

SPECIMEN – SUBJECT TO LEGAL REVIEW

GEORGIA BUILDING AUTHORITY CONSULTING SERVICES AGREEMENT

Contract No. (Insert Contract #)

This Agreement is entered into as of the ____ day of _____ 2012, by and between the **Georgia Building Authority**, 1 Martin Luther King, Jr. Drive, Atlanta, GA 30334 (hereinafter referred to as "GBA") and (**insert company name**) ("Consultant"), with an office at (insert address).

WITNESSETH

WHEREAS GBA has the authority to make contracts and to execute all instruments necessary or convenient, as well as the authority to employ such other experts, agents and employees as may be in the GBA's judgment necessary to carry on properly the business of the GBA; and

WHEREAS the GBA is desirous of obtaining professional and expert consulting services related to (**insert project name or description**) as described in the Statement of Work attached hereto as Exhibit A and incorporated herein by reference (hereinafter referred to as the "Services"); and

WHEREAS, Consultant has the knowledge, skill, experience, diligence and ability to provide or perform the Services for the benefit of the GBA; and

WHEREAS, Consultant and GBA desire to enter into and conduct business under this Agreement as independent contractors and not as employees, agents of, partners with, or as a joint venture with each other.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, GBA and Consultant hereby agree as follows:

1. Services. Subject to the terms and conditions of this Agreement, the GBA hereby engages Consultant as an independent contractor to perform the Services identified in Exhibit A, and Consultant hereby accepts such engagement.
2. Term and Termination.
 - 2.1. [Initial Term. The "Term" of this Agreement will begin on _____ (hereinafter referred to as "Effective Date") and end as of the end of the then current fiscal year (July 1 - June 30).] **OR** [Term. The "Term" of this Agreement will begin on _____ (hereinafter referred to as "Effective Date") and continue until _____ (hereinafter referred to as "Termination Date"), unless terminated earlier under the provisions of this Agreement.]
 - 2.2. Renewals. Thereafter, the Agreement may be renewed at the sole discretion of GBA for additional Terms of up to one year each; provided however that during any such renewal Term the project is completed or the GBA determines that the Project no longer requires the Services provided by Consultant, then GBA may terminate this Agreement without further obligation by providing the termination notice as set forth below. The terms and conditions of this Agreement shall apply during any renewals of the Term.
 - 2.3. Termination.
 - 2.3.1. Termination for Convenience. GBA may at any time, and for any reason or without any reason or cause, terminate this Agreement by written notice to the Consultant specifying the termination date, without cause and irrespective of whether or not Consultant is in

default of any of its obligations hereunder. The effective date of termination shall not be earlier than seven days from the date of written notice.

2.3.2. Termination for Cause. In the event that any provisions of this Agreement are violated by the Consultant, GBA may terminate this Agreement by serving written notice to the Consultant that it is in default and specifying the termination date of the Agreement. GBA, in its sole discretion, may elect to grant a cure period, but it is not obligated to do so. In the event of such a termination, GBA shall not have any further obligation whatsoever to Consultant as of the effective date of the termination. In addition to the basis for termination set forth previously, GBA may terminate this Agreement, in whole or in part, immediately, without notice, if: (a) GBA deems that such termination is necessary to prevent or protect against fraud or otherwise protect the health, life, or property of GBA, the State of Georgia or the general public; or (b) Consultant is convicted of any crime or offense, fails or refuses to comply with the written policies or reasonable directives of the GBA, is guilty of serious misconduct in connection with performance hereunder, or breaches any material provisions of this Agreement.

2.3.3. Termination by Consultant. Consultant may terminate this Agreement, with or without cause, upon 30 days written notice to GBA.

3. Fees. [GBA shall pay the Consultant a Fixed Fee of \$____. for completion of the Services contemplated under this Agreement in accordance with the terms below.] **OR** [GBA shall pay the Consultant at the rate of \$____. per _____, for Services performed under this Agreement in accordance with the terms below.]

3.1. Reimbursable Expenses. [During the term of this Agreement, the Consultant shall bill and the GBA shall reimburse Consultant for reasonable and ordinary pre-approved [**Optional:** non-travel related] out-of-pocket expenses which are incurred in connection with the performance of the Services hereunder, as long as GBA's prior approval is obtained prior to incurring the expense. GBA will not make reimbursement for expenses that are not pre-approved by GBA. Transportation, living expenses, reproduction costs, courier services, and long distance telephone charges shall not be reimbursable unless expressly approved in advance in writing by GBA. If reimbursable travel expenses are approved in advance in writing by GBA, such reimbursable expenses will be paid in accordance with the State travel regulations issued by the State Auditor, a copy of which is available at: <http://www.audits.state.ga.us/internet/nalgad/trvlpg.html> and are incorporated herein by reference and made a part of this Agreement.] **OR** [Consultant will be reimbursed for travel necessary to perform the Services requested in this Agreement in accordance with the State and GBA travel policies, procedures and prevailing per diem rates which may be found at: <http://www.audits.state.ga.us/internet/nalgad/trvlpg.html> and are incorporated herein by reference and made a part of this Agreement. Consultant shall provide receipts or other proof of actual cost incurred prior to receiving reimbursement.] **OR** [**Optional:** No expenses shall be reimbursed.]

3.2. Payments. Payments shall be made as follows:

3.2.1. Invoices. Compensation for services shall be based upon an invoice submitted to GBA for payment that corresponds to the percentage of completion of the Services. Invoices for fees for Services shall be submitted to GBA for payment. Payments to Consultant will normally be made within thirty (30) days of receipt by GBA of a complete and proper invoice.

3.2.2. Complete Services. Final payment for Services shall not be due and payable until the GBA has accepted and approved the Services as complete.

3.3. Maximum Amount Payable for Fees. Payment for the completion of Services contemplated under this Agreement shall not exceed (**insert amount**) (the "Not-to Exceed Amount"). In no

event shall GBA be liable for fees or reimbursements in excess of the Not-to-Exceed Amount, without approval of a formal amendment to this agreement duly executed and by an authorized GBA representative.

4. Independent Contractor. Both GBA and Consultant agree that Consultant will act as an independent contractor in the performance of Services under this Agreement. Accordingly, Consultant shall be responsible for payment of all taxes including Federal, State and local taxes arising out of Consultant's activities in accordance with this Agreement, including by way of illustration but not limited to: Federal and State income tax, Social Security tax, Unemployment Insurance taxes, and any other taxes or business license fees as required. Consultant acknowledges and agrees that GBA shall not be responsible for providing workers compensation coverage on Consultant and that any injury or any nature that may occur in the performance of services under this Agreement.
5. Warranty. Consultant hereby expressly warrants that the Services to be performed hereunder will be performed in a workmanlike manner, that all work assigned will be performed in a manner consistent with that level of care and skill ordinarily exercised by other providers of similar services under similar circumstances at the time Services are provided, and that Consultant shall comply with GBA's reasonable confidentiality and security requirements while on GBA's premises. In addition, Consultant represents and warrants that the Services will not violate or in any way infringe upon the rights of third parties, including proprietary information and non-disclosure rights, or any Intellectual Property rights. As used herein, "Intellectual Property" shall mean any and all know-how, inventions, patents, copyrights, models, designs, trademarks, trade dress, trade secrets, test results, knowledge, techniques, discoveries, regulatory filings, or other information (whether or not patentable and whether or not in tangible or intangible form), and any other industrial or proprietary rights, and any documentation relating thereto, and any and all applications for any of the foregoing, whether or not registered as of the Effective Date or at any later date..
6. Ownership, Copyright, License and Assignment. All work product, information data, or documents produced hereunder by the Consultant and his subconsultants shall be delivered to GBA, and title thereto shall vest in GBA regardless of the stage to which the development of the study may have progressed. In addition, the Consultant hereby expressly assigns, transfers and otherwise quitclaims to the GBA, its heirs and assigns forever, all right, title and interest, including all copyrights and all termination/renewal rights in such copyrights and all causes of action accruing under such copyrights, in all studies, study calculations, drawings, specifications, other data, embodiments of such studies, documents or other works of authorship produced hereunder by the Consultant, his employees, and his subconsultants. The Consultant further warrants that this transfer of copyrights and other rights is valid against the world. Finally, reproducible copies of all work products and other technical data shall be furnished to the GBA without cost whether the work for which they are made be executed or not. The Consultant may make and retain for its use such additional copies as it may desire.
7. Confidentiality. The Consultant acknowledges that during the engagement he or she will have access to and become acquainted with various trade secrets, inventions, innovations, processes, information, records and specifications owned or licensed by the State of Georgia, including any of its individual departments, agencies and instrumentalities; the GBA; and/or used by the GBA or its contractors and agents in connection with the operation of its business including, without limitation, the GBA's business and product processes, methods, customer lists, accounts and procedures. The Consultant agrees that he or she will not disclose any of the aforesaid, directly or indirectly, or use any of them in any manner, during the term of this Agreement or at any time thereafter, except as required in the course of this engagement with the GBA. All files, records, documents, blueprints, specifications, information, letters, notes, media lists, original artwork/creative, notebooks, and similar items relating to the business of the GBA, whether prepared by the Consultant or otherwise coming into his possession, shall remain the exclusive property of the GBA. The Consultant shall not retain any copies of the foregoing without the GBA's prior written permission. Upon the expiration or earlier termination of this Agreement, or whenever requested by the GBA, the Consultant shall immediately deliver to the GBA all such files, records, documents, specifications, information, and other items in his possession or under his control. The Consultant further agrees to not disclose the contents and

terms of this Agreement or the fact of this engagement as an independent contractor to any person without the prior written consent of the GBA and shall at all times preserve the confidential nature of his relationship to the GBA and of the Services hereunder.

8. Insurance.

8.1. Liability Insurance. Within ten days after execution of this Contract and during the entire period of the contract, the Consultant shall maintain professional liability insurance (errors and omissions insurance) applicable to the Services being performed. If there is no professional liability insurance product applicable to the services, the Consultant shall maintain a commercial general liability policy covering his Services. The Consultant shall file with the GBA a certificate of insurance from an insurance company licensed to do business in the State of Georgia showing evidence of such professional or commercial general liability insurance in limits of not less than \$1,000,000 per occurrence. Any deductibles and self-insurance retention may not be greater than \$50,000.

8.2. Workers Compensation Insurance. Within ten days after execution of this Contract and during the entire period of the contract, the Consultant shall maintain Workers Compensation insurance in the statutory amounts required. The Consultant shall file with the GBA a certificate of insurance from an insurance company licensed to do business in the State of Georgia showing evidence of workers compensation insurance meeting statutory requirements.

9. Indemnification.

9.1. Consultant hereby waives, releases, relinquishes, discharges and agrees to indemnify, protect and save harmless the State of Georgia, the GBA and their officers and employees (hereinafter collectively referred to as "Indemnitees"), of and from any and all claims, demands, liabilities, losses, costs or expenses, including attorneys' fees, for any loss or damage for bodily injury, property damage and attorney's fees related thereto caused by, growing out of, or otherwise happening in connection with this Agreement, due to any act or omission on the part of Consultant, its agents, employees, subcontractors, or others working at the direction or on behalf of Consultant. This indemnification applies notwithstanding the fact that third parties or any of the Indemnitees may be partially responsible for the events giving rise to the claim; or the claim results in a monetary obligation that exceeds any contractual commitment. However, if any of the Indemnitees or third parties are partially responsible for the events giving rise to the claim, Consultant's indemnification hereunder shall apply only to the extent that Consultant contributed to the events.

9.2. Consultant hereby waives, releases, relinquishes, discharges and agrees to indemnify, protect and save harmless the Indemnitees, of and from any and all claims, demands, liabilities, losses, costs or expenses, including attorneys' fees, made by any third party alleging that any Equipment or Services as provided by Consultant infringes a third party's Intellectual Property rights. Consultant shall be under no obligation to defend or indemnify the Indemnitees as set forth in this Section to the extent that such third party claim, suit, or other demand arises out of or relates to: (i) Consultant's compliance with GBA's written directions or specifications; (ii) a modification of the Services and/or Deliverables that is inconsistent with the terms of this Agreement; or (iii) information, data, or other content not provided by Consultant. With respect to any pending or threatened claim, suit or other demand as to which Consultant is the indemnifying party, Consultant shall obtain for GBA the right to continue using the Services and/or Deliverables or alternatively replace or modify the Services and/or Deliverables so that they are functionally equivalent but non-infringing.

9.3. If and to the extent such damage or loss as covered by this Indemnification provision is covered by the State of Georgia Tort Claims Fund (the "Fund"), Consultant agrees to reimburse the Fund. To the full extent permitted by the Constitution and the laws of the State of Georgia and the terms of the Fund, Consultant and its insured (if any) waive any right of subrogation against the State of

Georgia, the Indemnitees and the Fund and insurers participating hereunder, to the full extent of this indemnification.

9.4. Consultant shall, at its expense, be entitled to and shall have the duty to participate in the defense of any suit against the Indemnitees. No settlement or compromise of any claim, loss or damage entered into by Indemnitees shall be binding upon Consultant unless approved in writing by Consultant. No settlement or compromise of any claim, loss or damage entered into by Consultant shall be binding upon Indemnitees unless approved in writing by Indemnitees.

9.5. Consultant's obligation to indemnify any Indemnitee will survive the expiration or termination of this Agreement by either party for any reason.

10. Drug-Free Work Place.

10.1. If Consultant is an individual, he or she hereby certifies that he or she will not engage in the unlawful sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Agreement.

10.2. If Consultant is an entity other than an individual, it hereby certifies that a drug free work place will be provided for the Consultant's employees during the Term of this Agreement; and that Consultant's agents, employees, subcontractors, or others working at the direction or on behalf of Consultant shall not engage in the unlawful sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Agreement.

10.3. Consultant or this Agreement may be suspended, terminated, or debarred without further obligation on behalf of the GBA, if it is determined that:

10.3.1. Consultant has made false certification hereinabove.

10.3.2. Consultant has violated such certification by failure to carry out the requirements of Official Code of Georgia Annotated Section 50-24-3.

11. Vendor Lobbyist Certification. Consultant hereby certifies that, as of the Effective Date of this Agreement, any lobbyist employed by Consultant has registered with the Georgia State Ethics Commission and applicable laws. This Agreement may be declared void at GBA's sole discretion, if it is determined that Consultant has made false certification hereinabove or has violated any applicable laws governing the use or registration of lobbyists.

12. "Illegal Immigration Reform and Enforcement Act of 2011. Contractor certifies its compliance with Illegal Immigration Reform and Enforcement Act of 2011 and specifically those provisions codified at O.C.G.A. §13-10-90 et. seq. Contractor warrants that it has registered with and uses the federal work authorization program commonly known as "E-Verify." Contractor further agrees that it will contract for the physical performance of services in satisfaction of this contract only with subcontractors who present an affidavit as required by O.C.G.A. §13-10-91. Contractor warrants that it will include a similar provision in all contracts entered into with subcontractors for the physical performance of services in satisfaction of this contract."

13. Notices. All notices, requests, or other communications (excluding invoices) hereunder shall be in writing and either transmitted via overnight courier, electronic mail, hand delivery or certified or registered mail, postage prepaid and return receipt requested to the parties at the following addresses. Notices will be deemed to have been given when received.

To GBA	To Consultant
Georgia Building Authority	
1 Martin Luther King, Jr. Drive, SW	
Atlanta, GA 30334	
Attn: Rey Palma	

14. Waiver and Severability. The waiver by either party of any breach of any provision contained in this Agreement shall not be deemed to be a waiver of such provision on any subsequent breach of the same or any other provision contained in this Agreement. Any such waiver must be in writing in order to be effective, and no such waiver or waivers shall serve to establish a course of performance between the parties contradictory to the terms hereof. All provisions of this Agreement are severable, and the unenforceability or invalidity of any of the provisions will not affect the validity or enforceability of the remaining provisions. The remaining provisions will be construed in such a manner as to carry out the full intention of the parties. Section titles or references used in this Agreement have no substantive meaning or content and are not a part of this Agreement.
15. Assignment. Consultant shall not assign any of his rights under this Agreement, or delegate the performance of any of his duties hereunder, without the prior written consent of the GBA.
16. Applicable Law and Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Georgia, without regard to its conflict of laws principles. Any lawsuit or other action based on a claim arising from this Agreement shall be brought in the Superior Court of Fulton County, Georgia.
17. Entire Agreement. This Agreement, including all Exhibits and documents incorporated hereunder, constitutes the entire agreement between the parties with respect to the subject matter and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. No amendment to this Agreement shall be valid unless made in a writing of equal dignity and signed by both parties. No representation, request, instruction, directive or order, made or given by any official of GBA or of any agency of the State of Georgia, whether verbal or written, shall be effective to amend this Agreement or excuse or modify performance hereunder unless reduced to a formal amendment and executed as set forth above.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date set forth above.

CONSULTANT: (Insert Company Name)

GEORGIA BUILDING AUTHORITY

By: _____

By: _____

Name: _____

Name: Steven L. Stancil

Title: _____

Title: Executive Director

Date: _____

Date: _____

EXHIBIT A
Scope of Services

Contract No. 900-XX-XXX

The GBA Representative for this Contract is: _____. Only the Representative named above may delegate the coordination and communication of this Contract with the Consultant to another individual or individuals.

Consulting services - The Consultant shall provide the services as further described in **Proposal of Consultant, dated _____, (attached herewith as Exhibit "A-1")**: