

SPECIMEN – SUBJECT TO LEGAL REVIEW

**AGREEMENT (Maintenance or Service)
BY AND BETWEEN THE
GEORGIA BUILDING AUTHORITY
AND
{VENDOR NAME}
CONTRACT #**

THIS AGREEMENT is made the _____ day of _____ 2011, with said date being inserted by the Authority at the time of execution, by and between the GEORGIA BUILDING AUTHORITY, a public corporation and instrumentality of the State of Georgia, (hereinafter, called the “Authority”), with a place of business at 1 Martin Luther King, Jr. Drive, SW, Atlanta, Georgia 30334 and {VENDOR NAME}, a corporation duly authorized by law to transact business in the State of Georgia (hereinafter, called the “Contractor”), whose mailing address is {VENDOR ADDRESS}.

WITNESSETH:

WHEREAS, the Authority is authorized to enter into such contracts and execute all instruments necessary or convenient with respect to the use of projects which it causes to be erected and acquired and to operate and manage projects on property owned or leased by the Authority; and

WHEREAS, Contractor is willing and able to perform the work set forth below and in accordance with the terms and conditions herein; and

WHEREAS, Authority is willing to compensate Contractor for the full and faithful performance of the work in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of these premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. SCOPE OF SERVICES

Contractor shall supply all labor, materials, and supporting equipment necessary to {insert description of work to be performed}.

2. CONTRACT SUM

For the full and faithful performance of the work set forth herein, Authority shall pay Contractor the amount of {Proposal or bid amount, written and numbers}, which rate shall remain fixed for the term of this Agreement.

3. PAYMENT

Contractor shall submit **monthly** invoices to the Authority for services performed under this Contract. Any and all cost or fees charged by Contractor on an invoice shall conform to the rates, specifications, and requirements of the Contractor’s Cost Proposal and this Contract. Subject to Authority’s approval of any invoices, Authority shall make payment within thirty (30) days of receipt of invoice.

4. QUALITY OF WORK AND MATERIALS USED/INSPECTION OF WORK

All work performed pursuant to this Contract shall be performed in accordance with all requirements described in the Contractor's proposal dated [proposal date], (See Attachment A), and all work will be performed in a workman-like manner consistent with that level of care and skill ordinarily exercised by other providers of similar services under similar circumstances at the time the services are provided. Authority or its authorized representative shall have the right to inspect, monitor, or otherwise evaluate the quality of materials used, the progress of any task(s), or any other factor relating to the performance of obligations under this Contract. Such right of inspection shall extend to any location, including the premises of Contractor where any obligations of this contract are being performed. Contractor shall cooperate with facility inspections.

5. RISK OF LOSS/PERSONAL PROPERTY

- A. Contractor shall bear all risk of loss for equipment, supplies, and tools that are provided by Contractor for use in performing services hereunder, including any and all equipment, supplies, and tools used and stored on the premises of the Authority. Contractor shall not bring any tools, supplies, equipment, or other property onto premises of Authority without prior written approval by the Authority.
- B. Authority may, from time to time, provide Contractor with certain equipment, supplies, or tools for the Contractor's use in connection with Contractor's performance of services under this Contract. Contractor agrees to be responsible for safekeeping of such equipment, supplies, and tools provided by the Authority. The Authority will be responsible for routine maintenance of equipment supplied to the Contractor. The Contractor is responsible for repair and/or replacement of equipment, which is a result of loss or damage by the Contractor or its employees.

6. CONTRACTOR PERSONNEL, STAFFING, AND STAFF QUALIFICATIONS

- A. Contractor represents that all persons or entities assigned by it to perform work under this Contract shall be employees of the Contractor and shall be fully qualified and hold all required licenses and/or certifications to perform the work required herein.
- B. Contractor shall remove an employee (or any person working on behalf of the Contractor) upon notice that such person does not meet the requirements of the Contract or upon notice the Authority does not want such person (with or without cause) working on the Authority premises. In the event of removal of such persons, Contractor will cover such removed person's duties with appropriate personnel until an approved full time replacement can be hired. Contractor will have ten (10) days from date of removal to find an approved full time replacement.

7. IDENTIFICATION BADGES

The Consultant agrees for itself and on behalf of employees, subcontractors or others performing work hereunder to be bound by security measures prescribed by the Authority for the protection of persons and property in the vicinity of the work. All such personnel shall be subject to background investigation, for a fee of twenty dollars (\$20.00) each, and agree to wear contractor building access cards at all times while on the premises. Building Access Cards are available upon application and are valid for the time of the project completion up to a maximum of one year or until the completion or termination of the Agreement, and must be obtained prior to commencement of the work (allow three to five days to process) and returned upon termination or expiration of the Agreement. Should the work exceed one year, Consultant shall renew badges. The fee to renew an ID Badge after the project completion date or maximum date of one year expiration shall be twenty dollars (\$20.00). There is a \$50.00 fee for lost badge replacement, and the Consultant agrees that such fees may be deducted from the amount due the Consultant hereunder.

8. STAFFING AND MATERIAL REQUIREMENTS

Should Contractor at any time 1) refuse or neglect to supply adequate and competent supervision or sufficient properly-skilled personnel and/or equipment and materials of the proper quality or quantity, or 2) fail in the performance of any agreement on its part contained in this Contract, Authority may (in addition to any other contractual, legal, or equitable remedies) proceed to take any one or more of the following actions after five (5) days written notice to Contractor:

- A. Withhold any monies then or next due to Contractor; or
- B. Obtain the Services (or an equivalent to the Services) from a third party, pay the third party for same, and withhold the amount so paid from any money then or thereafter due to Contractor; or
- C. Withhold monies in the amount of any damages caused by deficiency and delay in the Services.

9. COMPLIANCE WITH HEALTH, SAFETY, AND SECURITY STANDARDS

In performing work assigned under this contract, Contractor shall comply with and conform to any and all applicable health, safety, and security standards established by the following:

- A. Laws, regulations, and rules of any entity with governing or regulating authority, related to the performance work under this contract, including but not limited to applicable professional industrial or licensing authorities.
- B. Requirement or policies of the Authority.

10. NO ASSIGNMENT, DELEGATION, OR SUBCONTRACT WITHOUT CONSENT

Contractor shall not delegate, subcontract, assign, or otherwise permit anyone other than Contractor personnel to perform any of the Services required of Contractor under this Contract, or assign any of its rights or obligations hereunder without the prior written consent of the Authority, which consent may be withheld by the Authority in its sole discretion. Any transfer and/or delegation in violation of this provision will automatically render this Contract null and void.

11. TERM {select one}

This agreement shall commence on _____, and shall terminate and end automatically on _____, subject to renewal and/or extension appearing herein below. Any extension will be presented in writing by the Authority no later than thirty (30) days prior to the expiration of the Agreement.

This agreement shall commence on _____, and shall terminate and end automatically on _____, subject to renewal and/or extension appearing herein below. Any extension request must be presented in writing by the Contractor no later than thirty (30) days prior to the expiration of the Agreement.

12. EXTENSION

No Extension. (If agreement contains extension leave next sentence in, if not delete) Contractor waives all succeeding opportunities for renewal by terminating any one renewal period.

13. CONTRACTOR RECORD KEEPING AND ACCOUNTING REQUIREMENTS

Contractor shall maintain books, records, documents, and other evidence pertaining to fees paid to Contractor under this Contract (collectively "Records"). Contractor agrees to make available, at all reasonable times, during the term of this Contract plus an additional three (3) years thereafter, any and all records relating to

this Contract, for inspection or audit by any authorized representative of the Authority or the Georgia State Auditor. Records which relate to any claim, litigation, or appeal process arising out of the performance of this Contract shall be retained by the Contractor until the final disposition of such claim, litigation, or appeal process.

14. CONTRACTOR'S OBLIGATION TO MAINTAIN CONFIDENTIALITY

Contractor acknowledges that some material and information, which may come into its possession or knowledge in connection with this Contract or the performance hereof, may consist of confidential and private information, the disclosure of which to or use by third parties may be damaging. Contractor therefore agrees to hold such material and information in strictest confidence, not to make use thereof other than as is necessary for performance of this Contract, and not to release or disclose any information to any other party except as may be required by law. Contractor hereby expressly agrees to immediately remove any of the Contractor's employees from performing any work in connection with this Contract upon the Authority giving notice to Contractor that the Authority reasonably believes such person has failed to meet the confidentiality obligations or standards of this Contract. Any employee so removed shall be replaced as provided under the staffing requirements of paragraph 6 of this Contract.

15. TERMINATION

- A. The Authority may at any time, and for any reason or for convenience, immediately terminate this contract by providing written notice to the Contractor. In the event that the written notice of Termination pursuant to this section states that termination is for the convenience of the Authority, Contractor shall be entitled to payment for 1) the reasonable unamortized cost of equipment and materials incurred through the date of the notice of termination (not the effective date of termination) and 2) charges for services properly rendered to the Authority through the effective date of termination.
- B. In the event the Contractor breaches any material term or condition of the Contract or any other event occurs which demonstrates a reasonable likelihood that the Contractor is unable or unwilling to fulfill its obligations under this contract, Authority shall terminate this contract by providing the Contractor with written notice. Contractor may avoid termination of the Contract pursuant to this subparagraph (B) by curing, to satisfaction of the Authority, the breach identified in the written notice within the period provided, however, opportunities to cure shall be limited to **two (2)** cure opportunities during the **fiscal year or term of the contract. {select one}**
- C. This contract may be immediately terminated by the Authority in the event that any of the following occurs:
 - 1. Contractor becomes insolvent or liquidation or dissolution of the Contractor begins; a voluntary or involuntary bankruptcy petition is filed by or against Contractor under the U.S. Bankruptcy Code or any similar petition under any state insolvency law; an assignment is made by Contractor for the benefit of creditors; or a proceeding for the appointment of a receiver, custodian, trustee, or similar agent is initiated with respect to Contractor.
 - 2. Contractor or any person acting on behalf of Contractor has committed an act of fraud or any illegal act.
 - 3. Contractor or any person acting on behalf of the Contractor misappropriates funds.
 - 4. Consideration of the circumstances of the breach or the consequences of the breach as to security and other critical aspects of operations necessitate the removal of Contractor from the Authority's premises.
- D. All records in the possession, custody, or control of Contractor as they relate to the services provided under this Contract are the property of the Authority and will be returned to the Authority at no cost within thirty (30) days of termination or expiration of this Contract.
- E. Contractor may terminate the contract with thirty (30) days written notice to the Authority.

16. COMPLIANCE WITH ALL LAWS, RULES AND REGULATIONS

Contractor shall comply with all applicable state, federal, and local laws, rules, and regulations.

17. INSURANCE

Contractor shall procure and maintain in full force and effect at all times during the term of this Agreement, through a self-insurance program or an insurance policy consistent with paragraph 17A: commercial general liability insurance, on an "occurrence basis" insuring against all liability and property damage of the Authority and Contractor and their members, officers, employees, and agents arising from or in connection with the use or occupancy of the Premises by Contractor, its agents, employees, or others working at the direction of Contractor or on its behalf during the Contract Term, with liability limits of One Million Dollars (\$1,000,000.00) per occurrence and of Two Million Dollars (\$2,000,000.00) in the general aggregate. Each policy also specifically shall insure performance of Contractor's obligation to indemnify the Authority pursuant to the paragraph 18 of this Agreement. A statement of policy limits herein shall not limit Contractor's liability under this Agreement.

A. General Requirements for Insurance Policies

Contractor shall pay the cost of all insurance coverage which Contractor is required to produce and maintain under this Agreement. Except where Contractor is self-insured, each insurance policy shall: a) be issued by an insurer with a current Best Policyholder's Rating of "A" or better and with a financial six rating of class "XI" or larger by A. M. Best Company, Inc.; b) state that notice of any claim against the Authority shall be deemed to have occurred only when an officer of the Authority has received actual notice, and has actual knowledge of the claim; c) not be subject to invalidation as to the Authority by reason of any act or omission of Contractor or any of Contractor's officers, employees or agents; and d) not be subject to invalidation as to the Contractor by reason of any act or omission of the Authority or any of the Authority's officers, employees or agents. Each policy required by this Agreement shall also contain a provision permitting the Contractor to waive all rights of recovery and claims by way of subrogation.

Contractor waives, during the term of this Agreement and for Contractor and Contractor's officers, employees, and agents, any and all rights of recovery and claims against the Authority, Authority's officers, members, employees, and agents to the full extent that indemnification is due under the insurance policies required by this Agreement and in which Authority is an insured. Contractor shall not produce or maintain in force any insurance policy, which might have the effect of reducing the loss payable under any of the policies required by this Agreement. Immediately upon execution of this Agreement, Contractor shall deliver a certificate of such insurance to Authority, together with evidence reasonably satisfactory to the Authority that the premiums have been paid for a period at least covering the Agreement Term.

B. Insurance Certificate

The insurance certificate must document that the liability insurance coverage purchased by the Contractor includes contractual liability coverage to protect the State. In addition, the insurance certificate must provide the following information:

1. Name and address of the authorized agent,
2. Name and address of insured,
3. Name of insurance company (licensed to operate in Georgia),
4. Description of coverage in standard terminology,
5. Policy period,
6. Limits of liability,
7. Name and address of certificate holder,
8. Acknowledgement of notice of cancellation to the State,
9. Signature of authorized agent,
10. Telephone number of authorized agent,
11. Details of policy exclusions in comments section of Insurance Certificate.

The foregoing policies shall contain a provision that coverage afforded under the policies will not be cancelled, or not renewed or allowed to lapse for any reason until at least thirty (30) days prior written notice has been given to the Authority. Certificates of Insurance showing such coverage to be in force shall be filed with the Authority prior to commencement of any work under this Contract. The foregoing policies shall be obtained from insurance companies licensed to do business in Georgia and shall be with companies acceptable to the Authority. Contractor shall indemnify and save harmless the Authority from any liability arising out of Contractor's untimely failure in securing adequate insurance coverage as prescribed herein. All such coverage shall remain in full force and effect during the initial term of the Contract and any renewal or extension thereof.

18. INDEMNIFICATION

Contractor hereby waives, releases, relinquishes, discharges, and agrees to indemnify, protect, and save harmless the State of Georgia (including the State Tort Claims Fund), the Authority, their officers and employees (collectively "Indemnities") of and from any and all claims, demands, liabilities, loss, costs, or expenses for any loss or damage for bodily injury (including but not limited to death), personal injury, property damage, and attorneys fees caused by any negligent act or omission or willful misconduct on the part of the Contractor, its agents, employees, subcontractors, or others working at the direction of the Contractor or on Contractor's behalf or caused by the breach of this Contract by Contractor (collectively, the "Indemnity Claims"). Contractor shall, at its expense, be entitled to and shall have the duty to participate in the defense of any suit against the Indemnities. No settlement or compromise of any claims, loss, or damage asserted against Contractor shall be binding on Contractor unless expressly approved by Contractor. No settlement or compromise of any claim, loss, or damage asserted against Indemnities shall be binding on Indemnities unless expressly approved by the Indemnities.

If and to the extent such damage or loss as covered by this indemnification is covered by State Tort Claims Fund or any other self-insurance funds maintained by the Department of Administrative Services (collectively, the "Funds"), the Contractor agrees to reimburse the Funds for such Funds paid out by the Funds. To the full extent permitted by the Constitution and the laws of the State of Georgia and the terms of the Funds, the Contractor and its insurers waive any right of subrogation against the State of Georgia, the Indemnities, and the Funds and insurers participating thereunder, to the full extent of this indemnification.

Contractor shall cover this indemnification through the purchase of the insurance policies required by this Contract, with endorsements waiving rights of subrogation against the State, the Indemnities, the Funds and insurers participating thereunder.

This indemnification extends to the successors and assigns of the Contractor, and this indemnification and release survives the termination of this Contract and the dissolution or, to the extent allowed by law, the bankruptcy of the Contractor.

19 IMMIGRATION REFORM COMPLIANCE.

"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."

20. DRUG-FREE WORKPLACE

Contractor hereby certifies as follows:

- A. Contractor will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, use of a possession, or use of a controlled substance or marijuana during the performance of this Contract,
- B. If Contractor has more than one employee, including Contractor, Contractor shall provide for such employees a drug-free work place, as defined under Official Code of Georgia Annotated (“OCGA”)- Section 50-24-3(b), throughout the duration of this Contract.
- C. Contractor may be suspended, terminated, or debarred if it is determined that:
 - 1. Contractor has made false certification hereinabove: or
 - 2. Contractor has violated such certification by failure to carry out the requirements of Official Code of Georgia Section 50-24-3.

21. TAXES

Contractor will timely pay all taxes lawfully imposed upon Contractor with respect to this Contract. The Authority makes no representation whatsoever regarding any tax liability of Contractor, nor regarding any exemption from tax liability related to this Contract.

22. INCORPORATION OF DOCUMENTS

Contractor’s Proposal, and any amendments thereto including any best and final offer, are incorporated into this Contract by reference and form an integral part of this Contract. If there is a conflict in language between this Contract and the foregoing documents incorporated herein, the language of this Contract shall govern.

23. NONEXCLUSIVE CONTRACT

This Contract is entered into solely for the convenience of the Authority and in no way precludes the Authority from obtaining like services or related goods from other Contractors for other locations. Except as expressly authorized in this Contract, Contractor shall not procure services or goods from other Contractors without the prior express written approval of the Authority. Such approval shall be within the sole discretion of the Authority and shall only be granted when it is deemed to be in the best interest of the State to do so. The determination of the Authority with regard to such approval shall be conclusive.

24. TRADING WITH STATE EMPLOYEES

The parties certify that this Contract does not and will not violate the provisions of Official Code of Georgia Annotated § 45-10-20 et seq. in any respect.

25. RELATIONSHIP OF THE PARTIES

Contractor expressly acknowledges and agrees that Contractor shall perform all work under this Contract as an independent contractor. Contractor shall be responsible for compliance with all laws, rules, and regulations involving Contractor’s agents, servants, employees, and subcontractors, including but not limited to employment labor, health and safety, working conditions, workers’ compensation insurance and payment of wages. Neither Contractor nor any of Contractor’s agents, servants, or employees shall become or be deemed to become agents, servants, or employees of the Authority or the State, and this Contract shall not be

construed so as to create a partnership or joint venture between Contractor and the State Of Georgia or any of its agencies.

26. NOTICES

Except as otherwise provided herein, all notices under this Contract shall be deemed duly given upon delivery, if delivery by hand (against receipt); three (3) days after posting, if sent by U.S. Mail, to a person and address designated below, or to such other person or address as a party may designate by notice pursuant hereto.

Authority:
Rey Palma, Purchasing Manager
Georgia Building Authority
1 Martin Luther King, Jr. Drive
Atlanta, GA 30334

Contractor:

27. SEVERABILITY

Any section, subsection, paragraph, term, condition, provision, or other part of this Contract which is judged, held, found or declared to be voidable, void, invalid, illegal or otherwise not fully enforceable shall not affect any other section, subsection, paragraph, term, condition, provision, or part of this Contract, and the remainder of this Contract shall continue to be of full force and effect. Any agreement of the parties to amend, modify, eliminate or otherwise change any section, subsection, paragraph, term, condition, provision, or other part of this Contract shall not affect any other section, subsection, paragraph, term, condition, provision, or part of this Contract and the remainder of this Contract shall continue to be of full force and effect.

28. AUTHORITY

Each party has full power and authority to enter into and perform this Contract. The person signing on behalf of each party is duly authorized and fully empowered to enter into this Contract on behalf of such party.

29. PARTIES BOUND

This Contract shall be binding on and inure to the benefit of the parties to this Contract and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

30. PUBLICITY

Contractor shall not prepare or disseminate any publicity relating to this Contract or the Services performed without express written consent of the Authority. As used in this Section, the term "publicity" includes, but is not limited to, advertisements, flyers, public announcements, pamphlets, press releases, reports, books, broadcasts, signs, and similar public information. However, Contractor may refer to this Contract in proposals for other contracts without the Authority approval.

31. SURVIVAL OF REPRESENTATIONS

All terms, conditions, representations, warranties, guaranties, assurances, and other provisions of this Contract shall survive the delivery of all the Services procured hereunder and any payment thereof.

32. TIME OF THE ESSENCE

Time is of the essence in this Contract. Any reference to “days” shall be calendar day unless specified as “business day.”

33. CHOICE OF LAW AND VENUE

This Contract shall be governed in all respects by the Laws of the State of Georgia. Any lawsuit or other action based on claims arising from this Contract shall be brought in a court or the forum of competent jurisdiction in Fulton County, in the State of Georgia.

34. AMENDMENTS IN WRITING

No amendment to this Contract shall be effective unless it is in writing and signed by duly authorized representatives of the parties. **NO REPRESENTATION, REQUEST, INSTRUCTION, DIRECTIVE OR ORDER, MADE OR GIVEN BY ANY OFFICIAL OF ANY AGENCY OF THE STATE OF GEORGIA, WHETHER VERBAL OR WRITTEN SHALL BE EFFECTIVE TO AMEND THIS CONTRACT OR EXCUSE OR MODIFY PERFORMANCE HEREUNDER UNLESS REDUCED TO A FORMAL AMENDMENT AND EXECUTED AS SET FORTH ABOVE. CONTRACTOR SHALL NOT BE ENTITLED TO ADDITIONAL COMPENSATION, DELAY IN PERFORMANCE, OR OTHER BENEFIT CLAIMED FOR RELYING UPON OR RESPONDING TO ANY SUCH REPRESENTATION, REQUEST, INSTRUCTION, DIRECTIVE, OR ORDER.**

35. ENTIRE CONTRACT

This Contract, including all documents incorporated herein, constitutes the entire agreement between the parties with respect to the subject matter; hereby superseding all other prior and contemporaneous agreements, representations, statements, negotiations, and undertakings whether oral or written.

THE PARTIES HERETO ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THIS CONTRACT AND AGREE TO BE BOUND BY ALL TERMS, CONDITIONS, AND PROVISIONS OF THIS CONTRACT, AS INDICATED BY THEIR SIGNING OF THIS CONTRACT ON THE DATE(S) SET OUT BELOW.

GEORGIA BUILDING AUTHORITY

CONTRACTOR

Steven L. Stancil. Executive Director

Printed Name: _____

Title: _____

By: _____
(Signature)

By: _____
(Signature)

Date: _____

Date: _____

Witness: _____
(Signature)

Witness: _____
(Signature)