdiction upholding the binding effect on DB Team or GDOT of a Change in Law that causes impossibility of performance of a fundamental obligation by DB Team or GDOT under the DB Documents or impossibility of exercising a fundamental right of DB Team or GDOT under the DB Documents, (c) occurrence of the circumstances described in Article 24.13.2, or (d) issuance of a final order by a court of competent jurisdiction to the effect that a material provision under the DB Documents is void and/or unenforceable so as to deprive DB Team of its ability to exercise a fundamental right granted to DB Team under the DB Documents and such inability resulting from such order cannot be otherwise remedied through a Compensation Event, Relief Event or other contractual remedy. The final court order shall be treated as the notice of termination.

19.11.2 Once Termination by Court Ruling becomes effective, GDOT and DB Team shall cooperate to implement Articles 19.5 (Termination Procedures and Duties), 19.8 (Liability After Termination; Final Release), and 19.10 (Access to Information).

19.11.3 Notwithstanding Article 19.11.2, if a Termination by Court Ruling occurs, DB Team shall be entitled to compensation to the extent, and only to the extent, provided in Exhibit 20 (Terms for Termination Compensation). Payment shall be due and payable as and when provided in Exhibit 20. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures.

Article 20 RESERVED

Article 21 ASSIGNMENT AND TRANSFER

21.1 Restrictions on Assignment, Subletting and Other Transfers

21.1.1 DB Team shall not voluntarily or involuntarily sell, assign, convey transfer, pledge, mortgage or otherwise encumber the DB Team's Interest or any portion thereof without GDOT's prior written acceptance (including under any Direct Agreement), except:

21.1.1.1 To any entity that is under the same ultimate management control as DB Team.

21.1.2 DB Team shall not grant any other special occupancy or use of the Project to any other Person that is not in the ordinary course of DB Team performing the Work, without GDOT's prior written acceptance.

21.1.3 Any sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, or grant of other special occupancy or use in violation of this provision shall be null and void *ab initio* and GDOT may, by Warning Notice, declare any such attempted action to be a material DB Team Default.

21.2 Standards and Procedures for GDOT Acceptance

21.2.1 Where GDOT's prior acceptance is required for a proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of other special occupancy or use, or for any proposed Change of Control, GDOT may withhold or condition its acceptance in its sole discretion. Any such decision of GDOT to withhold consent shall be final, binding and not subject to the Dispute Resolution Procedures.

21.2.2 Thereafter, GDOT shall not unreasonably withhold its acceptance thereto. Among other reasonable factors and considerations, it shall be reasonable for GDOT to withhold its acceptance if:

21.2.2.1 DB Team fails to demonstrate to GDOT's reasonable satisfaction that the proposed assignee, sublessee, grantee or transferee, or the proposed transferee of rights and/or equity interests that would amount to a Change of Control (for purposes of these Articles 21.2 (Standards and Procedures for GDOT Acceptance) through 21.5 (Change of Organization or Name), collectively the "Transferee"), and its proposed contractors (a) have the financial resources, qualifications and experience to timely perform DB Team's obligations under the DB Documents and Principal Project Documents and (b) are in compliance with GDOT's rules, regulations and adopted written policies regarding organizational conflicts of interest;

21.2.2.2 Less than all of DB Team's Interest is proposed to be assigned, conveyed, transferred, pledged, mortgaged, encumbered, or granted; or

21.2.2.3 At the time of the proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of other special occupancy or use requiring GDOT's prior acceptance, or of any proposed Change of Control, there exists any uncured DB Team Default or any event or circumstance that with the lapse of time, the giving of notice or both would constitute a DB Team Default, unless GDOT receives from the proposed Transferee assurances of cure and performance acceptable to GDOT in its good faith discretion.

21.2.3 GDOT will accept or disapprove within 30 days after it receives from DB Team a Submittal consisting of a request for acceptance together with (a) a

reasonably detailed description of the proposed transaction, (b) such information, evidence and supporting documentation as GDOT may request concerning the identity, financial resources, qualifications, experience and potential conflicts of interest of the proposed Transferee and its proposed contractors and (c) such evidence of organization and authority, and such incumbency certificates, certificates regarding debarment or suspension, and other certificates, representations and warranties as GDOT may reasonably request. GDOT will evaluate the identity, financial resources, qualifications, experience and potential conflicts of interest using the same standards and criteria that it is then currently applying, or if there is no current application, then the same standards and criteria it most recently applied, to the evaluation of Persons responding to GDOT requests for qualifications for concession or similar agreements for comparable projects and facilities.

21.2.4 If for any reason GDOT does not act within such 30-day period, or any extension thereof by mutual agreement of the Parties, then the provisions of Article 6.3.4.2 shall apply.

21.3 Assignment by GDOT

GDOT may assign all or any portion of its rights, title and interests in and to the DB Documents, payment and performance bond(s), guarantees, and other security for payment or performance, (a) without DB Team's consent, to any other Person that succeeds to the governmental powers and authority of GDOT, and (b) to others with the prior written consent of DB Team.

21.4 Notice and Assumption

21.4.1 Assignments and transfers of the DB Team's Interest permitted under this Article 21 (Assignment and Transfer) (other than pursuant to Article 21.1.1.1) or otherwise accepted in writing by GDOT shall be effective only upon GDOT's receipt of written notice of the assignment or transfer and a written recordable instrument executed by the Transferee, in form and substance acceptable to GDOT, in which the Transferee, without condition or reservation, assumes all of DB Team's obligations, duties and liabilities under the DB Documents and agrees to perform and observe all provisions thereof applicable to DB Team.

21.4.2 Each Transferee, including any Person who acquires the DB Team's Interest pursuant to foreclosure, transfer in lieu of foreclosure or similar proceeding, shall take the DB Team's Interest subject to, and shall be bound by, the Management Plans, the Key Contracts, the Standard Utility Agreements, all agreements between the transferor and railroads, the Governmental Approvals, and all agreements between the transferor and Governmental Entities with jurisdiction over the Project or the Work, except to the extent otherwise accepted by GDOT in writing in its good faith discretion.

21.4.3 Except with respect to assignments and transfers pursuant to foreclosure, transfer in lieu of foreclosure or similar proceeding, the transferor and Transferee shall give GDOT written notice of the assignment not less than 30 days prior to the effective date thereof.

21.5 Change of Organization or Name

21.5.1 DB Team shall not change the legal form of its organization in a manner that adversely affects GDOT's rights, protections and remedies under the DB Documents without the prior written acceptance of GDOT, which consent may be granted or withheld in GDOT's sole discretion.

21.5.2 In the event either Party changes its name, such Party agrees to promptly furnish the other Party with written notice of change of name and appropriate supporting documentation.

Article 22 RECORDS AND AUDITS; INTELLECTUAL PROPERTY

22.1 Maintenance and Inspection of Records

22.1.1 DB Team shall keep and maintain at a single location as approved by GDOT all books, records and documents relating to the Project, Utility Adjustments or Work, including copies of all original documents delivered to GDOT. DB Team shall keep and maintain such books, records and documents in accordance with applicable provisions of the DB Documents, Volume 2, Section 2 (Project Management), and of the Management Plans, and in accordance with Good Industry Practice. DB Team shall notify GDOT where such records and documents are kept.

22.1.2 DB Team shall make all its books, records and documents available for inspection by GDOT, its representatives and legal counsel at DB Team's principal offices in Georgia, at all times during normal business hours, without charge. GDOT may conduct any such inspection upon 48 hours' prior written notice, or unannounced and without prior notice where there is good faith suspicion of fraud. The right of inspection includes the right to make extracts and take notes. The provisions of this Article 22.1.2 are subject to the following:

22.1.2.1 DB Team reserves the right to assert exemptions from disclosure for information that would be exempt under applicable State Law from discovery or introduction into evidence in legal actions; and

22.1.2.2 Unless otherwise lawfully required by federal Law or the Open Government Laws, DB Team may make available copies of books, records and documents containing trade secrets and confidential proprietary information with such information redacted. Unless otherwise lawfully required by federal Law or the Open Government Laws, GDOT shall have no right to make extracts of such trade secrets and confidential proprietary information except in connection with resolution of Disputes.

22.1.2.3 DB Team shall retain records and documents for a minimum of five years after the date the record or document is generated; provided that if the DB Documents or applicable Law specify any longer time period for retention of particular records, such time period shall control. With respect to records and documents generated prior to Final Acceptance, the time period for retention shall commence upon Final Acceptance. Notwithstanding the foregoing, all

records which relate to any actions brought forth under the Dispute Resolution Procedures shall be retained and made available until any later date that such actions are finally resolved.

22.2 Audits

22.2.1 GDOT shall have such rights to review and audit DB Team, its Contractors and their respective books and records as and when GDOT deems necessary for purposes of verifying compliance with the DB Documents and applicable Law. Without limiting the foregoing, GDOT shall have the right to audit DB Team's Management Plans and compliance therewith, including the right to inspect Work and/or activities and to verify the accuracy and adequacy of the Management Plans and its component parts, plans and other documentation. GDOT may conduct any such audit of books and records upon 48 hours' prior written notice, or unannounced and without prior notice where there is good faith suspicion of fraud.

22.2.2 All claims filed against GDOT shall be subject to audit at any time following the filing of the claim. The audit may be performed by employees of GDOT or by an auditor under contract with GDOT. Notice shall not be required before commencing any audit prior to 60 days after the expiration of the term of this Agreement. Thereafter, GDOT shall provide 20 days' notice to DB Team, any Contractors or their respective agents before commencing an audit. DB Team, Contractors or their agents shall provide adequate facilities, acceptable to GDOT, for the audit during normal business hours. DB Team, Contractors or their agents shall cooperate with the auditors. Failure of DB Team, Contractors or their agents to maintain and retain sufficient books and records to allow the auditors to verify all or a portion of the claim or to permit the auditor access to such books and records shall constitute a waiver of the claim and shall bar any recovery thereunder. At a minimum, the auditors shall have available to them the following documents relating to the claim:

(a) Daily time sheets and supervisor's daily reports;

(b) Union agreements;

(c) Insurance, welfare, and benefits records;

(d) Payroll registers;

(e) Earnings records;

(f) Payroll tax forms;

(g) Material invoices and requisitions;

(h) Material cost distribution work sheet;

(i) Equipment records (list of company equipment, rates, etc.);

(j) Contractors' (including Suppliers') invoices;

(k) Contractors' and agents' payment certificates;

(l) Canceled checks (payroll and Suppliers);

(m) Job cost report;

(n) Job payroll ledger;

(o) General ledger;

(p) Cash disbursements journal;

(q) All documents that relate to each and every claim together with all documents that support the amount of damages as to each claim; and

(r) Work sheets used to prepare the claim establishing (a) the cost components of the claim, including labor, benefits and insurance, materials, equipment, Contractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals, and (b) the lost revenue components of the claim.

22.2.3 Full compliance by DB Team with the provisions of this Article 22.2 (Audits)is a contractual condition precedent to DB Team's right to seek relief on a Dispute under Article 17.7 (Dispute Resolution Procedures).

22.2.4 Reserved

22.2.5 GDOT's right of audit include the right to observe the business operations of DB Team and its Contractors to confirm the accuracy of books and records.

22.2.6 DB Team represents and warrants the completeness and accuracy in all material respects of all information it or its agents provides in connection with GDOT audits, and shall cause all Contractors other than Governmental Entities acting as Contractors to warrant the completeness and accuracy in all material respects of all information such Contractors provide in connection with GDOT audits.

22.2.7 Nothing in the DB Documents shall in any way limit the constitutional and statutory powers, duties and rights of elected State officials, including the independent rights of the State Auditor, in carrying out his or her legal authority. DB Team understands and acknowledges that (a) the State auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this Agreement or indirectly through a Contract, (b) acceptance of funds directly under this Agreement or indirectly through a Contract acts as acceptance of the authority of the State auditor to conduct an audit or investigation in connection with those funds, and (c) an entity that is the subject of an audit or investigation must provide the State auditor with access to any information the State auditor considers relevant to the investigation or audit.

22.3 Open Government Laws and Freedom of Information Act

22.3.1 DB Team acknowledges and agrees that all Submittals, records, documents, drawings, Plans, specifications and other materials in GDOT's possession, including materials submitted by DB Team to GDOT (whether directly or indirectly), are subject to the provisions of the Open Government Laws, subject only to certain exceptions and exemptions contained therein. DB Team also acknowledges that, pursuant to O.C.G.A. § 50-18-70(a), "records received or maintained by a private person, firm, corporation, or other private entity in the performance of a service or function for or on behalf of an agency, a public agency, or a public office shall be subject to disclosure to the same extent that such records would be subject to disclosure if received or maintained by such agency, public agency, or public office." If DB Team believes information or materials submitted or otherwise made available to GDOT constitute trade secrets, proprietary information or other information that is not subject to the Open Government Laws or is excepted from disclosure under the Open Government Laws, DB Team shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such document or page affected, as it determines to be appropriate. Any specific proprietary information, trade secrets or confidential commercial and financial information shall be clearly identified as such, and shall be accompanied by a concise statement of reasons supporting the claim. Nothing contained in this Article 22.3.1 shall modify or amend requirements and obligations imposed on GDOT by the Open Government Laws or other applicable Law, and the provisions of the Open Government Laws or other Laws shall control in the event of a conflict between the procedures described above and the applicable Law. DB Team is advised to contact legal counsel concerning such Law and its application to DB Team.

22.3.2 If GDOT receives a request for public disclosure of materials marked "CONFIDENTIAL," GDOT (as the case may be) will endeavor to notify DB Team of the request. DB Team may seek a protective order or other appropriate remedy. If GDOT determines in good faith that the materials identified as "CONFIDENTIAL" are not exempt from the Open Government Laws, GDOT will release the requested information within the applicable statutory time period, unless otherwise directed by an order of a court of competent jurisdiction. GDOT shall make the final determination regarding whether the requested information is to be disclosed or withheld.

22.3.3 In the event of any proceeding or litigation concerning the disclosure of any material submitted by DB Team to GDOT, DB Team shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk; provided, however, that the Attorney General shall represent GDOT, which will participate in the litigation in such manner as they each may deem necessary or desirable. Except in the case of GDOT's voluntary intervention in litigation, DB Team shall pay and reimburse GDOT (as the case may be) within 30 days after receipt of written demand and reasonable supporting documentation for all costs and fees, including attorneys' fees and costs, GDOT incurs in connection with any litigation, proceeding or request for disclosure.

22.3.4 DB Team further acknowledges and agrees that all Submittals, records, documents, drawings, Plans, specifications and other materials in FHWA's possession may also be subject to disclosure under federal Law, including the Freedom of Information Act. DB Team's rights and obligations with respect to such disclosure shall be in accordance with such federal Law.

22.4 Intellectual Property

22.4.1 All Proprietary Intellectual Property, including with respect to Technology Enhancements, Source Code and Source Code Documentation, shall remain exclusively the property of DB Team or its Affiliates or Contractors that supply the same, notwithstanding any delivery of copies thereof to GDOT.

22.4.2 GDOT shall have and is hereby granted a nonexclusive, transferable, irrevocable, fully paid up right and license to use, reproduce, modify, adapt and disclose, and sublicense others to use, reproduce, modify, adapt and disclose, the Proprietary Intellectual Property of DB Team, including with respect to Technology Enhancements, Source Code and Source Code Documentation, solely in connection with the Project and any Highway, tolled or not tolled, owned and operated by GDOT or a State or regional Governmental Entity.

22.4.3 Subject to the license and rights granted to GDOT pursuant to Article 22.4.2, GDOT shall not at any time sell any Proprietary Intellectual Property of DB Team or use, reproduce, modify, adapt and disclose, or allow any party to use, reproduce, modify, adapt and disclose, any such Proprietary Intellectual Property for any other purpose not consistent with Article 22.4.2 above.

22.4.4 The right to transfer the license is limited to any Governmental Entity that succeeds to the power and authority of GDOT generally or with respect to the Project.

22.4.5 The right to sublicense is limited to State or regional Governmental Entities that own or operate a Highway or other road, tolled or not tolled, and to the concessionaires, contractors, subcontractors, employees, attorneys, consultants and agents that are retained by or on behalf of GDOT or any such State or regional Governmental Entity in connection with the Project or another Highway or other road, tolled or untolled. All such sublicenses shall be subject to Article 22.4.6.

22.4.6 Subject to Article 22.3 (Open Government Laws and Freedom of Information Act), GDOT shall:

22.4.6.1 Not disclose any Proprietary Intellectual Property of DB Team to any Person other than authorized transferees and sublicensees who agree to be bound by any confidentiality obligations of GDOT relating thereto;

22.4.6.2 Enter into a commercially reasonable confidentiality agreement if requested by DB Team with respect to the licensed Proprietary Intellectual Property; and

22.4.6.3 Include, or where applicable require such State or regional Governmental Entity to include, in the contract with the sublicensee its covenant to employ sound business practices no less diligent than those used for its own confidential information, and no less diligent than required by commercially reasonable standards of confidentiality, to protect all Proprietary Intellectual Property of DB Team and other materials provided under the sublicense against disclosure to third parties not in receipt of a sublicense, and to use the sublicense only for the permitted purposes.

22.4.7 Notwithstanding any contrary provision of the DB Documents, in no event shall GDOT or any of their respective directors, officers, employees, consultants or agents be liable to DB Team, any Affiliate or any Contractor for any damages, including loss of profit, arising out of breach of the duty of confidentiality set forth in Article 22.4.6 if such breach is not the result of gross negligence or intentional misconduct or is required under the provisions of the Open Government Laws or a court order or other legal requirement.

22.4.8 DB Team shall continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.

22.4.9 With respect to any Proprietary Intellectual Property, including with respect to Technology Enhancements, Source Code and Source Code Documentation, owned by a Person other than DB Team, including any Affiliate, and other than GDOT or a Governmental Entity acting as a Contractor, DB Team shall obtain from such owner, concurrently with execution of any contract, subcontract or purchase order with such owner or with the first use or adaptation of the Proprietary Intellectual Property in connection with the Project, for DB Team and GDOT, nonexclusive, transferable, irrevocable, fully paid up licenses to use, reproduce, modify, adapt and disclose such Proprietary Intellectual Property solely in connection with the Project and any Highway, tolled or not tolled, owned and operated by GDOT or a State or regional Governmental Entity, of at least identical scope, purpose, duration and applicability as the license granted under Article 22.4.1. The foregoing requirement shall not apply, however, to mass-marketed software products (sometimes referred to as "shrink wrap software") owned by such a Person where such a license cannot be extended to GDOT using commercially reasonable efforts. The limitations on sale, transfer, sublicensing and disclosure by GDOT set forth in Articles 22.4.3 through 22.4.6 shall also apply to GDOT's licenses in such Proprietary Intellectual Property.

22.5 Reserved

Article 23 FEDERAL REQUIREMENTS

23.1 Compliance with Federal Requirements

DB Team shall comply and require its Contractors to comply with all Federal Requirements set forth in Exhibit 8 (Federal Requirements). In the event of any conflict between any applicable Federal Requirements and the other requirements of the DB Documents, the Federal

Requirements shall prevail, take precedence and be in force over and against any such conflicting provisions.

23.2 Reserved

Article 24 MISCELLANEOUS

24.1 Taxes

DB Team shall pay, prior to delinquency, all applicable Taxes. DB Team shall have no right to a Compensation Event or a Relief Event due to its misinterpretation of Laws respecting Taxes or incorrect assumptions regarding applicability of Taxes.

24.2 Amendments

The DB Documents may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns, except to the extent expressly provided otherwise in this Agreement.

24.3 Waiver

24.3.1 No waiver of any term, covenant or condition of this Agreement or the other DB Documents shall be valid unless in writing and signed by the obligee Party.

24.3.2 The exercise by a Party of any right or remedy provided under this Agreement or the other DB Documents shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by any Party of any right or remedy under this Agreement or the other DB Documents shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or the other DB Documents. The consent by one Party to any act by the other Party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

24.3.3 Except as provided otherwise in the DB Documents, no act, delay or omission done, suffered or permitted by one Party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such Party hereunder, or to relieve the other Party from the full performance of its obligations under this Agreement or the other DB Documents.

24.3.4 Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the DB Documents at any time shall not in any way limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the Parties make and implement any interpretation of the DB Documents without documenting such interpretation by an instrument in writing signed by both

Parties, such interpretation and implementation thereof will not be binding in the event of any future Disputes.

24.3.5 Subject to Article 14.2.7, the acceptance of any payment or reimbursement by a Party shall not waive any preceding or then-existing breach or default by the other Party of any term, covenant or condition of this Agreement or the other DB Documents, other than the other Party's prior failure to pay the particular amount or part thereof so accepted, regardless of the paid party's knowledge of such preceding or then-existing breach or default at the time of acceptance of such payment or reimbursement. Nor shall such acceptance continue, extend or affect: (a) the service of any notice, any Disputes or final judgment; (b) any time within which the other Party is required to perform any obligation; or (c) any other notice or demand.

24.4 Independent Contractor

24.4.1 DB Team is an independent contractor, and nothing contained in the DB Documents shall be construed as constituting any relationship with GDOT other than that of an independent contractor under this Agreement.

24.4.2 Nothing in the DB Documents is intended or shall be construed to create any partnership, joint venture or similar relationship between GDOT and DB Team; and in no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture or similar relationship exists. While the term "public-private partnership" may be used on occasion to refer to contractual relationships of the type hereby created, the Parties do not thereby express any intention to form or hold themselves out as a *de jure* or *de facto* partnership, joint venture or similar relationship, to share net profits or net losses, or to give GDOT control or joint control over DB Team's financial decisions or discretionary actions concerning the Project and Work.

24.4.3 In no event shall the relationship between GDOT and DB Team be construed as creating any relationship whatsoever between GDOT and DB Team's employees. Neither DB Team nor any of its employees is or shall be deemed to be an employee of GDOT. Except as otherwise specified in the DB Documents, DB Team has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Contractors and for all other Persons that DB Team or any Contractor hires to perform or assist in performing the Work.

24.5 Successors and Assigns

The DB Documents shall be binding upon and inure to the benefit of GDOT and DB Team and their permitted successors, assigns and legal representatives.

24.6 Designation of Representatives; Cooperation with Representatives

24.6.1 GDOT and DB Team shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on matters relating to the DB Documents ("Authorized Representative"). In addition, for purposes of Project administration and oversight to be performed by GDOT as

provided in this Agreement, GDOT shall designate an individual or individuals who shall be authorized to make decisions and bind GDOT and upon such person(s) direction DB Team may rely. Exhibit 22 provides the initial Authorized Representative designations. A Party may change such designations by a subsequent writing delivered to the other Party in accordance with Article 24.11 (Notices and Communications). For purposes of this Agreement, the Parties, except where expressly stated to the contrary, all communications and deliveries, including submittals, shall be through the respective Authorized Representative for each party.

24.6.2 DB Team shall cooperate with GDOT and all representatives of GDOT designated as described above.

24.7 Survival

DB Team's and GDOT's representations, covenants, warranties, the dispute resolution provisions contained in Article 17.7 (Dispute Resolution Procedures), the express obligations of the Parties following termination, and all other provisions which by their inherent character should survive expiration or earlier termination of this Agreement and/or completion of the Work shall survive the expiration or earlier termination of this Agreement and/or the completion of the Work. The provisions of Article 17.7 shall continue to apply after expiration or earlier termination of this Agreement to all Disputes between the parties arising out of the DB Documents.

24.8 Limitation on Third-Party Beneficiaries

24.8.1 It is not intended by any of the provisions of the DB Documents to create any third-party beneficiary hereunder or to authorize anyone not a Party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent provided in Article 24.9.2 and other specific provisions (such as the warranty and indemnity provisions) that identify third parties and state that they are entitled to benefits hereunder. Except as otherwise provided in this Article 24.8, the duties, obligations and responsibilities of the Parties to the DB Documents with respect to third parties shall remain as imposed by Law. The DB Documents shall not be construed to create a contractual relationship of any kind between GDOT and a Contractor or any Person other than DB Team.

24.8.2 GDOT shall be a third-party beneficiary, and entitled to the benefits, with respect to the rights under the DB Documents related to the following:

24.8.2.1 Oversight, review, inspection, testing, monitoring, acceptance, and enforcement of DB Team's obligations to perform the design and construction of the Project in accordance with the DB Documents and applicable Law.

24.8.2.2 Review, audit, inspection and copying of data, information, documents, books and records of DB Team and any other DB Team-Related Entity.

24.8.2.3 Step in rights upon the occurrence of a DB Team Default.

24.9 No Personal Liability of GDOT Employees; No Tort Liability

24.9.1 GDOT's officers, employees, representatives are acting solely as agents and representatives of such respective entities, as applicable, when carrying out the provisions of or exercising the power or authority granted to them under this Agreement and the DB Documents. They shall not be liable either personally or as employees of GDOT for actions in their ordinary course of employment.

24.9.2 The Parties agree to provide to each other with written notice of any claim which such Party may receive from any third party relating in any way to the matters addressed in this Agreement, and shall otherwise provide notice in such form and within such period as is required by Law.

24.10 Governing Law

The DB Documents shall be governed by and construed in accordance with the laws of the State of Georgia.

24.11 Notices and Communications

24.11.1 Notices under the DB Documents shall be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by facsimile or e-mail communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

24.11.2 All notices, correspondence and other communications to DB Team shall be delivered to the following address or as otherwise directed by DB Team's Authorized Representative:

_____
_____
_____
Telephone: _____
Facsimile: _____
E-mail: _____

24.11.3 All notices, correspondence, submittals, transmittals and any other communications shall be directed to GDOT's Authorized Representative. All notices, correspondence, submittals, transmittals, and other communications to GDOT shall be marked as regarding the "Statewide ITS DMS Deployment Design-Build Project" and shall be delivered to the following addresses or as otherwise directed by GDOT's Authorized Representative:

Darryl D. VanMeter, P.E.
Georgia Department of Transportation
Office of Innovative Delivery
600 West Peachtree Street, Floor 19
Atlanta, Georgia 30308

E-mail: dvanmeter@dot.ga.gov

In addition, copies of all notices regarding Disputes, and termination and default notices shall be delivered to the following person:

Georgia Department of Transportation
Office of General Counsel
600 West Peachtree Street, Suite 2300
Atlanta, Georgia 30308
E-mail: mcline@dot.ga.gov

24.11.4 Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 12:00 p.m. Eastern Standard or Daylight Time (as applicable) and all other notices received after 12:00 p.m. shall be deemed received on the first Business Day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 12:00 p.m.). Any technical or other communications pertaining to the Work shall be conducted by DB Team's Authorized Representative and technical representatives designated by GDOT.

24.12 Integration of DB Documents

GDOT and DB Team agree and expressly intend that, subject to Article 24.13 (Severability) and other DB Documents constitute a single, non-severable, integrated agreement whose terms are interdependent and non-divisible.

24.13 Severability

24.13.1 If any clause, provision, section or part of this Agreement or the other DB Documents or any other Principal Project Document is ruled invalid (including invalid due to Change in Law) by a court having proper jurisdiction, then the Parties shall: (a) promptly meet and negotiate a substitute for such clause, provision, section, or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section, or part shall not affect the validity or enforceability of the balance of the DB Documents or such other Principal Project Documents, which shall be construed and enforced as if the DB Documents or such other Principal Project Documents did not contain such invalid or unenforceable clause, provision, section, or part.

24.13.2 If after the efforts required by Article 24.13.1, the Parties mutually agree that without the section or part of the DB Documents or such other Principal Project Documents that the court ruled to be invalid, there is no interpretation or reformation of the DB Documents or such other Principal Project Documents that can reasonably be adopted which will return the Parties to the benefits of their

original bargain, the Parties can mutually agree to treat the court order as a Termination by Court Ruling pursuant to Article 19.11 (Termination by Court Ruling).

24.14 Usury Savings

The DB Documents are subject to the express condition that at no time shall either Party be obligated or required to pay interest on any amount due the other Party at a rate which could subject the other Party to either civil or criminal liability as a result of being in excess of the maximum non-usurious interest rate permitted by Georgia Law (the "maximum legal rate"), if any. If, by the terms of the DB Documents either Party at any time is obligated to pay interest on any amount due in excess of the maximum legal rate, then such interest shall be deemed to be immediately reduced to the maximum legal rate and all previous payments in excess of the maximum legal rate shall be deemed to have been payments in reduction of the principal amount due and not on account of the interest due. All sums paid or agreed to be paid to a Party for the use, forbearance, or detention of the sums due that Party under the DB Documents shall, to the extent permitted by applicable Georgia Law, be amortized, prorated, allocated, and spread throughout the full period over which the interest accrues until payment in full so that the rate or amount of interest on account of the amount due does not exceed the maximum legal rate in effect from time to time during such period. If after the foregoing adjustments a Party still holds interest payments in excess of the maximum legal rate, it shall promptly refund the excess to the other Party.

24.15 Boycott of Israel

Pursuant to O.C.G.A. Sec. 50-5-85, DB Team certifies that it is not currently engaged in, and agrees that for the duration of the Project, it will not engage in a boycott of Israel.

24.16 Entire Agreement

This Agreement and the other DB Documents contain the entire understanding of the Parties with respect to the subject matter thereof and supersede all prior agreements, understandings, statements, representations and negotiations between the Parties with respect to their subject matter.

24.17 Counterparts

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

CONTRACT IDENTIFICATION NUMBER	DATE CONTRACT EXECUTED
[XXXX]	Date
PROJECT NUMBER(S)	COUNTY(IES)
P.I. 0017389	Cobb, Cherokee, Chatham Counties
CONTRACTOR	
[DB Team Name]	
DESCRIPTION OF IMPROVEMENTS AND FACILITY	
Statewide ITS DMS Deployment Design-Build Project	
CONTRACT SUM	
$	

[Signature Page Immediately Follows]

IN WITNESS WHEREOF, the Parties intending to be legally bound, have set their hands and affixed their seals, and have executed this Agreement, including the requirements of the DB Documents, as of the date first above written.

[DB TEAM]	GEORGIA DEPARTMENT OF TRANSPORTATION
By: _____	By: _____
Name: _____	Name: Russell R. McMurry, P.E.
Title: _____	Title: Commissioner
By: _____	Attested By: _____
Name: _____	Name: Angela O. Whitworth
Title: _____	Title: Treasurer

EXHIBIT 1

ACRONYMS AND DEFINITIONS

Unless otherwise specified, wherever the following abbreviations or terms are used in this Agreement and the Technical Provisions, they have the meanings set forth below:

AASHTO	American Association of State Highway and Transportation Officials
ADA	Americans with Disabilities Act
AGC	Associated General Contractors of America
AMRL	AASHTO Materials Reference Laboratory
ANSI	American National Standards Institute
APE	Area of Potential Effects
ARC	Atlanta Regional Commission
AREMA	American Railway Engineering and Maintenance of Way Association
ASTM	American Society of Testing and Materials
ATC	Alternative Technical Concept
BFI	Bridge Foundation Investigation
AWS	American Welders Society
BMP	Best Management Practice
CAD	Computer Aided Design
CAPWAP	Case Pile Wave Analysis program
CCTV	Closed Circuit Television
CE	Categorical Exclusion
CEI	Construction Engineering and Inspection
CEPP	Comprehensive Environmental Protection Plan
CFR	Code of Federal Regulations
CIA	Contract Item Agreement
CMS	Changeable Message Sign
CPI	Consumer Price Index
CQAM	Construction Quality Assurance Manager
CQMP	Construction Quality Management Plan
CSJ	Control Section Job
CWA	Clean Water Act
DB	Design-Build
DBA	Design-Build Agreement
DBE	Disadvantaged Business Enterprise, as set forth in 49 CFR Part 26
DEIS	Draft Environmental Impact Statement
DMS	Dynamic Message Signs
DNR	Georgia Department of Natural Resources
DQAM	Design Quality Assurance Manager
DQMP	Design Quality Management Plan

DSS	Decent, Safe and Sanitary
EA	Environmental Assessment
ECM	Environmental Compliance Manager
EDG	GDOT Electronic Data Guidelines
EP	Extraction Procedure (toxicity)
EPA	Environmental Protection Agency
EPD	Georgia Department of Natural Resources, Environmental Protection Division
EPIC	Environmental Permits Issues and Commitments
ESA	Endangered Species Act of 1973, 16 U.S.C. §§ 1531 *et seq.*, as amended from time to time
EUC	Emergency Utility Coordinator
FAA	Federal Aviation Administration
FAPG	Federal-Aid Policy Guide
FEMA	Federal Emergency Management Agency
FHWA	U.S. Federal Highway Administration
FEIS	Final Environmental Impact Statement
FONSI	Finding of No Significant Impact
FTP	File Transfer Protocol
FWCA	Fish and Wildlife Coordination Act, 16 U.S.C. §§661 *et seq*., as amended from time to time
GDOT	Georgia Department of Transportation
GEPA	Georgia Environmental Policy Act, Section 12-16-1, et seq. of the Official Code of Georgia Annotated
GIS	Geographical Information System
HEC-FFA	Hydraulic Engineering Circular – Flood Frequency Analysis
HCR	Highway Conditions Report
ICD	Interface Control Document
ID	Form of Identification
IH	Interstate Highway
IRI	International Roughness Index
ISO	International Organization for Standardization
ITS	Intelligent Transportation System
IVHS	Intelligent Vehicle Highway System
IWP	Investigative Work Plan
MDS	Microwave Detection System
MASH	Manual for Assessing Safety Hardware
MOA	Memorandum of Agreement
MOT	Maintenance of Traffic
MOU	Memorandum of Understanding
MPH	Miles Per Hour
MPO	Metropolitan Planning Organization

MS4	Municipal Separate Storm Sewer System
MSDS	Materials Safety Data Sheets
MSE	Mechanically Stabilized Earth
MUTCD	Manual of Traffic Control Devices
NAVD	North American Vertical Datum
NBIS	National Bridge Inspection Standards
NCHRP	National Cooperative Highway Research Program
NCR	Nonconformance Report
NEPA	National Environmental Policy Act, 42 U.S.C. § 4321 *et seq*., as amended from time to time
NFIP	National Flood Insurance Program
NMFS	National Marine Fisheries Service
NOI	Notice of Intent
NOAA	National Oceanic and Atmospheric Administration
NOT	Notice of Termination
NPDES	National Pollutant Discharge Elimination System
NRCS	Natural Resource Conservation Service
NRHP	National Register of Historic Places
NTP	Notice to Proceed
NTAS	National Terrorism Advisory System
OCGA	Official Code of Georgia Annotated
OCR	Optical Character Recognition
OSAH	Georgia Office of State Administrative Hearings
OSHA	Occupational Safety and Health Administration
OVF	Owner Verification Firm
PA	Programmatic Agreement
PACES	Pavement Condition Evaluation System
PDP	GDOT Plan Development Process
PLS (or RPLS)	Professional Land Surveyor
PMC	Program Management Consultant
PMCS	Project Management Controls System
PMP	Project Management Plan
PPE	Personal Protection Equipment
PQMP	Project Quality Management Plan
PUA	Possession and Use Agreement
QA	Quality Assurance
QC	Quality Control
QMP	Quality Management Plan
RCP	Reinforced Concrete Pipe
RFC	Release for Construction
RFI	Request for Information

RFQ	Request for Qualifications
RFP	Request for Proposals
RLM	Residual Life Methodology
ROD	Record of Decision
ROW	Right of Way
ROW AM	Right of Way Acquisition Manager
ROWIS	Right of Way Information System
RTF	Related Transportation Facilities
SDPP	Special Deposit and Possession Procedure
SDEIS	Supplemental Draft Environmental Impact Statement
SH	State Highway
SHPO	State Historic Preservation Officer
SME	Subject Matter Expert
SOQ	Statement of Qualifications
SOV	Schedule of Values
SSTR	Single Slope Traffic Railing
STA	State Transportation Agency
SUA	Standard Utility Agreement
SUE	Subsurface Utility Engineering
SVDBE	Small, Veteran, and Disadvantaged Business Enterprise
TCLP	Toxicity Characteristic Leaching Procedure
TIR	Traffic Interruption Request
TMC	Traffic Management Center
TMP	Transportation Management Plan
UAM	Utility Accommodation Manual
UAT	Utility Adjustment Team
UCS	User Classification Subsystem
UDC	Utility Design Coordinator
UJUA	Utility Joint Use Acknowledgment or Utility Joint Use Agreement
UM	Utility Manager
US	United States
USACE	United States Army Corps of Engineers
U.S. DOT	United States Department of Transportation
USFWS	United States Fish and Wildlife Service
U.S. GAAP	U.S. Generally Accepted Accounting Principles
USPAP	Uniform Standard of Professional Appraisal Practices
UST	Underground Storage Tank
UTM	Universal Transverse Mercator
VDS	Video Detection System
VES	Video Exception Sub-system
WBS	Work Breakdown Structure

WFI	Wall Foundation Investigation
WECS	Worksite Erosion Control Supervisor
WTCS	Worksite Traffic Control Supervisor
WUCS	Worksite Utility Coordination Supervisor

Abandonment means that Design-Build Team abandons all or a material part of the Project, which abandonment shall have occurred if (a) Design-Build Team demonstrates through acts or omissions an intent not to continue, for any reason other than a Relief Event that materially interferes with ability to continue, to construct or operate all or a material part of the Project and (b) no significant Work (taking into account the Project Schedule, if applicable, and any Relief Event) on the Project or a material part thereof is performed for a continuous period of more than 45 days.

Addenda/Addendum/Amendment means supplemental additions, deletions, and modifications to the provisions of the RFP after the release of the draft RFP.

Adjust means to perform a Utility Adjustment.

Adjustment means a Utility Adjustment.

Adjustment Standards means the standard specifications, standards of practice, and construction methods that a Utility Owner customarily applies to facilities (comparable to those being Adjusted on account of the Project) constructed by the Utility Owner (or for the Utility Owner by its contractors), at its own expense. Unless the context requires otherwise, references in the DB Documents to a Utility Owner's "applicable Adjustment Standards" refer to those that are applicable pursuant to Article 7.5.3 (Requirements).

Administrative Information Submittals means those submittals Proposers are required to submit with their respective Proposal.

Affiliate means:

(a) any shareholder, member, partner or joint venture member of Design-Build Team,

(b) any Person which directly or indirectly through one or more intermediaries' controls, or is controlled by, or is under common control with, Design-Build Team or any of its shareholders, members, partners or joint venture members; and

(c) any Person for which ten percent (10%) or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by (i) Design-Build Team, (ii) any of Design-Build Team's shareholders, members, partners or joint venture members or (iii) any Affiliate of Design-Build Team under clause (b) of this definition.

For purposes of this definition the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise.

Age means the elapsed time since an Element was first constructed or installed or, if applicable, last reconstructed, rehabilitated, restored, renewed or replaced.

Agreement, **DBA**, **Design-Build Agreement**, or **DB Agreement** means this certain Design-Build Agreement executed by GDOT and Design-Build Team, including any and all exhibits, attachments, riders, and amendments thereto.

Allowable Design Exceptions means design exceptions identified in Volume 2, Section 11.3.2 (Design Criteria Order of Precedence) that are allowed to be implemented on the Project.

Alternative Technical Concept (ATC) means a Proposer's suggested change or variance to the requirements of the RFP that results in performance and quality of the end product that is equal to or better than the performance and quality of the Project on an overall basis with the proposed change or variance. GDOT's determination of any Proposer's ATC is conclusive as to the acceptability of an ATC for inclusion in the Proposal.

Apparent Successful Proposer means the Proposer with the apparent Successful Proposal, taking into consideration the evaluation criteria and procedures.

Area of Potential Effects (APE) means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of Historic Properties, if such properties exist.

Attorney General means the Attorney General of the State of Georgia.

Authorized Representative has the meaning set forth in Article 24.6.1 and shall be applicable person(s) and/or party(ies) authorized to act on behalf of GDOT and the Design-Build Team respectively, as initially set forth pursuant to Exhibit 22 (Initial Designation of Authorized Representative). All notices, deliveries, responses, approvals, and other communications among GDOT and/or the Design-Build Team shall be directed to the respective Authorized Representative for each of the aforementioned, unless expressly provided to the contrary in this Agreement.

Baseline Project Schedule shall have the meaning set forth in Volume 2, Section 2.5 (Project Schedule Requirements).

Best Management Practices (BMP) has the meaning set forth in *Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices* (EPA Document 832 R 92-005).

Best Value Proposal means the Proposal meeting the standards set by the RFP that GDOT determines, through the evaluation process and evaluation criteria described in this ITP, to present the best value and to be in the best interest of GDOT and the State.

Betterment has, with respect to a given Utility being Adjusted, the meaning (if any) set forth in the Utility Agreement(s) applicable to the Utility; in all other cases, "Betterment" means any upgrading of the Utility in the course of such Utility Adjustment that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Utility Owner, including an increase in the capacity, capability, efficiency or function of an Adjusted Utility over that which was provided by the existing Utility. Notwithstanding the foregoing, the following are not considered Betterments unless otherwise provided in the applicable Utility Agreement(s):

(a) any upgrading which is required for accommodation of the Project;

(b) replacement devices or materials that are of equivalent standards although not identical;

(c) replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size;

(d) any upgrading required by applicable Law;

(e) replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase); and

(f) any upgrading required by the Utility Owner's applicable Adjustment Standards.

With respect to any Replacement Utility Property Interest, "**Betterment**" has the meaning (if any) set forth in the applicable Utility Agreement(s). In all other cases, a Replacement Utility Property Interest shall be considered a Betterment, except to the extent that reinstallation of a Utility in the Replacement Utility Property Interest (i) is necessary in order to meet the requirements of the DB Documents, or (ii) is called for by Design-Build Team in the interest of overall economy for the Project.

Business Day, work day, or working day means any Calendar Day less Saturday, Sunday and State of Georgia holidays.

Calendar Day means any day shown on the calendar, beginning and ending at midnight.

Change in Law means (a) the adoption of any Law after the date that is 90 days prior to the Proposal Due Date, or (b) any change, amendment to, repeal or revocation of any Law or in the interpretation or application thereof by any Governmental Entity after the date that is 90 days prior to the Proposal Due Date, in each case that is materially inconsistent with Laws in effect 90 days prior to the Proposal Due Date; excluding, however, any such Change in or new Law that also constitutes or causes a change in or new Adjustment Standards, as well as any change in or new Law passed or adopted but not yet effective as of the date that is 90 days prior to the Proposal Due Date.

Change of Control means any assignment, sale, financing, grant of security interest, transfer of interest or other transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of Design-Build Team or a material aspect of its business. A change in the power to direct or control or cause the direction or control of the management of a shareholder, member, partner or joint venture member of Design-Build Team may constitute a Change of Control of Design-Build Team if such shareholder, member, partner or joint venture member possesses the power to direct or control or cause the direction or control of the management of Design-Build Team. Notwithstanding the foregoing, the following shall not constitute a Change of Control:

(a) A change in possession of the power to direct or control the management of Design-Build Team or a material aspect of its business due solely to a bona fide open market transaction(s) in securities effected on a recognized public stock exchange, including such transactions involving an initial public offering;

(b) A change in possession of the power to direct or control the management of Design-Build Team or a material aspect of its business due solely to a bona fide transaction

involving beneficial interests in the ultimate parent organization of a shareholder, member, partner or joint venture member of Design-Build Team, (but not if the shareholder, member, partner or joint venture member is the ultimate parent organization), unless the transferee in such transaction is at the time of the transaction suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or State department or agency;

(c) An upstream reorganization or transfer of direct or indirect interests in Design-Build Team so long as there occurs no change in the entity with ultimate power to direct or control or cause the direction or control of the management of Design-Build Team;

(d) A transfer of interests between managed funds that are under common ownership or control other than a change in the management or control of a fund that manages or controls Design-Build Team;

(e) The exercise of minority veto or voting rights (whether provided by applicable Law, by Design-Build Team's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of Design-Build Team, provided that if such minority veto or voting rights are provided by shareholder or similar agreements, GDOT has received copies of such agreements; or

Change Order means a written approval by GDOT, counter-signed by Design-Build Team, with respect to a GDOT Change or Change Request, which shall set forth any adjustments to the Contract Sum and/or the Contract Time, including on account of a Relief Event or Compensation Event, as provided in the Agreement.

Change Request means a written request from Design-Build Team seeking to change the character, quantity, quality, description, scope or location of any part of the Work, to modify the DB Documents.

Claimant means any Person that would be entitled to protection of payment bond under Code Section 13-10-63, including any P&P Bonds.

Code means the Official Code of Georgia Annotated.

Commissioner means the Commissioner of GDOT appointed by the State Transportation Board and any successor thereto having substantially similar powers and authority.

Communications Support Plan has the meaning set forth in Volume 2, Section 2.2.3 (Communications Support).

Compensation Amount means the amount of compensation to be paid to Design-Build Team for a Compensation Event as set forth and subject to the limitations of the Agreement, including Article 14.2 (Compensation Events) therein.

Compensation Event means the written notice submitted by Design-Build Team in accordance with Article 14.2.

Compensation Event Notice means the written notice submitted by Design-Build Team in accordance with Article 13.3.2 (DB Team's Notice of Compensation Event and/or Relief Event).

Completion Date means the date the Design-Build Team has satisfied all conditions and requirements of and for a Completion Deadline the Substantial Completion Deadline, and Final Acceptance, as may be adjusted pursuant to any Supplemental Agreement, including on account of any Relief Events.

Completion Deadline means the critical milestones for commencement or completion of the Work as set forth in Exhibit 9 (Milestone Deadlines), including without limitation Interim Completion Deadlines, the Substantial Completion Deadline, and Final Acceptance Deadline, as may be adjusted upon approval of the Baseline Project Schedule as set forth in Article 3.2 (Project Schedule), and as further adjusted pursuant to any Supplemental Agreement, including on account of any Relief Events.

Conceptual Layout Plan means the schematic layout which provides alignment and lane configuration information necessary to verify lane continuity and general scope compliance for the entire Project.

Construction Commencement Date means for the date on which Design-Build Team first commences construction of the Project or such relative phase thereof.

Construction Documents means all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary or desirable for construction of the Project and/or the Utility Adjustments included in the Construction Work, in accordance with the DB Documents.

Construction Maintenance Limits means the physical boundaries of Design-Build Team's maintenance responsibilities for the Construction Work.

Construction Phase has the meaning set forth in Volume 2, Section 2.2.4 (Construction Phasing and Staging Plan).

Construction Phasing and Staging Plan has the meaning set forth in Section 2.2.4 of the Technical Provisions.

Construction Work means all portions of the Work necessary to build or construct, make, form, manufacture, furnish, install, supply, deliver or equip the Project and/or the Utility Adjustments. Construction Work includes landscaping.

Contract means any agreement, and any supplement or amendment thereto, by either (a) Design-Build Team with any other Person or Contractor, or (b) any Contractor with any Person or Subcontractor, to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement, supplement or amendment at a lower tier, between a Subcontractor and its lower tier sub-subcontractor or supplier. The term "Contract" excludes Utility Agreements and any agreement with GDOT.

Contract Item Agreement (CIA) means an Agreement used for including Utility work in the Department's project and performed by the Department's Contractor awarded by competitive bid.

Contract Sum means the total contract sum to be paid to Design-Build Team on account of the fully and properly performed Work as set forth in the Agreement (preceding signatures under Article 24 (Miscellaneous)), as adjusted pursuant to Supplemental Agreements (including to reflect adjustments for Compensation Events or Change Orders as provided in the Agreement), including without limitation all of Design-Build Team's profit, fees, financing costs and interest expense for Design-Build Team Debt, all costs of work and services, materials, equipment, supplies, general conditions costs, overhead and administrative expenses, professional fees and subconsultant costs, acquisition and other costs associated with acquisition of any Approved Properties, insurance and bond premiums, sales taxes, assessments, tariffs, permit, license and registration fees, and all other related costs and expenses.

Contract Time means the time period provided for Design-Build Team's completion of the Work as provided in Article 3.3.1.

Contractor means any Person, including any Subcontractor with whom Design-Build Team has entered into any Contract to perform any part of the Work or provide any materials, equipment or supplies for the Project and/or the Utility Adjustments included in the Construction Work, on behalf of Design-Build Team. The term "Contractor" excludes GDOT.

Cost to Cure means an appraisal method applied to estimate a proper adjustment for damages to a property that can be physically and economically corrected, as described in further detail in the GDOT ROW Manual.

Critical Path means the sequence of activities that must be completed on schedule for the entire Project to be completed in accordance with the Milestone Deadlines. This is the longest duration path through the work plan, in terms of time, of logically connected activities on the Baseline Project Schedule ending with the relative Milestone Deadline in respect thereof.

Customer Groups means groups, Persons and entities having a perceived stake or interest in the Project, including: the media, elected officials, Governmental Entities, general public residing or working within the general vicinity of the Project or traveling within or across the limits of the Project, business owners within or adjacent to the Project corridor, Utility Owners, railroads, transportation authorities and providers, community groups, local groups (neighborhood associations, business groups, chambers of commerce, convention and visitors bureaus, contractors, etc.) and other Persons or entities affected by the Project.

Day or **day** means calendar day unless otherwise expressly specified.

Decent, Safe and Sanitary (DSS) means the condition of a dwelling such that it meets applicable housing and occupancy codes.

Default Interest Rate means the statutory interest rate applicable to GDOT for contract payment defaults.

Default Termination Event means each of the Design-Build Team Defaults listed in Article 19.3.1 (DB Team Defaults Triggering GDOT Termination Rights).

Defect means any Work that does not otherwise conform with the DB Documents, or otherwise is a defect, whether by design, construction, installation, affecting the condition, use, functionality or operation of any portion of the Work which, ordinary wear and tear excepted, would cause or have the potential to cause one or more of the following:

(a) a hazard, nuisance or other risk to public or worker health or safety, including the health and safety of Users;

(b) a structural deterioration of the affected Element or any other part of the Project;

(c) damage to a third party's property or equipment;

(d) damage to the Environment;

(e) failure of the affected Element or any other part of the Project to meet a Performance Requirement; or

(f) failure of an Element to meet the Target for a measurement record as set forth in the columns headed "Target" and "Measurement Record" in the Performance and Measurement Table Baseline.

Demobilization means Work performed to remove offices, plants, and facilities; and to move personnel, equipment, and supplies from the Project site to complete Construction Work.

Design-Build Agreement, DB Agreement, DBA - see definition for Agreement.

Design-Build Documents or **DB Documents** means those documents as set forth in Article 1.2 (DB Documents; Order of Precedence)and all such other agreements entered into by GDOT and Design-Build Team or any Design-Build Team-Related Entity, or otherwise executed by Design-Build Team or a Design-Build Team-Related Entity and delivered to GDOT, with respect to or in connection with this Agreement, including without limitation Supplemental Agreements.

Design-Build Period means the period commencing with NTP 1 and ending when Design-Build Team achieves Final Acceptance.

Design-Build Team or **DB Team** means the party identified as such in the opening paragraph of this Agreement, together with its permitted successors and assigns.

Design-Build Team Default or **DB Team Default** has the meaning set forth in Article 17.1.1 (DB Team Default).

Design-Build Team's Interest or **DB Team's Interest** means all right, title, and interest of Design-Build Team in, to, under or derived from the Agreement and the other DB Documents.

Design-Build Team-Related Entities or **DB Team Team-Related Entities** means (a) Design-Build Team, (b) Design-Build Team's shareholders, partners, joint venture members and/or members, (c) the Contractor and all other Subcontractors (including Suppliers), (d) any other Persons performing any of the Work, (e) any other Persons for whom Design-Build Team may be legally or contractually responsible, and (f) the employees, agents, officers, directors,

shareholders, representatives, consultants, successors and assign of any of the foregoing; provided, however, that GDOT shall not be considered Design-Build Team-Related Entities.

Design-Build Team Release(s) of Hazardous Material or **DB Team Release(s) of Hazardous Material** means (a) Release(s) of Hazardous Material, or the exacerbation of any such release(s), attributable to the culpable actions, culpable omissions, negligence, willful misconduct, or breach of applicable Law or contract by any Design-Build Team-Related Entity; (b) Release(s) of Hazardous Materials arranged to be brought onto the Site or elsewhere by any Design-Build Team-Related Entity; regardless of cause, or (c) use, containment, storage, management, handling, transport and disposal of any Hazardous Materials by any Design-Build Team-Related Entity in violation of the requirements of the DB Documents or any applicable Law or Governmental Approval.

Design-Build Team Vehicle or **DB Team Vehicle** means any vehicle authorized by Design-Build Team performing construction, maintenance or operation of the Project, or other related activity.

Design Deviation means any deviation from criteria defined in the GDOT Design Policy Manual as a "guideline". Failure to adhere to the "10 Controlling Criteria" mandated by FHWA and/or the GDOT Standard Design Criteria mandated by GDOT does not qualify as a Design Deviation.

Design Documents means all drawings (including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records and submittals necessary for, or related to, the design of the Project and/or the Utility Adjustments included in the Design Work and/or the Construction Work.

Design Speed means the speed used to determine the various geometric design features of the roadway.

Design Work means all Work of design, engineering or architecture for the Project or Utility Adjustments.

Deviation means any proposed or actual change, deviation, modification, alteration or exception from this Agreement, the Technical Provisions, Technical Documents or Governmental Approvals.

Directive Letter means the letter described in Article 13.1.

Disadvantaged Business Enterprise or **DBE** has the meaning set forth 49 CFR 23.

Discipline Groups has the meaning set forth in Volume 2, Section 3.3.7.10 (GDOT Design Review Process).

Discriminatory or **Discriminatory Action** means (a) materially more onerous application to Design-Build Team or the Project of changes or additions to Technical Provisions or Technical Documents than the application thereof to other Comparable Limited Access Highways, or (b) selective application of changes or additions to Technical Provisions or Technical Documents to Design-Build Team or the Project and not to other Comparable Limited Access Highways. Notwithstanding the foregoing, the following actions are not Discriminatory or Discriminatory Actions: (i) any such application in response to any act or omission by or on

behalf of Design-Build Team in violation of Law or the DB Documents; (ii) Safety Compliance; (iii) any such application in response to a directive by the U.S. Department of Homeland Security or comparable State agency, unless such directive is directed solely at or solely affects the Project and such application requires specific changes in Design-Build Team's normal design, construction, operation or maintenance procedures in order to comply; and (iv) any other actions necessary to address potential safety concerns arising from a specific condition or feature peculiar to the Project.

Dispute means any claim, dispute, disagreement or controversy between GDOT and Design-Build Team concerning their respective rights and obligations under the DB Documents, including concerning any alleged breach or failure to perform and remedies.

Dispute Resolution Procedures means the procedures for resolving Disputes set forth in Article 17.7 (Dispute Resolution Procedures).

Early Termination Date means the effective date of termination of the Agreement for any reason prior to the stated expiration Final Acceptance Deadline, as specified in the relevant provisions of Article 19 (Termination).

Effective Date means the date of the Agreement or such other date as shall be mutually agreed upon in writing by GDOT and Design-Build Team.

Element means an individual component, system or subsystem of the Work.

Emergency means an unforeseen event affecting the Project whether directly or indirectly which (a) causes or has the potential to cause disruption to the free flow of traffic on the Project or a threat to the safety of the public; (b) is an immediate or imminent threat to the long term integrity of any part of the infrastructure of the Project, to the Environment, to property adjacent to the Project or to the safety of Users or the traveling public; or (c) is recognized by the Georgia Department of Public Safety as an emergency.

Engineer of Record means a Professional Engineer as defined in this Exhibit 1 (Acronyms and Definitions) on the Design-Build Team who is responsible and liable for the adequacy and safety of the design. This individual will sign and seal the Released for Construction plans, as well as revisions on construction and shop drawings.

Environment means air, soils, surface waters, groundwater, land, stream sediments, surface or subsurface strata, biological resources, including endangered, threatened and sensitive species, natural systems, including ecosystems, and historic, archeological and paleontological resources.

Environmental Approvals (also Environmental Document Approvals) means all Governmental Approvals arising from or required by any Environmental Law in connection with development of the Project, including approvals and permits required under NEPA/GEPA.

Environmental Commitment (also Environmental Permits, Issues and Commitments) means an environmental requirement that must be fulfilled before, during or after construction. Environmental Commitments include commitments to avoid impacts in specified areas, complete environmental investigations before construction impacts, or to perform specified actions after completion of construction.

Environmental Documents means all required documents and submittals pertaining to either federal or state laws and permits which are necessary to complete the Project. This may include but not be limited to NEPA, GEPA, and/or other state and federal environmental laws.

Environmental Law means any Law applicable to the Project or the Work regulating or imposing liability or standards of conduct that pertains to the Environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, and any lawful requirements and standards that pertain to the Environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, set forth in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated, pursuant to Laws applicable to the Project or the Work, as such have been or are amended, modified, or supplemented from time to time (including any present and future amendments thereto and reauthorizations thereof) including those relating to:

(a) The manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation, and transportation of Hazardous Materials;

(b) Air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;

(c) Releases of Hazardous Materials;

(d) Protection of wildlife, Threatened or Endangered Species, sensitive species, wetlands, water courses and water bodies, historical, archeological, and paleontological resources, vegetative buffers, and natural resources;

(e) The operation and closure of underground storage tanks;

(f) and safety of employees and other persons; and

(g) Notification, documentation, and record keeping requirements relating to the foregoing.

Without limiting the above, the term “Environmental Laws” shall also include the following:

(i) The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*), as amended;

(ii) The Georgia Environmental Policy Act (Section 12-16-1, et seq. of the Official Code of Georgia Annotated), as amended;

(iii) State species laws, including Georgia Endangered Wildlife Act and/or, Georgia Wildflower Preservation Act;

(iv) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 *et seq.*), as amended;

(v) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*);

(vi) The Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§ 11001 *et seq.*), as amended;

(vii) The Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), as amended;

(viii) The Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*);

(ix) The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, *et seq.*), as amended;

(x) The Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), as amended;

(xi) The Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*), as amended;

(xii) The Oil Pollution Act (33 U.S.C. §§ 2701, *et. seq.*), as amended;

(xiii) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 *et seq.*), as amended;

(xiv) The Federal Safe Drinking Water Act (42 U.S.C. §§ 300 *et seq.*), as amended;

(xv) The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§ 7401 *et seq.*), as amended;

(xvi) The Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*);

(xvii) The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*), as amended;

(xviii) The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 *et seq.*), as amended;

(xix) The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*), as amended;

(xx) The Coastal Zone Management Act (33 U.S.C. §§ 1451 *et seq.*), as amended;

(xxi) Georgia Water Quality Act (O.C.G.A. § 12-5-20);

(xxii) Georgia Erosion and Sedimentation Act (O.C.G.A. § 12-7-1), as amended;

(xxiii) Best Management Practices (O.C.G.A. § 12-7-6(b)(15)); and

(xxiv) Georgia Underground Storage Act (O.C.G.A. § 12-13-1)).

Evaluation Score means the numerical score resulting from the adjectival evaluation and numerical conversion of a particular portion of the Proposals.

Exhibits means all exhibits, riders, and other attachments to the DB Documents, including without limitation Volume 1 and Volume 2, as well as, any of the aforementioned, which are incorporated into any DB Documents by reference, and all amendments, modifications, and supplements thereto.

Existing Improvements means the existing highway, bridge, and related improvements as of the date that are in effect at the date of the RFP advertisement within the Construction Maintenance Limits.

Existing Right of Way or **Existing ROW** means any real property (which term is inclusive of all estates and interests in real property), improvements and fixtures (i) as provided in Article 2.2 (Right of Way; Construction Easement; Ownership) and more specifically described and identified as "Existing ROW" in which GDOT has a leasehold estate and interest pursuant to the Estate for Years or other property right or interest. The term specifically includes all air space, surface rights and subsurface rights within the limits of the Existing Right of Way.

Existing Utility Property Interest means any right, title or interest in real property (e.g., a fee or an easement) claimed by a Utility Owner as the source of its right to maintain an existing Utility in such real property, which is compensable in eminent domain.

Federal Requirements means the provisions required to be part of federal-aid construction contracts, including the provisions set forth in Exhibit 8 (Federal Requirements).

Final Acceptance means the occurrence of all the events and satisfaction of all the conditions set forth in Article 7.7.2 (Punch List), as and when confirmed by GDOT's issuance of a certificate in accordance with the procedures and within the timeframe established in Article 7.7.2.

Final Acceptance Date means the date upon which Design-Build Team has satisfied all conditions of and for Final Acceptance and GDOT has certified same.

Final Acceptance Deadline means the deadline for achieving Final Acceptance, as set forth in Exhibit 9 (Milestone Deadlines) as such deadline may be extended for any Relief Event or Change Order as and to extend provided in the Agreement.

Final Design shall have the meaning set forth in Article 3.3.1.2.

Final Plans means the Design Documents which provide the complete and final documents necessary for the construction, operations, and maintenance of the Project or any portion thereof including any Utility Adjustments required by the Project.

Final ROW Lines means the final location of all Right of Way within the project limits.

Fiscal Year means the 12 month fiscal year used by GDOT for budgeting purposes.

Float means the amount of time that any given activity or logically connected sequence of activities shown on the Project Schedule, as the case may be, may be delayed before it will affect completion of any Work as required to achieve any Milestone Deadlines, including the Substantial Completion Deadline and Final Acceptance Deadline.

Force Majeure Event means the occurrence of any of the following events that materially and adversely affects performance of Design-Build Team's obligations, provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Design-Build Team: (a) war (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of the Project, in each case occurring within the State; (b) any act of terrorism or sabotage that causes direct physical damage to the Project; (c) nuclear explosion or contamination, in each case occurring within the State; (d) riot and civil commotion on or in the immediate vicinity of the Project; (e) fire, explosion, flood, earthquake,

hurricane, or tornado, in each case that causes direct physical damage to the Project; or (f) national or statewide (i.e., State of Georgia) strike that has a direct adverse impact on Design-Build Team's ability to obtain materials, equipment or labor for the Project.

Formal Consultation means during Section 7 Consultation (Endangered Species Act) that a Federal agency determines, through a biological assessment or other review, that its action is likely to adversely affect a listed species.

GDOT means the Georgia Department of Transportation, as set forth in the recitals of the Agreement, and any entity succeeding to the powers, authorities and responsibilities of GDOT invoked by or under the DB Documents.

GDOT-Caused Delay means any of the following events, to the extent they result in a material delay or interruption in performance of any material obligation under the Agreement, and provided such events are beyond Design-Build Team's control and are not due to any act, omission, negligence, recklessness, willful misconduct, breach of contract or Law of any of the Design-Build Team-Related Entities, solely to the extent not concurrent or overlapping with any delay attributable to Design-Build Team, and further provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Design-Build Team, and with respect to any Compensation Event, solely to the extent that the cumulative effect of any such delays as set forth below have or shall result in delays, after taking into account any available Float, in excess of 90 days:

(a) Failure of GDOT to issue NTP 1 as provided pursuant to Article 3.3.1.1 and/or failure to issue NTP 2 or NTP 3 as provided pursuant to Article 3.3.1.2 and Article 3.3.1.3;

(b) GDOT Changes;

(c) Failure of GDOT to provide the GDOT-Provided Approvals within the time periods set forth in Volume 2, Section 4.3.2 (GDOT Review and Approval of Environmental Documents and Permits), subject to Article 6.2.1; or

(d) Failure of GDOT to provide responses to proposed schedules, plans, Design Documents, condemnation and acquisition packages, and other Submittals and matters submitted to GDOT after the Effective Date for which response is required under the DB Documents as an express prerequisite to Design-Build Team's right to proceed or act, within the time periods (if any) indicated in the DB Documents, or if no time period is indicated, within a reasonable time, taking into consideration the nature, importance and complexity of the submittal or matter, following delivery of written notice from Design-Build Team requesting such action in accordance with the terms and requirements of the DB Documents;

(e) Failure of GDOT to provide Design-Build Team with access to the Right of Way as required; or

(f) The occurrence of a GDOT Release of Hazardous Materials.

Any proper suspension of Work pursuant to Article 17.3.7 (Suspension of Work) shall not be considered a GDOT-Caused Delay.

GDOT Change means:

(a) Any change in the scope of the Work or terms and conditions of the Technical Provisions or Technical Documents (including changes in the standards applicable to the Work) that GDOT has directed Design-Build Team to perform through a Supplemental Agreement as described in Article 13 (GDOT Changes; DB Team Changes; Directive Letters) or a Directive Letter pursuant to Article 13.1; and

(b) Any other event that the DB Documents expressly state shall be treated as a GDOT Change.

GDOT Claims Account means the designated account for the benefit of GDOT and Design-Build Team to be administered and maintained by GDOT for payments on account of claims as required by GDOT pursuant to Article 17.3.4 (Damages; Offset).

GDOT Default has the meaning set forth in Article 17.5.1 (GDOT Default).

GDOT Recoverable Costs means:

(a) The costs of any assistance, action, activity or Work undertaken by GDOT which Design-Build Team is liable for or is to reimburse under the terms of the DB Documents, including the charges of third-party contractors, and reasonably allocated wages, salaries, compensation and overhead of GDOT staff and employees, performing such action, activity or Work (exclusive of ordinary and customary administration and review activities by GDOT employees or consultants, except for such consultant fees and expenses as expressly reserved in the Agreement); plus

(b) Third-party costs GDOT incurs to publicly procure any such third-party contractors; plus

(c) Reasonable fees and costs of attorneys (including the reasonably allocable fees and costs of the Georgia Attorney General's Office), financial advisors, engineers, architects, insurance brokers and advisors, investigators, traffic and revenue consultants, risk management consultants, other consultants, and expert witnesses, as well as court costs and other litigation costs, in connection with any such assistance, action, activity or Work, including in connection with defending claims by and resolving disputes with third-party contractors; plus

(d) Any expense or cost for which GDOT is to be reimbursed by Design-Build Team pursuant to the express terms of the Agreement; plus

(e) Interest on all the foregoing sums at the Default Interest Rate from the date due under the applicable terms of the DB Documents and continuing until paid.

GDOT Re-evaluation Period (Re-evaluation Period) means the specified amount of time set forth as a condition in an approved ATC for GDOT to obtain the applicable Governmental Approval required for a re-evaluation of the NEPA/GEPA Approval, prior to Design-Build Team being entitled to a Relief Event or Compensation Event; provided, however, that such time shall commence upon the date that GDOT has received a full and complete document package from Design-Build Team required for GDOT to process such re-evaluation.

GDOT Release(s) of Hazardous Materials means, except as provided below, the introduction in, on or under the Construction Maintenance Limits or Operation and Maintenance Limits of Hazardous Material directly by GDOT, and their respective agents and contractors

(excluding Design-Build Team). GDOT Release(s) of Hazardous Material excludes, however, (i) any Hazardous Materials so introduced that are in or part of construction materials and equipment incorporated into the Project and (ii) any Hazardous Materials identified in the phase 1 investigation and report described in clause (i) of the definition of Pre-Existing Hazardous Materials.

GDOT Standard Specifications means the Georgia Department of Transportation Standard Specifications, Construction of Transportation Systems.

General Purpose Lanes means Limited Access Highway lanes within the Existing Right of Way other than the Managed Lanes.

Geotechnical Engineering Reports means the reports which meet the requirements described in Volume 2, Section 8.3 (Design Requirements).

GEPA means the Georgia Environmental Policy Act, as amended and as it may be amended from time to time.

GEPA Approval means the (a) GEPA document as approved by GDOT including any studies, reports, Environmental Commitments, and all other procedural requirements and documents required for the Project or a portion of the Project, as (b) may be modified pursuant to all Georgia EPD, USACE, USFWS approvals, and approved supplements and re-evaluations pertaining to the Project.

Good Faith Effort has the meaning set forth in Volume 2, Section 2.6.10.1 (SVDBE Measurement and Payment).

Good Industry Practice means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced designer, engineer, or constructor, seeking in good faith to comply with its contractual obligations, complying with the DB Documents, all applicable Laws and Governmental Approvals, and engaged in the same type of undertaking in the United States under similar circumstances and conditions.

Governmental Approval means any permit, license, consent, concession, grant, franchise, authorization, waiver, variance or other approval, guidance, protocol, mitigation agreement, special provision, or memoranda of agreement/understanding, and any amendment or modification of any of them provided by Governmental Entities including State, local, or federal regulatory agencies, agents, or employees, which authorize or pertain to the Project or the Work.

Governmental Entity means any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than GDOT.

Guarantor means any Person that is the obligor under any guaranty in favor of GDOT required under the Agreement, including any Design-Build Guaranty.

Hazardous Materials means any element, chemical, compound, material or substance, whether solid, liquid or gaseous, which at any time is defined, listed, classified or otherwise regulated in any way under any Environmental Laws, or any other such substances or

conditions (including mold and other mycotoxins or fungi) which may create any unsafe or hazardous condition or pose any threat to human health and safety. "Hazardous Materials" includes the following:

(a) Hazardous wastes, hazardous material, hazardous substances, hazardous constituents, and toxic substances or related materials, whether solid, liquid, or gas, including substances defined as or included in the definition of "hazardous substance", "hazardous waste", "hazardous material", "extremely hazardous waste", "acutely hazardous waste", "radioactive waste", "radioactive materials", "bio-hazardous waste", "pollutant", "toxic pollutant", "contaminant", "restricted hazardous waste", "infectious waste", "toxic substance", "toxic waste", "toxic material", or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "TCLP" toxicity" or "EP toxicity" or words of similar import under any applicable Environmental Laws);

(b) Any petroleum, including crude oil and any fraction thereof, and including any refined petroleum product or any additive thereto or fraction thereof or other petroleum derived substance; and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto;

(c) Any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;

(d) Any flammable substances or explosives;

(e) Any radioactive materials;

(f) Any asbestos or asbestos-containing materials;

(g) Any lead and lead-based paint;

(h) Any radon or radon gas;

(i) Any methane gas or similar gaseous materials;

(j) Any urea formaldehyde foam insulation;

(k) Electrical equipment which contains any oil or dielectric fluid containing regulated levels of polychlorinated biphenyls;

(l) Pesticides;

(m) Any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Entity or which may or could pose a hazard to the health and safety of the owners, operators, Users or any Persons in the vicinity of the Project or to the indoor or outdoor Environment; and

(n) Soil, or surface water or ground water, contaminated with Hazardous Materials as defined above.

Hazardous Materials Management means procedures, practices and activities to address and comply with Environmental Laws and Environmental Approvals with respect to Hazardous Materials encountered, impacted, caused by or occurring in connection with the Project or the Work, as well as investigation and remediation of such Hazardous Materials. Hazardous Materials Management may include sampling, stock-piling, storage, backfilling in place, asphalt batching, recycling, treatment, clean-up, remediation, transportation and/or off-site disposal of Hazardous Materials, whichever approach is effective, most cost-efficient and authorized under applicable Law.

Hazardous Materials Management Plan has the meaning set forth in Volume 2, Section 4.3.4 (Hazardous Materials Management Plan).

Highway means a travel way for vehicular traffic that is included in the State or federal highway system.

Highway Service Systems means GDOT's or a Governmental Entity's lighting and electrical systems, traffic control systems, communications systems and irrigation systems serving street or highway purposes (including ITS and Intelligent Vehicle Highway System facilities).

Historic Property means any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, either the National Register of Historic Places or the Georgia Register of Historic Places.

Immigration Act means the Georgia Immigration & Compliance Act, O.C.G.A. § 13-10-90, *et seq.* as set forth in Article 10.6.4.

Incident means any unplanned event during the course of construction.

Incident Management Plan means Design-Build Team's plan for detection and response to Incidents or Emergencies, as part of the PMP.

Indemnified Parties means GDOT, the State, the State Transportation Board, and their respective successors, assigns, officeholders, officers, directors, commissioners, agents, representatives, consultants and employees. Indemnified Party shall mean any of the aforementioned.

Informal Consultation means during Section 7 Consultation (Endangered Species Act) that a Federal agency determines that its action may affect a listed species.

Instructions to Proposers (**ITP**) means the document that provides instructions to be followed by Proposers in their responses to the RFP.

Insurance Policies means all of the insurance policies Design-Build Team is required to carry pursuant to Article 16.1 (Insurance Policies and Coverage).

Intellectual Property means all current and future legal and/or equitable rights and interests in know-how, patents (including applications), copyrights (including moral rights), trademarks (registered and unregistered), service marks, trade secrets, designs (registered and unregistered), utility models, circuit layouts, plant varieties, business and domain names, inventions, solutions embodied in technology, and other intellectual activity, and applications of

or for any of the foregoing, subsisting in or relating to the Project, Project design data or Project traffic data. Intellectual Property includes toll-setting and traffic management algorithms, and software used in connection with the Project (including but not limited to software used for management of traffic on the Project), and Source Code. Intellectual Property also includes the trade secret information contained in proprietary pricing information. Intellectual Property is distinguished from physical construction and equipment itself and from drawings, plans, specifications, layouts, depictions, manuals and other documentation that disclose Intellectual Property.

Intelligent Transportation System (ITS) has the meaning set forth in Volume 2, Section 17.

Intelligent Vehicle Highway System (IVHS) means smart vehicle and smart highway technologies to improve the safety, efficiency and environmental impact of highway facilities.

Interim Design means any submittal of Design Documents after the Preliminary Plans have been accepted but prior to submittal of Final Plans for the entire Project or any approved Project segment. Interim Designs are intended to resolve conflicts and unresolved comments from the Preliminary Plans submittal.

ITS Burn In means the 30-day (minimum) test of operational performance of ITS devices, per GDOT Specifications under Section 942 – ITS General Requirements.

Joint Project Inspection has the meaning set forth in Volume 2, Section 19.3.2.

Key Contract means any one of the following Contracts for Work that Design-Build Team or Design-Build Team's Contractor's causes to be performed:

(a) All prime construction Contracts;

(b) All project or program management services, architectural design, or engineering Contracts; and

(c) All other Contracts with a single Contractor or Subcontractor which individually or in the aggregate total in excess of $25 million.

Key Contractor means any Contractor or Subcontractor, as the case may be, under any Key Contract.

Key Personnel or **Key Team Members** means those individuals appointed by Design-Build Team and approved by GDOT from time to time to fill the "Key Personnel" positions. The specific individuals appointed by Design-Build Team and approved by GDOT to initially fill certain of the Key Personnel positions are identified in Exhibit 2 (Key Personnel and Other Proposal Commitments) to the Agreement.

Landscape Enhancement Plan has the meaning set forth in Volume 2, Section 15.3.1 (Landscape and Hardscape Enhancement Principles and Strategies).

Law or **Laws** means (a) any statute, law, code, regulation, ordinance, rule or common law, (b) any binding judgment (other than regarding a Dispute), (c) any binding judicial or administrative order or decree (other than regarding a Dispute), (d) any written directive,

guideline, policy requirement or other governmental restriction (including those resulting from the initiative or referendum process, but excluding those by GDOT within the scope of its administration of the DB Documents or in the normal course of its adoption of new or revised technical standards pursuant to Article 7.2.5) or (e) any similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any Governmental Entity, in each case which is applicable to or has an impact on the Project or the Work, whether taking effect before or after the Effective Date, including Environmental Laws. "Laws", however, excludes Governmental Approvals.

Lead Contractor shall mean the entity designated as a Proposer's "Lead Contractor" in its Proposal. There may only be one Lead Contractor per Proposer team.

Lead Engineering Firm shall mean the entity designated as a Proposer's "Lead Engineering Firm" in its Proposal. There may only be one Lead Engineering Firm per Proposer team.

Line or **line** means, in the context of Utilities or Highway Service Systems, a line, pipeline, conduit or cable used for utility purposes, including underground, surface or overhead facilities.

Liquidated Damages means such liquidated damages as may accrue and be due and payable by Design-Build Team to GDOT as set forth under Article 17.4 (Liquidated Damages and Nonrefundable Deductions) and as set forth under Exhibit 18 (Measures of Liquidated Damages and Nonrefundable Deductions) thereto.

Loss or **Losses** means any loss, damage, injury, liability, obligation, cost, response cost, expense (including attorneys', accountants' and expert witnesses' fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of the Agreement)), fee, charge, judgment, penalty or fine. Losses include injury to or death of persons, damage or loss of property, and harm or damage to natural resources.

Maintenance Acceptance means the point at which the DB Team has determined a portion of the Project has met all of the conditions of Substantial Completion for that portion of the Project and has made a written request for GDOT consideration, and GDOT has issued a written determination of Maintenance Acceptance, subject to the following:

(a) all work for that portion of the Project shall meet the standards for completion listed in Articles 7.7.1.3 through 7.7.1.5 and Article 7.7.2.1;

(b) upon satisfactory completion of all Punch List items for that portion of the Project, GDOT will issue a determination of Maintenance Acceptance for only that portion of the Project; and

(c) Maintenance Acceptance does not constitute Substantial Completion or Final Acceptance of the Work and is for the limited purpose of relieving the DB Team of responsibility for damage to that portion of the Project other than that attributable to the DB Team's actions or inadequate construction.

Maintenance Management Plan has the meaning set forth in Volume 2, Section 19.3.3 (Maintenance Management Plan).

Major Culvert means a culvert that provides an opening of more than 35 square feet in a single or multiple installations. A Major Culvert may consist of a single round pipe, pipe arch, open or closed-bottom box, bottomless arch, or multiple installations of these structures placed adjacent or contiguous as a unit. Certain Major Culverts are classified as bridges when they provide an opening of more than 20 feet, measured parallel to the roadway; such culverts may be included in the bridge inventory.

Major Non-Participating Member means a Proposer's Lead Contractor and Lead Engineering Firm. If any of these entities qualify as a Participating Member, then that entity shall not be treated as a Major Non-Participating Member. Major Non-Participating Members are not considered Contractors to Proposer regardless of their role in the performance of Project-related services.

Major River Crossing means a crossing with a 100-year storm event flow in excess of 10,000 cubic feet per second (cfs).

Management Plans means all of the management plans identified in Volume 2, Section 2.

Memorandum of Understanding (MOU) means a formal agreement between GDOT and one or more agencies, organizations or providers.

Milestone Deadline shall have the same meaning as Completion Deadline.

Minor Culvert means any culvert not classified as a Major Culvert.

Mobilization means Work performed to establish offices, plants, and facilities; and to move personnel, equipment, and supplies to the Project site to begin Construction Work.

NaviGAtor Contractor means that certain Separate Contractor engaged by GDOT to provide the NaviGAtor System to be included and integrated into the ITS to be incorporated into the Project, if such system is identified in Volume 2, Section 17 (Intelligent Transportation Systems)to be incorporated into the Project.

NaviGAtor System means the "NaviGAtor" advanced transportation management system to be included as a part of the ITS as set forth pursuant to Volume 2, Section 17.2.4 (Transportation Management Center (TMC) Improvements).

NaviGAtor Work means the work to be provided by the NaviGAtor Contractor, coordinated with the Work, for completion of the NaviGAtor System for the Project.

NEPA means the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq*., as amended and as it may be amended from time to time.

NEPA Approval means the (a) NEPA document as approved by FHWA including any studies, reports, Environmental Commitments, and all other procedural requirements and documents required for FHWA approval for the Project or a portion of the Project, as (b) may be modified pursuant to all approved supplements and re-evaluations pertaining to the Project.

NEPA Finality Date means the date NEPA Approval becomes final and non-appealable and the federal statute of limitations for commencing legal action to challenge the validity of any NEPA Approval has expired.

Nonconforming Work means Work that does not conform to the requirements of the DB Documents, the Governmental Approvals, applicable Law or the Design Documents.

Nonrefundable Deductions means such nonrefundable deductions as may accrue and be due and payable by Design-Build Team to GDOT as set forth under Article 17.4 (Construction Requirements) and as set forth under Exhibit 18 (Measures of Liquidated Damages and Nonrefundable Deductions) thereto.

Notice of Award means formal acceptance of the Apparent Successful Proposer.

Notice of Termination for Convenience means written notice issued by GDOT to Design-Build Team terminating the Agreement in whole or in part for convenience.

NTP means a written notice issued by GDOT to Design-Build Team authorizing Design-Build Team to proceed with the portion or phase of the Work as being designated as subject to such notice to proceed in the Proposal Schedule, Project Schedule, or otherwise in the Agreement Documents, including without limitation NTP 1, NTP 2, and NTP 3.

NTP 1 means a written notice issued by GDOT to Design-Build Team authorizing Design-Build Team to proceed with the portion of the Work described in Article 3.3.1.1.

NTP 1 Conditions Deadline means the outside date set forth in the Milestone Deadlines (or the Baseline Project Schedule as to the extent such outside date is adjusted thereby) by which Design-Build Team is obligated under the Agreement to satisfy all conditions to issuance of NTP 1, as such deadline may be extended for Relief Events from time to time pursuant to the Agreement.

NTP 2 means a written notice issued by GDOT to Design-Build Team authorizing Design-Build Team to proceed with the portion of the Work described in Article 3.3.1.2 of the Agreement.

NTP 2 Conditions Deadline means the outside date set forth in the Milestone Deadlines (or the Baseline Project Schedule as to the extent such outside date is adjusted thereby) by which Design-Build Team is obligated under the Agreement to satisfy all conditions to issuance of NTP 2, as such deadline may be extended for Relief Events from time to time pursuant to the Agreement.

NTP 3 means a written notice issued by GDOT to Design-Build Team pursuant to Article 3.3.1.3 authorizing Design-Build Team to proceed with the remaining Work and other activities pertaining to the Project.

NTP 3 Conditions Deadline means the outside date set forth in the Milestone Deadlines (or the Baseline Project Schedule as to the extent such outside date is adjusted thereby) by which Design-Build Team is obligated under the Agreement to satisfy all conditions to issuance of NTP 3, as such deadline may be extended for Relief Events from time to time pursuant to the Agreement.

Open Book Basis means allowing the relevant Party to review all underlying assumptions and data associated with the issue in question, including, but not limited to, assumptions as to costs of the Work, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, inflation and deflation rates, and other items reasonably required by the relevant Party.

Open Government Laws mean, collectively, the Georgia Open Records Act, Ga. Code Ann. §§ 50-18-70 *et seq.*, Section 32-2-80(a)(40) of the Code and Section 672-17.06 of the Rules, as amended from time to time.

Optical Character Recognition (OCR) means the process of converting an image to text.

P&P Bonds or Performance and Payment Bonds means the bonds meeting the requirements of Article 16.2.1.

P&P Obligor means the Person identified as the obligor or account party in the P&P Bonds, as applicable.

Participating Agency means a public, quasi-public, or private agency that has agreed to cooperate with and assist Design-Build Team during an Emergency.

Participating Member means (a) if the Proposer is a joint venture, partnership, or limited liability company, each member of the joint venture, partnership or limited liability company; or (b) if the Proposer is a corporation or other corporate entity, the Proposer.

Party means Design-Build Team or GDOT, as the context may require, and "**Parties**" means Design-Build Team and GDOT, collectively.

Payment Activity shall have the meaning set forth in Volume 2, Section 2.6.

Payment Request means the request for payment on account of the Work all in accordance with Volume 2, Section 2.6 (Payment Requests and Payment), and with the terms and conditions set forth in GDOT Standard Specification 109.03.

Permanent Works are permanent structures and parts thereof required of the completed DB Documents.

Person means any individual, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization, Governmental Entity, or GDOT.

Phase 1 Hazardous Materials Investigation means an environmental assessment conducted in accordance with the DB Documents and ASTM E-1527-05, or any future revision or replacement thereof, to identify Recognized Environmental Conditions and potential Recognized Environmental Conditions.

Plans means (only where capitalized) contract drawings, working drawings, supplemental drawings, detail sheets or exact reproductions thereof, which show the location, character, dimensions and details of the Construction Work to be done.

Pre-existing Hazardous Materials means Hazardous Materials that meet all the following criteria:

(a) The Hazardous Materials are in, on or under the Right of Way as of the date GDOT makes available to Design-Build Team the affected parcel; or

(b) The Hazardous Materials are not located in, on or under any Project Specific Locations or Additional Properties, except Additional Properties required due to GDOT Changes (including GDOT Changes regarding the initial construction).

For purposes of determining whether Hazardous Materials were in, on or under the Right of Way or any Additional Properties required by GDOT to be included in the Property as a result of GDOT Changes, as of the date on which GDOT makes available to Design-Build Team the affected parcel, Design-Build Team shall have the burden of proof to demonstrate it was not a Design-Build Team Release of Hazardous Materials:

(i) As to any Hazardous Materials not identified as being present as of such date in the Phase 1 investigations of the Project conducted by GDOT prior to the Effective Date or any Phase 1 Hazardous Materials Investigation or Phase 2 Hazardous Materials Investigation supplementing the foregoing report prepared prior to the Effective Date; and

(ii) As to any Additional Properties required by GDOT to be included in the Property as a result of GDOT Changes, any Phase 1 Hazardous Materials Investigation thereof prepared and delivered prior to the Effective Date.

For the purpose of this definition, “makes available” means:

(i) The Effective Date, except for parcels not yet acquired as of the Effective Date; and

(ii) As to parcels not yet acquired as of the Effective Date and as to Additional Properties required by GDOT to be included in the Property as a result of GDOT Changes, the date Design-Build Team first receives the right to take and maintain possession of the parcel for all purposes for the remainder of the Term in accordance with the DB Documents, including commencement of construction, as the result of GDOT’s having secured title or right of possession by contract or title instrument or by a special commissioners’ award through the eminent domain process or otherwise.

Preliminary Plans means the Design Documents which provide the preliminary design necessary for the related to construction, operations, and maintenance of the entire Project including any Utility Adjustments required by the Project.

Presidential Disaster Declaration means a declaration of a major disaster by the President of the United States triggering assistance from FEMA pursuant to the Disaster Relief Act of 1974 (Pub.L. No. 93-288, as amended).

Price Proposal means the price component of the Proposal evaluation as described in the ITP.

Principal Project Documents means the Security Instruments and the Design-Build Contract.

Professional Engineer means a person who is duly licensed and registered by the Georgia State Board of Registration for Professional Engineers and Land Surveyors to engage in the practice of engineering in the State of Georgia.

Professional Land Surveyor means a person registered by the Georgia State Board of Registration for Professional Engineers and Land Surveyors to practice the profession of land, boundary, or property surveying or other similar professional practices.

Project means the Project as defined in the RFP, that is the subject of this Agreement, and which shall include the transportation facilities and all related structures, and improvements, including integration of the ITS, and communications systems used in connection with operation of such transportation facilities, to be designed and constructed pursuant to the terms of the DB Documents.

Project Extension means a linear addition to the original Project by Design-Build Team, including any at either terminus of the original Project and any linear improvement that interconnects with the original Project.

Project Manager means the individual designated by Design-Build Team and approved in writing by GDOT in the position to take full responsibility for the prosecution of the Work and will act as a single point of contact on all matters on behalf of Design-Build Team.

Project Schedule shall have the meaning set forth in Section 2.5 (Project Schedule Requirements).

Project Schedule Narrative shall have the meaning set forth in Volume 2, Section 2.5 (Project Schedule Requirements).

Project Specific Locations means any additional temporary property interests or rights, other than ROW or Additional Properties, which are not contiguous to the Property, that Design-Build Team may require for performance of the Work, including for temporary activities in connection with the Construction Work, such as construction work sites, temporary work areas, staging areas, storage areas, and earthwork material borrow sites.

Project Schedule Update shall have the meaning set forth in Volume 2, Section 2.5 (Project Schedule Requirements).

Property has the meaning set forth in Article 2.2.1 and shall include only such property as identified in the Environmental Document Approval.

Proposal means the complete response to the RFP which may include the Proposer's Administrative Information Submittals, Technical Proposal for the Project, and Price Proposal for the Project.

Proposal Bond means the security that Proposers submit to GDOT with their Proposals.

Proposal Commitments means statements, offers, terms, concepts, or designs in DB Team’s Proposal that are to a standard higher than required by the Agreement or Technical Provisions, or include terms advantageous to GDOT.

Proposal Due Date means the deadline for submission of the Proposal to GDOT as defined in the ITP Section 1.4 (Procurement Schedule).

Proposal Revisions has the meaning set forth in Section 5.4 (Request for Proposal Revisions) of the ITP.

Proposal Schedule means the high level, logic based, critical path schedule representing Design-Build Team's plan to complete performance of the Work beginning on the date of NTP 1 to Final Acceptance of the Work, submitted with the Proposal.

Proposed Supplemental Agreement has the meaning set forth in Article 13 (GDOT Changes; DB Team Changes; Directive Letters).

Proposer or **Proposers** has the meaning set forth in Section 1.1 (Introduction) in the ITP.

Proprietary Intellectual Property means Intellectual Property created, used, applied or reduced to practice in connection with the Project or the Work that derives commercial value from its protection as a trade secret under applicable Law or from its protection under patent law.

Protection in Place means any action taken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of a Utility, exposing the Utility, avoidance of a Utility's location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. The term includes both temporary measures and permanent installations meeting the foregoing definition.

Provided Approvals means the Governmental Approvals for the Project obtained or to be obtained by GDOT, as specifically listed in Volume 2, Section 4.3 (Environmental Approvals) (including any such approvals as may be required from GDOT independent of GDOT's Project administration pursuant to Article 6.2 (Governmental Approvals and Third-Party Agreements)).

Punch List means an itemized list of Construction Work that remains to be completed following Substantial Completion but as a condition to Final Acceptance, provided that the nature of any such incomplete Work, and the correction and completion of same, will have no material or adverse effect on the normal and safe use and operation of the Project.

Punch List Period means the time provided for Design-Build Team's completion of Punch List Work, which shall be the time between Substantial Completion and Final Acceptance as provided in the Project Schedule.

QA means quality assurance.

QA/QC means quality assurance and quality control.

Quality Management Plan (QMP) means the set of GDOT-approved plans for quality management and control of the Project and Work, as set forth in Volume 2, Section 2.3 (Quality Management Requirements).

Quality Assurance Manager (QAM) means the individual retained by Design-Build Team as the Key Personnel with the authority and responsibility for ensuring establishment and maintenance of, and compliance with, the Quality Management Plan. The Quality Assurance Manager shall be a Professional Engineer as defined in this Exhibit 1.

Railroad means, depending on the context, either the right of way, tracks, and systems used for rail traffic in the vicinity of the Project, or the owners and/or operators of such rail systems.

Recognized Environmental Condition has the meaning set forth in ASTM E-1527-00.

Record Drawings (also known as As-Builts, as-builts, or as-built drawings) means construction drawings and related documentation revised to show as-built changes to the Project at Final Acceptance. Interim marked-in-the-field or red-lined drawings to be provided during the progress of the Work as required pursuant to the Technical Provisions shall not constitute the final Record Drawings.

Reference Information Documents (RIDs) means the collection of information, data, documents and other materials that GDOT has provided to Design-Build Team for general or reference information only.

Related Transportation Facility(ies) means all existing and future highways, streets and roads, including upgrades and expansions thereof, that is/are or will be adjacent to, connecting with or crossing under or over the Project, as specifically identified in the Technical Provisions.

Release for Construction or **RFC** means the written authorization by GDOT to proceed with any designated phase of the Construction Work based on the approved Final Plans.

Release of Hazardous Materials means any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Hazardous Materials into the soil, air, water, groundwater or environment, including any exacerbation of an existing release or condition of Hazardous Materials contamination.

Relief Event has the meaning set forth in Article 14.1.1.

Relief Event Determination has the meaning set forth in Article 14.1.1.

Relief Event Notice means the written notice required to be provided by Design-Build Team under Article 13.3.2 (DB Team's Notice of Compensation Event and/or Relief Event).

Replacement Housing Calculation means the opportunity to provide the displaced person with the financial assistance to purchase or rent and occupy a comparable replacement dwelling without involuntarily incurring additional financial means due to the displacement.

Replacement Utility Property Interest means any permanent right, title or interest in real property outside of the Property (e.g., a fee or an easement) that is acquired for a Utility being reinstalled in a new location as a part of the Utility Adjustment Work. The term specifically excludes any statutory right of occupancy or permit granted by a Governmental Entity for occupancy of its real property by a Utility.

Request for Change Proposal means a written notice issued by GDOT to Design-Build Team setting forth a proposed GDOT Change and requesting Design-Build Team's assessment of cost, and Project Schedule impacts thereof, as set forth in Article 13.2.1 (GDOT's Request for Change Proposal).

Request for Information (RFI) means a written request by the Design-Build Team to GDOT requesting clarification of the DB Document requirements.

Request for Proposals (RFP) means all documents, whether attached or incorporated by reference, utilized for soliciting proposals. The RFP is the only solicitation utilized by the Department in the One Phase Low Bid selection method.

Reserved means a section of the DB Documents (Design-Build Agreement, Technical Provisions, or Programmatic Provisions) that is not being utilized for this contract. Sections marked Reserved have no requirements and references to sections marked Reserved shall mean that there are no additional requirements beyond the reference point.

Revised Baseline Project Schedule shall have the meaning set forth in Volume 2, Section 2.5 (Project Schedule Requirements).

Right of Way (**ROW)** means the Existing Right of Way.

Rules means Chapter 672-18 of the Rules of the State Department of Transportation, Governing the Design-Build Procedures.

Safety Compliance means any and all improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement and changes in configuration or procedures respecting the Project to correct a specific safety condition or risk of the Project that GDOT has reasonably determined to exist by investigation or analysis and that is in violation of the requirements of the DB Documents.

Safety Compliance Order means a written order or directive from GDOT to Design-Build Team to implement Safety Compliance measures.

Safety Plan has the meaning set forth in Volume 2, Section 2.4.1 (Safety Plan).

Safety Standards means those provisions of the Technical Provisions or Technical Documents that GDOT, FHWA, OSHA, or AASHTO considers to be important measures to protect public safety or worker safety. As a matter of clarification, provisions of Technical Provisions or Technical Documents primarily directed at durability of materials or equipment, where the durability is primarily a matter of life cycle cost rather than protecting public or worker safety, are not Safety Standards.

Schedule of Values (SOV) shall have the meaning set forth in Volume 2, Section 2.6 (Payment Requests and Payment).

Schematic Plan of Project means Design-Build Team's Schematic Plan specific to the preliminary roadway plans showing the concept and technical solutions in accordance with the provisions of Exhibit C (Technical Proposal Submittal Requirements) of the ITP. A Schematic Plan may include but is not limited to standard design plan sheets, roll plots, and conceptual drawings.

Security Document means any mortgage, deed of trust, pledge, lien, indenture, trust agreement, hypothecation, assignment, collateral assignment, financing statement under the Uniform Commercial Code of any jurisdiction, security instrument or other charge or encumbrance of any kind, including any lease in the nature of a security instrument, given to any Person as security for Design-Build Team Debt or Design-Build Team's obligations pertaining to Design-Build Team Debt and encumbering the Design-Build Team's Interest.

Separate Contractor(s) means each and any separate contractor or vendor engaged by GDOT or any other governmental authority or agency of the State to perform, provide, and/or supply work, services, labor or materials for the Project that is expressly excluded from Design-Build Team's Work pursuant to the DB Documents.

Service Line means a Utility line, the function of which is to directly connect the improvements on an individual property to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system. However, unless otherwise noted in the Technical Provisions, the term "Service Line" excludes any line that supplies an active feed from a Utility Owner's facilities to supply, activate or energize GDOT's or a Governmental Entity's Highway Service System. Such line, including its actual connection to the Utility facility, shall instead be considered to be part of the applicable Highway Service System.

Site means the Property and any temporary rights or interests that Design-Build Team may acquire in connection with the Project or the Utility Adjustments included in the Construction Work, including Project Specific Locations.

Small, Veteran, and Disadvantaged Business Enterprise or **SVDBE** has the meaning set forth in Article 10.9.

Source Code and **Source Code Documentation** mean software written in programming languages including all comments and procedural code, such as job control language statements, in a form intelligible to trained programmers and capable of being translated into object or machine readable code for operation on computer equipment through assembly or compiling, and accompanied by documentation, including flow charts, schematics, statements of principles of operations, architectural standards, and commentary, explanations and instructions for compiling, describing the data flows, data structures, and control logic of the software in sufficient detail to enable a trained programmer through study of such documentation to maintain and/or modify the software without undue experimentation. Source Code and Source Code Documentation also include all modifications, additions, substitutions, updates, upgrades and corrections made to the foregoing items.

Staged Design Submittals shall have the meaning set forth in Volume 2, Section 3.3.7.1 (Staged Design Submittals).

Standard Utility Agreement (SUA) means an Agreement providing for relocation or adjustment work to be performed by the Utility and/or its consultant or contractor and modification of easement limited provisions, if applicable. To the extent practical, reimbursement by the Department will be made based upon the Department's specifications, agreements and forms or consultant and construction contract work. The payment method may be actual cost, unit price, or lump sum as appropriate.

State means the State of Georgia.

State and Local Government Series (SLGS) Index means the State and Local Government Series (SLGS) Index published and maintained by the United States Department of the Treasury.

State Highway means a highway designated as part of the state highway system under Code 32-4-21.

Subcontractor means any other Person, including any Supplier with whom any Contractor has further subcontracted, purchased or procured any part of the Work, at all tiers.

Submittal means any document, work product or other written or electronic end product or item required under the DB Documents to be delivered or submitted to GDOT, as applicable.

Substantial Completion means satisfaction of the criteria for completion of Construction Work as set forth in Article 7.7 (Substantial Completion, Punch List, Final Acceptance; Early Opening of Portions of the Project), as and when confirmed by GDOT's issuance of a certificate in accordance with the procedures and within the time frame established in Article 7.7.1 (Substantial Completion).

Substantial Completion Date means the date upon which Design-Build Team has satisfied all conditions of and for Substantial Completion.

Substantial Completion Deadline means the deadline and required date for Substantial Completion of the Project as set forth in Exhibit 9 (Milestone Deadlines), as such deadline may be extended for Relief Events from time to time pursuant to the Agreement, time being of the essence.

Subsurface Utility Engineering (SUE) means an engineering process for accurately identifying the quality of overhead/underground utility information needed for highway plans, and for acquiring and managing that level of information during the development of a highway project, as more particularly described at the FHWA website http://www.fhwa.dot.gov/programadmin/sueindex.cfm.

Supplemental Agreement means a mutual agreement between GDOT and Design-Build Team for changes in the Work under Article 13 (GDOT Changes; DB Team Changes; Directive Letters), including on account of any Relief Event Determination and/or Compensation Event Determination as set forth under Article 13.4 (Final Relief Event and Compensation Event Determinations).

Supplier means any Person not performing work at or on the Site that supplies machinery, equipment, materials, hardware, software, systems or any other appurtenance to the Project to Design-Build Team or to any Contractor in connection with the performance of the Work. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other similar items or persons to or from the Site shall not be deemed to be performing Work at the Site.

Surety means each properly licensed surety company, insurance company or other Person approved by GDOT, which has issued any of the P&P Bonds.

SVDBE Commitments List means Design-Build Team's commitment for meeting the Small, Veteran, and Disadvantaged Business Enterprises (SVDBE) participation goals set forth

in Article 10.9 (SVDBE Participation Goals) and Exhibit 14 (Design-Build Team's SVDBE Commitments List).

Taxes means federal, State, local or foreign income, margin, gross receipts, sales, use, excise, transfer, consumer, license, payroll, employment, severance, stamp, business, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Internal Revenue Code of 1986, as amended), customs, permit, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, registration, value added, alternative or add-on minimum, estimated or other taxes, levies, imposts, duties, fees or charges imposed, levied, collected, withheld or assessed at any time, whether direct or indirect, relating to, or incurred in connection with, the Project, the performance of the Work, or act, business, status or transaction of Design-Build Team, including any interest, penalty or addition thereto, and including utility rates or rents, in all cases whether disputed or undisputed.

Technical Documents means all the standards, criteria, requirements, conditions, procedures, specifications and other provisions set forth in the manuals and documents identified in the DB Documents, as such provisions may (a) have been generally revised from time to time up the RFP advertisement date, or (b) be changed, added to or replaced pursuant to the Agreement.

Technical Proposal means the technical component of the Proposal evaluation as described ITP.

Technical Provisions means Volume 2 as such documents may (a) have been generally revised from time to time that are in effect at the date of the RFP advertisement, or (b) be changed, added to or replaced pursuant to the Agreement.

Temporary Works is any temporary construction work necessary for the construction of the Permanent Works. This includes falsework, formwork, scaffolding, shoring, temporary earthworks, sheeting, cofferdams, special erection equipment, etc.

Term has the meaning set forth in Article 3.1 (Term of Agreement).

Termination by Court Ruling has the meaning set forth in Article 19.11.

Termination Compensation means each of the measure of compensation owing from GDOT to Design-Build Team upon termination of the Agreement prior to the stated expiration of the Term, pursuant to Article 19 (Termination), and as set forth in Exhibit 20 (Terms for Termination Compensation).

Termination Date means (a) the date of expiration of the Term or (b) if applicable, the Early Termination Date.

Termination for Convenience has the meaning set forth in Article 19.1.1.

Third-Party Claim means, subject to Article 16.5.4, any and all claims, disputes, disagreements, causes of action, demands, suits, actions, investigations, or legal or administrative proceedings asserted, initiated or brought by a Person that is not an Indemnified Party or Design-Build Team with respect to any Third-Party Loss.

Third-Party Loss means, subject to Article 16.5.4, any actual or alleged Loss sustained or incurred by a Person that is not an Indemnified Party or Design-Build Team.

Threatened or Endangered Species means any species listed by the USFWS as threatened or endangered pursuant to the Endangered Species Act, as amended, 16 U.S.C. §§ 1531, *et seq*.

Traffic Management Center is a center for the management and distribution of information to Users on a regional or statewide basis.

Transferee means any party as defined pursuant to Article 21.2.2.1, solely for purposes of Articles 21.2 Standards and Procedures for GDOT Acceptance) through 21.5 (Change of Organization or Name).

Travel Lane means the portion of roadway for the movement of vehicles, exclusive of shoulders.

Two-Week Detail Schedule shall have the meaning set forth in Volume 2, Section 2.5 (Project Schedule Requirements).

Uniform Act means the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, P.L. 91-646, as amended.

Uninsurable Risk means a risk, or any component of a risk, against which Design-Build Team or a Contractor is required to insure pursuant to the Agreement and for which, at any time after the Effective Date, either:

(a) the insurance coverage required under the Agreement is not available in relation to that risk from insurers that meet the qualifications set forth in Article 16.1.2; or

(b) the terms and conditions for insuring that risk are such that the risk is not generally being insured against in the insurance market under commercially reasonable terms from insurers that meet the qualifications set forth in Article 16.1.2.

Utility or **utility** means any of the following:

(a) a public, private, cooperative, municipal and/or government line, facility or system used for the carriage, transmission and/or distribution of cable television, electric power, telephone, telegraph, water, gas, oil, petroleum products, steam, chemicals, hydrocarbons, telecommunications, sewage, and similar commodities, that directly or indirectly serves the public;

(b) a line, facility or system which (i) carries or transmits a commodity referenced in clause (a) above but does not directly or indirectly serve the public, and (ii) is designated in Volume 1 or Volume 2 to be treated, for purposes of the DB Documents only, in the same manner as a line, facility or system that qualifies as a Utility under clause (a) above; and

(c) a radio tower or transmission tower (including cellular) that directly or indirectly serve the public.

Notwithstanding the foregoing, the term “Utility” or “utility” excludes:

(a) all storm water lines, facilities, and systems that are part of the drainage system for the Property or connect to that system; and

(b) GDOT's or a Governmental Entity's Highway Service Systems.

The necessary appurtenances to each Utility facility shall be considered part of such Utility. Any Service Line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Line.

Utility Accommodation Manual (UAM) means the Utility Accommodation Manual issued by GDOT, as the same may be amended, supplemented or replaced by GDOT from time to time.

Utility Adjustment Field Modification means any horizontal or vertical design change to a Utility Adjustment required by Design-Build Team or proposed by a Utility Owner due either to roadway design or to conditions not accurately reflected in the corresponding Utility Work Plan for which the review and comment/approval process has been completed, that alters the design included in the approved Utility Work Plan. An example would be shifting the alignment of an 8" water line to miss a roadway drainage structure. A minor change (e.g., an additional water valve, an added Utility marker at ROW line, a change in vertical bend, etc.) will not be considered a Utility Adjustment Field Modification, but shall be shown in the Record Drawings.

Utility Adjustment means each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously abandoned Utilities as well as of newly abandoned Utilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate construction, operation, maintenance and/or use of the Project; provided, however, that the term "Utility Adjustment" shall not refer to any of the work associated with facilities owned by any railroad. For any Utility crossing the Property, the Utility Adjustment Work for each crossing of the Property by that Utility shall be considered a separate Utility Adjustment. For any Utility installed longitudinally within the Property, the Utility Adjustment Work for each continuous segment of that Utility located within the Property shall be considered a separate Utility Adjustment.

Utility Adjustment Work means all efforts and costs necessary to accomplish the required Utility Adjustments, including all coordination, design, design review, permitting, construction, inspection, maintenance of records, relinquishment of Existing Utility Property Interests, preparation of Utility Joint Use Acknowledgements, and acquisition of Replacement Utility Property Interests, whether provided by Design-Build Team or by the Utility Owners. The term also includes any reimbursement of Utility Owners which is Design-Build Team's responsibility pursuant to Article 7.5 (Utility Adjustments). Any Utility Adjustment Work furnished or performed by Design-Build Team is part of the Work; any Utility Adjustment Work furnished or performed by a Utility Owner is not part of the Work.

Utility Joint Use Acknowledgment or **Utility Joint Use Agreement** means an agreement between GDOT and a Utility Owner that establishes the rights and obligations of GDOT and the Utility Owner with respect to occupancy of the Property by such Utility Owner's Utility.

Utility Owner means the owner or operator of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies).

Utility Owner Project means the design and construction by or at the direction of a Utility Owner (or by Design-Build Team) of a new Utility installation other than (a) as part of a Utility Adjustment or (b) to provide service to the Project. Betterments are not Utility Owner Projects. Utility Owner Projects are entirely the financial obligation of the Utility Owner.

Utility Work Plan Retention Request means the collection of plans and other information and materials which Design-Build Team is required to submit to GDOT in connection with each Utility proposed to remain at its original location within the Existing Right of Way or Property; a single Utility Work Plan Retention Request may address more than one such Utility.

Volume 1 means the Design-Build Agreement or the Agreement.

Volume 2 means the project-specific and programmatic GDOT technical provisions entitled "Technical Provisions - Volume 2".

Warning Notice means a written notice that GDOT delivers to Design-Build Team pursuant to Article 17.2 (Warning Notices).

Work means all of the work required to be furnished and provided by Design-Build Team under the DB Documents for the Project, including without limitation, all administrative, management, design, engineering, other professional services, construction, Utility Adjustment, utility accommodation, support services, ETCS and software integration, and coordination, except for those efforts which such DB Documents expressly specify will be performed by Persons other than Design-Build Team-Related Entities.

Work Breakdown Structure (WBS) means a deliverable-oriented hierarchical structure that breaks the Work into elements that have distinct identification and that contain specific scope characteristics. Each descending WBS level represents an increasingly detailed delineation of elements of the total Project scope. The WBS will contain all elements of the Work.

Work Code means a code assigned to a contract line item. Example: 400 is asphalt paving, 653 is highway traffic striping. The Work Codes were established and predefined by a GDOT Committee comprised of the Office of EEO, Construction, Bidding Administration, and Prequalification, in 2012. Not every item has a work code, only those items that are predominantly used on Highway construction projects. Contractors and Subcontractors in the GDOT directories are assigned work codes based upon their work description. Work codes are the most refined data available.

Work Product means any design files, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans and specifications used in the development of the Proposal including the proposal and any ATCs being acquired by GDOT from unsuccessful responsive Proposers.

EXHIBIT 2

KEY PERSONNEL AND OTHER PROPOSAL COMMITMENTS

[Proposer's organization chart, Form G – Form of Participating Members etal, and Form L – Debarment and Suspension Certification to be provided with execution version]

- Proposal organization chart
- Form G – Form of Participating Members, Major Non-Participating Members, Contractors and Key Personnel Commitment of the Proposal
- Form L – Debarment and Suspension Certification

Proposal Commitments as set forth in the Proposal as defined in the Agreement and hereby incorporated by reference, subject to the provisions of Article 1.2.2

EXHIBIT 3

RESERVED

EXHIBIT 4

RESERVED

EXHIBIT 5

PROPOSAL SOV

[insert Form F in executed version]

EXHIBIT 6

RESERVED

EXHIBIT 7

RESERVED

EXHIBIT 8

FEDERAL REQUIREMENTS

Exhibit Description	No. of Pages
Attachment 1 – Reserved	
Attachment 2 – Reserved	
Attachment 3 – Reserved	
Attachment 4 – Reserved	
Attachment 5 – Reserved	
Attachment 6 – Reserved	
Attachment 7 – Debarment and Suspension Certification	1
Attachment 8 – Reserved	
Attachment 9 – Reserved	
Attachment 10 – Reserved	
Attachment 11 – Reserved	
Attachment 12 – Reserved	

ATTACHMENT 1 TO EXHIBIT 8

RESERVED

ATTACHMENT 2 TO EXHIBIT 8

RESERVED

ATTACHMENT 3 TO EXHIBIT 8

RESERVED

ATTACHMENT 4 TO EXHIBIT 8

RESERVED

ATTACHMENT 5 TO EXHIBIT 8

RESERVED

ATTACHMENT 6 TO EXHIBIT 8

RESERVED

ATTACHMENT 7 TO EXHIBIT 8

DEBARMENT AND SUSPENSION CERTIFICATION

1. By signing and submitting its proposal or bid, and by executing the Agreement or and Contract, each prospective Design-Build Team member (at all tiers) shall be deemed to have signed and delivered the following certification:

The undersigned certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

2. Where the prospective Design-Build Team member is unable to certify to any of the statements in this certification, such Person shall attach a certification to its proposal or bid, or shall submit it with the executed Agreement or Contract, stating that it is unable to provide the certification and explaining the reasons for such inability.

ATTACHMENT 8 TO EXHIBIT 8

RESERVED

ATTACHMENT 9 TO EXHIBIT 8

RESERVED

ATTACHMENT 10 TO EXHIBIT 8

RESERVED

ATTACHMENT 11 TO EXHIBIT 8

RESERVED

ATTACHMENT 12 TO EXHIBIT 8

RESERVED

EXHIBIT 9

MILESTONE DEADLINES

Milestone Deadlines	Duration
*Substantial Completion Deadline	No later than 395 Days after NTP 1
*Final Acceptance Deadline	No later than 90 Days after Substantial Completion

EXHIBIT 10

RESERVED

EXHIBIT 11

HAZARDOUS MATERIALS RISK ALLOCATION TERMS

1. Design-Build Team shall be solely responsible for Hazardous Materials Management, including all required remediation and disposal of Hazardous Materials that constitute Design-Build Team Releases of Hazardous Materials or which are otherwise with respect to any Additional Properties or Project Specific Locations, Design-Build Team shall be responsible for all Hazardous Materials Management for Design-Build Team Release(s) of Hazardous Materials or with respect to Additional Properties, even if the required Hazardous Materials Management extends beyond the end of the Term or Final Acceptance of the Work.

2. Other than a Design-Build Team Releases of Hazardous Materials or with respect to any Project Specific Locations, GDOT shall, at its own expense shall manage, treat, handle, store, remediate, remove, transport (where applicable), investigate, oversee and dispose of such Hazardous Materials in accordance with applicable Law and Governmental Approvals or otherwise enter into a Supplement Agreement with the Design-Build Team, or order such Work pursuant to Directive Letter (provided that GDOT may not require any long term monitoring of Hazardous Materials under any such Directive Letter), with respect to same.

3. Notwithstanding the aforementioned or anything to the contrary in the Agreement, none of the following costs and expenses shall be chargeable to or reimbursed by GDOT:

(a) Costs and expenses to the extent attributable to Design-Build Team Releases of Hazardous Materials;

(b) Delay and disruption costs and expenses, except to the extent expressly set forth under the Agreement;

(c) Costs and expenses that could be avoided by the exercise of commercially reasonable efforts to mitigate and reduce cost; and

(d) Attorney's fees or other expenses incurred by Design-Build Team in demonstrating or determining the proportionate responsibility between the parties as to Design-Build Team Releases of Hazardous Materials, GDOT Releases of Hazardous Materials, Pre-existing Hazardous Materials, and/or Hazardous Materials due to any third party.

4. Nothing contained herein shall be interpreted to limit Design-Build Team's obligations with respect to Article 7.8 (Hazardous Materials Management) or Article 7.9 (Environmental Compliance).

EXHIBIT 12

RESERVED

EXHIBIT 13

RESERVED

EXHIBIT 14

DESIGN-BUILD TEAM'S SVDBE COMMITMENTS LIST

[Form I – SVDBE Certification, SVDBE Commitments List to be provided with execution version]

EXHIBIT 15

CERTIFICATION OF COMPLIANCE WITH THE STATE OF GEORGIA'S SEXUAL HARASSMENT PREVENTION POLICY

[Insert completed Form U in executed version]

EXHIBIT 16

RESERVED

EXHIBIT 17

RESERVED

EXHIBIT 18

MEASURES OF LIQUIDATED DAMAGES and NONREFUNDABLE DEDUCTIONS

1.1 For Late Substantial Completion and Late Final Acceptance

(a) Reserved

(b) Liquidated Damages for late Substantial Completion for the Project shall equal $300 per day for each day that the Substantial Completion Date is later than the Substantial Completion Deadline, as the Substantial Completion Deadline may be extended pursuant to this Agreement.

(c) Liquidated Damages for late Final Acceptance shall equal $300 per day for each day that the date of Final Acceptance is later than the Final Acceptance Deadline, as the Final Acceptance Date may be extended pursuant to this Agreement.

(d) Liquidated Damages on account of any failure to achieve Final Acceptance by the Final Acceptance Date shall not be cumulative and in addition to Liquidated Damages under subpart (b) above where Substantial Completion is not achieved by the Substantial Completion Deadline, provided that where any such Liquidated Damages under subpart (b) cease to then accrue as a result of achieving Substantial Completion, and the Final Acceptance Date, as may thereafter be revised is not met, subpart (c) shall then apply.

1.2 Incident Based Liquidated Damages

Liquidated Damages upon the occurrence of the following, which shall not be cumulative, for any single occurrence. Where there are multiple incidents as set forth below contributing to a single occurrence, the highest applicable incident based Liquidated Damages relative to such occurrence shall apply.

1	Failure to reopen lanes on Cobb Parkway as specified in Volume 2, Section 18	$2,500 per hour
2	Failure to reopen lanes on Augusta Road as specified in Volume 2, Section 18	$2,500 per hour
3	Failure to reopen lanes on Jimmy Deloach Connector as specified in Volume 2, Section 18	$2,500 per hour
4	Failure to reopen lanes on I-575 Sixes Road Southbound On-Ramp as specified in Volume 2, Section 18	$2,500 per hour
5	Failure to adhere to holiday traffic restrictions as required under Volume 2, Table 18-1	$2,500 per hour
6	Failure to respond to GDOT direction regarding changeable message signs (CMS) as specified in Volume 2, Section 18.3.2	$1,300 per hour

*In addition to Liquidated Damages, DB Team shall be liable for any fines assessed against GDOT as a result of any noncompliance event as provided herein.

1.3 Incident Based Nonrefundable Deductions

Nonrefundable Deductions upon the occurrence of the following, which shall not be cumulative, for any single occurrence. Where there are multiple incidents as set forth below contributing to a single occurrence, the highest applicable incident based Liquidated Damages relative to such occurrence shall apply.

1	Replacement of an individual in a Key Personnel position after submission of the Proposal for any reason, except as allowed under Article 10.4.1	$10,000 per occurrence
2	Unreasonable failure to comply with any of its responsibilities per the requirements of Volume 2, Section 2 (Project Management) including Project Management, Quality Management, Schedule, etc.	$5,000 per occurrence
3	Causing environmental damage in contravention of Volume 2, Section 4 (Environmental) of the Technical Provisions and the latest approved Environmental Documents	$7,000 per occurence
4	Failure to follow the approved procedures outlined in the Utility Emergency Response Procedures Plan as required in Volume 2, Section 6 (Utility Adjustments) of Technical Provisions	$8,500 per occurence
5	Damage caused by the DB Team to GDOT/Governmental Entity ITS device (camera, radar, VSLS, etc.) or enclosure. Or damage caused or loss of use to an existing ITS device.	$2,500 per occurence
6	Failure to bring the GDOT/Governmental Entity ITS system (fiber optic trunk, electrical power, ITS device (camera, radar, VSLS, etc.)) back on line within 24 hours after damage or failure caused by the DB Team	$13,700 per occurrence

*In addition to Nonrefundable Deductions, the DB Team shall be liable for any fines assessed against GDOT.

**In addition to Nonrefundable Deductions, the DB Team shall be liable for all costs of repairs of ITS equipment.

EXHIBIT 19

GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT AFFIDAVIT

[Insert completed Form R in executed version]

EXHIBIT 20

TERMS FOR TERMINATION COMPENSATION

A. Compensation on Termination for Convenience, for GDOT Default, or for GDOT Suspension of Work

1. In the event of termination of the Agreement under Article 19.1 (Termination for Convenience) or Article 19.4 (Termination for GDOT Default or Suspension of Work), the Termination Compensation shall equal:

(i) That portion of the Contract Sum on account of (a) Work performed that has not already been paid; plus

(ii) The amount necessary to reimburse reasonable and documented out-of-pocket costs of third party and Affiliate Contractors to demobilize and terminate under Contracts between Design-Build Team and third parties or Affiliates for performance of Work, excluding Design-Build Team's non-contractual liabilities and indemnity liabilities (contractual or non-contractual) to third parties or Affiliates; plus

(iii) If termination occurs prior to Substantial Completion, Design-Build Team's own reasonable and documented out-of-pocket costs to demobilize (without duplication) and carry out termination obligations as may be directed by GDOT or required pursuant to the Agreement; minus

(iv) The sum of (i) the greater of (A) the proceeds received from insurance (including casualty insurance and business interruption insurance) that is required to be carried pursuant to Article 16.1 (Insurance Policies and Coverage) and provides coverage to pay, reimburse or provide for any of the costs and losses attributable to any Force Majeure Event, and (B) the proceeds received from insurance that is actually carried by or insuring Design-Build Team under policies solely with respect to the Project and the Work, regardless of whether required to be carried pursuant to Article 16.1 (Insurance Policies and Coverage), and that provides coverage to pay, reimburse or provide for any of the costs and losses attributable to any Force Majeure Event (exclusive of payments on account of replacement Work performed and to be reimbursed under the builder's risk insurance coverage), plus (ii) the foregoing costs and losses that Design-Build Team is deemed to have self-insured pursuant to Article 16.3.3; minus

(v) The portion of any Compensation Amounts previously paid to (or charged against) Design-Build Team that compensated Design-Build Team for Work attributable to the period after the Early Termination Date.

2. In the event of termination of the Agreement under Article 19.1 (Termination for Convenience) or Article 19.4 (Termination for GDOT Default or Suspension of Work), any such Termination Compensation shall be payable by GDOT as follows:

(i) For Termination for Convenience

(a) Termination for Convenience shall be valid and effective on the date set forth in the Notice of Termination for Convenience, which date shall not be more than three (3) months after the date the notice is delivered.

(b) GDOT shall deliver to Design-Build Team, in immediately available funds, within sixty (60) days after the Early Termination Date, the Termination Compensation due, less a holdback amount equal to GDOT's reasonable estimate of the costs Design-Build Team will thereafter incur to perform and complete its post-termination obligations under Article 19.5 (Termination Procedures and Duties), subject to Sections (ii)(b) -(d) below.

(ii) For Termination for GDOT Default or Suspension of Work

(a) If the Agreement is terminated due to Design-Build Team's exercise of its right to terminate under Article 19.4 (Termination for GDOT Default, Suspension of Work, Force Majeure Event, or Materially Delayed Notice to Proceed), termination shall be valid and effective on the date notice of termination is delivered; and, subject to Articles 19.3.2 (Compensation to DB Team) and 19.4.4, GDOT shall deliver to Design-Build Team, in immediately available funds, within sixty (60) days after the Early Termination Date, the Termination Compensation due, less a holdback amount equal to GDOT's reasonable estimate of the costs Design-Build Team will thereafter incur to perform and complete its post-termination obligations under Article 19.5. In the event that the Termination Compensation is negative, then the Design-Build Team shall deliver the Compensation Payment due to GDOT within sixty (60) days after the Early Termination Date.

(b) GDOT shall pay the holdback amount to Design-Build Team within ten (10) days after Design-Build Team completes all its post-termination obligations under Article 19.5.

(c) If as of the date GDOT tenders payment under clause (a) above the Parties have not agreed upon the amount of Termination Compensation due, then:

(i) GDOT shall proceed with such payment to Design-Build Team;

(ii) Within thirty (30) days after receiving such payment Design-Build Team shall deliver to GDOT written notice of the additional amount of Termination Compensation that Design-Build Team in good faith determines is still owing (the "disputed portion");

(iii) GDOT shall pay the disputed portion of the Termination Compensation to Design-Build Team in immediately available funds within thirty (30) days after the disputed portion is determined by settlement, final order or final judgment, and also shall pay interest thereon, at the Default Interest Rate from the Early Termination Date until paid; and

(iv) A failure by GDOT to effect payment by such date shall not entitle Design-Build Team to reinstatement of the Design-Build Team's Interest or to rescission of the termination.

(d) From and after the Early Termination Date until the Termination Compensation is finally determined and paid, the provisions of Article 19.10 (Access to Information) shall apply.

(e) If it is determined by settlement or final judgment that the Termination Compensation due from GDOT is less than the payment previously made by GDOT, then within thirty (30) days after the date of settlement or final judgment Design-Build Team shall reimburse the excess payment, together with interest thereon at the Default Interest Rate from the date of overpayment until the date of reimbursement.

(f) Any amounts to be paid by GDOT pursuant hereto shall be subject to Default Interest Rate from the date that such payment shall be due until paid.

B. Compensation on Termination for Design-Build Team Default

1. Design-Build Team shall not be entitled to receive any compensation where the Agreement is terminated by GDOT pursuant to Article 19.3 as a result of a Design-Build Team Default if it has been determined by GDOT that the damages incurred by GDOT and costs to complete the Work as a result of the Design-Build Team Default exceed the unpaid balance of the Contract Sum. In no event shall Design-Build Team be entitled to any direct costs, including demobilization, associated with a termination by GDOT pursuant to Article 19.3 (Termination for DB Team Default). In the event that the Termination Compensation is negative, then the Design-Build Team shall deliver the Compensation Payment due to GDOT within sixty (60) days after the Early Termination Date.

C. Claims

1. Notwithstanding anything to the contrary herein, Termination Compensation shall include and be adjusted on account of any outstanding Compensation Event that is independent of the event of termination and which is not otherwise resolved as of the effective date of such termination. The Parties shall adjust the Termination Compensation by the amount of the unpaid award, if any, on the Compensation Event.

2. At GDOT's sole election, it may hold back from payment of the Termination Compensation for deposit into the GDOT Claims Account the amount of any claim of GDOT against Design-Build Team not resolved prior to payment. GDOT shall provide written notice to Design-Build Team of any such election, the subject claim and the amount deposited or to be deposited, prior to or concurrently with tendering payment of the Termination Compensation.

3. If as of the date GDOT tenders payment under clause (a) above the Parties have not agreed upon the amount of Termination Compensation due, then:

(i) GDOT shall proceed with such payment to Design-Build Team;

(ii) Within thirty (30) days after receiving such payment Design-Build Team shall deliver to GDOT written notice of the additional amount of Termination Compensation that Design-Build Team in good faith determines is still owing (the "disputed portion");

(iii) GDOT shall pay the disputed portion of the Termination Compensation to Design-Build Team in immediately available funds within thirty (30) days after the disputed portion is determined by settlement, final order or final judgment, together with interest thereon at the Default Interest Rate from the later of the two dates set forth in clause (a) above until paid; and

(iv) Failure by GDOT to effect payment by such date shall not entitle Design-Build Team to reinstatement of the Design-Build Team's Interest or to rescission of the termination.

4. If it is determined by settlement or final judgment that the Termination Compensation due from GDOT is less than the payment previously made by GDOT, then within thirty (30) days after the date of settlement or final judgment Design-Build Team shall reimburse the excess payment, together with interest thereon at the Default Interest Rate from the date of overpayment until the date of reimbursement.

EXHIBIT 21

Non-Collusion Affidavit

[Insert Completed Form B In Executed Version]

EXHIBIT 22

INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

GDOT's Authorized Representative:

GDOT hereby designates the persons from time to time serving as the Commissioner of GDOT as its Authorized Representatives and such other persons as the Commissioner may from time to time designate by delivering written notice thereof to Design-Build Team. Any such designations by the Commissioner may be limited in scope and duration and may be revoked at any time by delivery of written notice thereof to Design-Build Team pursuant to Article 24.11 (Notices and Communications).

Design-Build Team's Authorized Representative:

Design-Build Team hereby designates the persons from time to time serving as the Chief Executive Officer of Design-Build Team as its Authorized Representatives and such other persons as the Chief Executive Officer may from time to time designate by delivering written notice thereof to GDOT. Any such designations by the Chief Executive Officer may be limited in scope and duration and may be revoked at any time by delivery of written notice thereof to GDOT pursuant to Article 24.11 (Notices and Communications).

EXHIBIT 23

Drug Free Workplace

[Insert completed Form T in executed version]

EXHIBIT 24

RESERVED

EXHIBIT 25

Opinion of Counsel

[Refer to Form S for appropriate format]

Georgia Department of Transportation

VOLUME 2

Technical Provisions
For

Design-Build Agreement

P.I. No. 0017389

Statewide ITS DMS Deployment Design-Build Project

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1 GENERAL

1.1 General Overview

This Section 1 provides a general description of the Project and certain requirements. Comply with all requirements set forth in the DB Documents. Ensure the Design Documents for the Project are consistent with the following:

1. Environmental Documents Approvals
2. Approved Concept Report

1.2 Administrative Requirements

1.2.1 Errata to the Technical Provisions

Interpret the Technical Provisions and GDOT standards, policies, and specifications in accordance with Volume 1, Article 1.6 (Errata to the GDOT Standard Specifications).

1.2.2 Prequalification

All Design Work must be performed by entities prequalified by GDOT in the respective discipline at the time the Design Work is performed or at any time that Design Work is needed during the construction phase because of conditions in the field.

1.3 Design Requirements

1.3.1 General Design Requirements

Adhere to the requirements of the Agreement and the Technical Provisions for the general administration and management of the Project, specifically including those provisions in Section 2 (Project Management) and Section 3 (Design and Submittals).

Coordinate with GDOT, adjacent Governmental Entities, and other third parties as appropriate to determine the design criteria, standards, and specifications of those components of Work that are constructed by the DB Team but maintained by others. For components of Work that impact or may impact the infrastructure of any Governmental Entity or third-party entity, conform to the design requirements of such entity.

1.3.2 Project Scope

Design and construct the Project as required by the DB Documents, including design, design-related activities, permitting, Utility Adjustments, construction, and related Work.

Do not rely on the physical description contained herein to identify all Project components. Determine the full scope of the Project through thorough examination of the DB Documents and the Project or as may be reasonably inferred from such examination.

The Work includes the installation of five Dynamic Messaging Sign (DMS) sites in Cobb, Cherokee, and Chatham Counties. Install the DMS sites as specified in Section 17 (Intelligent

Transportation Systems) within the Right of Way and in the areas identified in Attachment 1-1 (DMS Locations).

1.3.3 Transitions to Adjacent Infrastructure, Roadways and Facilities

Design and construct Project transitions and interconnections with adjacent infrastructure, roadway, facilities, and related appurtenances for compatibility and uniformity with all interfaces. Coordinate with Persons, including other contractors performing Work at or adjacent to the Site, to provide seamless transitions from the Project to any Work proposed, being developed, or existing. Remove any temporary transitions that are not intended to accommodate permanent traffic operations connecting the proposed improvements to existing roadways, and restore all areas within the Work or impacted by the Work. Minimize disruption to traffic operations and adjacent property access throughout the performance of the Work.

1.3.4 Cooperation Between Contractors

GDOT reserves the right at any time to contract for and perform other or additional work on or near the Work covered by the DB Agreement. The I-575 SB at CS 779/Sixes Road – Ramp Meters project (PI No. 0017435) is in development.

When separate contracts are let within the limits of any one Project, each contractor shall conduct its work so as not to interfere with or hinder the progress or completion of the Work being performed by other contractors. Contractors working within the same Project limits shall cooperate with each other.

Each contractor involved shall assume all liability, financial or otherwise, in connection with its contract and shall protect and save harmless GDOT from any and all damages or claims that may arise because of inconvenience, delay or loss experienced because of the presence and operations of other contractors working within the limits of the same Project.

The DB Team shall arrange its Work and shall place and dispose of the materials being used so as not to interfere with the operations of the other contractors within the limits of the same Project. The DB Team shall adjoin its Work with that of the others in an acceptable manner and shall perform the Work in a sequence as coordinated with the adjacent contractor.

This Section 1.3.4 applies to all the Work.