

SPECIMEN – SUBJECT TO LEGAL REVIEW

PROFESSIONAL SERVICES AGREEMENT

By and Between

THE GEORGIA BUILDING AUTHORITY

and

{INSERT VENDOR NAME}

CONTRACT #

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter referred to as “Agreement”) entered into this ____ day of _____, 2012, by and between the **GEORGIA BUILDING AUTHORITY**, (hereinafter referred to as the “Authority” or “Owner”) whose address is 1 Martin Luther King, Jr. Drive, Atlanta, Georgia 30334; and **{INSERT VENDOR NAME}**, (hereinafter referred to as “Consultant”) whose address is {Insert address}.

WITNESSETH:

WHEREAS, the Authority is authorized to enter into 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, in accordance with OCGA § 50-22-7(d), state agencies, including the GBA, are exempt from the public notice requirement or utilization of the selection process defined in Chapter 22 of Title 50, when the state agency or authority estimates the costs of professional services for a predesign phase of a project to be \$75,000 or less; and

WHEREAS, the Authority requires professional services for **INSERT NAME OF PROJECT** ; and

WHEREAS, the Consultant is qualified and desires to perform the professional services for **INSERT BRIEF DESCRIPTION OF WORK**;

NOW, THEREFORE, the Authority and the Consultant, in consideration of the premises and the mutual promises and benefits flowing each to the other as hereinafter stated, agree as follows:

- 1) CONSULTING SERVICES, SCOPE OF WORK.** Professionally and as an independent contractor, Consultant agrees to perform the professional services (hereinafter referred to as the contract “deliverables”) for **(INSERT SCOPE OF WORK)**. The Consultant agrees that all drawings and specifications for engineering services shall be performed by registered professionals in his own organization, or the Consultant agrees to employ without additional cost to the Owner, the services of registered professionals regularly engaged in delivering such professional services. Design and Construction Documents so prepared shall bear the stamp of responsible registered professionals.
- 2) TIME OF COMPLETION.** The Consultant shall commence work under the contract promptly so as to complete all deliverables in not more than **XX days**, but in any event prior to construction completion, time being of the essence. Should Authority-initiated changes in the

requirements result in substantial re-work of the deliverables, the Authority and Consultant shall mutually negotiate both an additional fee and extension of time.

3) **CONTRACT SUM.** For the Consultant's deliverables hereunder, Authority shall pay Consultant an amount not to exceed **Insert Contract Amount**, which amount is designated the stipulated maximum for the full and faithful performance of all deliverables.

4) **PAYMENT.** Consultant shall submit an invoice at the beginning of each month for services rendered in production of the deliverables provided in the immediate preceding month. Payment shall be made by the Authority upon determination that all deliverables required by the contract, including reporting requirements of various categories and kinds of information, for the period have been provided.

5) **INSTRUMENTS OF SERVICE.**

a. **Definition of Instruments of Service.** Instruments of Service are those drawings, specifications and other documents, including those in electronic form, prepared by the Consultant and his consultants. In recognition of the public ownership of the Project, the Consultant and his subconsultants agree and shall be deemed to have prepared their respective Instruments of Service as architectural and engineering works and as works for hire as defined in 17 U.S.C. §§102(a)(8) and 201(b), thereby transferring and vesting pursuant to 17 U.S.C. §201(d) all common law, statutory and other reserved rights, including copyrights in the Instruments of Service and in the buildings, improvements and structures constituting the Project in the Owner.

b. **Copyright.** Upon execution of the Contract, the Consultant expressly grants, assigns, transfers and otherwise quitclaims to the Owner, its successors and assigns, pursuant to 17 U.S.C. §201(d), all common law, statutory and other reserved rights, including copyrights in both the Instruments of Service and in the buildings, improvements and structures embodying the architectural and engineering works that constitute the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Contract. The Consultant shall obtain similar grants, assignments, transfers and quitclaims from his consultants consistent with this Contract. The Consultant warrants (and shall cause each of the Consultant's consultants to also warrant) that this transfer of copyright and other rights is valid against the world.

c. **License to Consultant.** Notwithstanding the rights, ownership, grants, assignments, transfers and quitclaims set forth in paragraphs 5(a) and (b) of this Article above, the Owner expressly grants, assigns and transfers a permanent and exclusive license to the Consultant, and its successors and assigns, for the Consultant's Instruments of Service, and to each consultant (including the consultant's successors and assigns) of the Consultant for such consultant's instruments of service, to use, reproduce, sell, transfer and accomplish derivative works therefrom, for any and all purposes.

d. **Release of Liability.** The Owner agrees and hereby forever releases the Consultant from all liabilities that might arise from the Owner's use of the Instruments of Service for any alterations, additions, subtractions, or modifications of the Instruments of Service or of the buildings, improvements and structures of the Project resulting therefrom, or for use in other projects; provided, however, that this release does not apply to liabilities arising from the original Instruments of Service and the buildings, improvements and structures of the Project that have not been altered, added to, subtracted from, or modified subsequent to completion of construction of the Project by the Owner, its successors or assigns.

e. **Use of Instruments of Service.** Except for the licenses granted in this Article, no other license or right shall be deemed granted or implied under this Contract. The Owner permits and authorizes the Contractor, subcontractors, sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work.

6) PROFESSIONAL STANDARDS.

- a. The Consultant by the execution of this Agreement contracts that it will perform by persons possessed of that degree of care, learning, skill, and ability which is ordinarily possessed by members of the Consultant's profession and further contracts that in the performance of duties herein set forth it will exercise such degree of care, learning, skill and ability as is ordinarily exercised by professionals under similar conditions and like circumstances and shall perform such duties without neglect.
- b. The Consultant acknowledges and agrees that the Authority does not undertake to approve or pass upon matters of professional judgment and that the Authority, therefore, assumes no responsibility for such. The Consultant acknowledges and agrees that the Authority approval or acceptance of the Consultant's design, supervision and/or work product is limited to the function of determining whether there has been compliance with the Authority's instructions. The Authority does not undertake to inquire into the adequacy, fitness or correctness of engineering or architectural design or other work product. The Consultant agrees that no approval of plans and specifications or other work product by any person, body, or agency shall relieve the Consultant of its responsibility for the adequacy, fitness, suitability and correctness of the Consultant's deliverables (including without limitation architectural and engineering design) and for supervising any construction or installation (if required and authorized under this Agreement) in accordance with sound accepted professional principals (including without limitation architectural and engineering principals).

7) DESIGN WARRANTY AND INDEMNITY.

- a. **Design Warranty.** The Consultant warrants to the Owner that its design and the Professional Design Services provided for the Project reasonably meet the intent of the Program, are consistent with sound design principles commonly used by Consultants under similar circumstances, and the resulting design is constructible. The Consultant further warrants to the Owner that the equipment specified by the Consultant meets industry standards (such as approval by UL, or other independent quality assurance rating agencies) and the design permits installation in a useable configuration with appropriate utilities and safety features. The Consultant does not undertake to make any manufacturer's warranty, such as a warranty as to the materials, design, manufacture or workmanship of the equipment.
- b. **Professional Services Indemnity.** The Consultant shall indemnify, release and hold the Authority, its officers, members, employees and agents, harmless from and against all liability, damages, costs, expenses (including reasonable attorney's fees and expenses incurred by the Authority and any of the Authority's officers, members, employees or agents), claims, suits and judgments to the extent arising or resulting from the delivery of Professional Services under this agreement, as defined below, but such indemnity is limited to those liabilities arising from a Negligent Professional Act of the Consultant, as defined below.
 - i) For the purposes of the Professional Services Indemnity in paragraph 7b above, Professional Services means those services performed by Consultant in Consultant's practice as an architect, engineer, land surveyor, landscape architect, scientist or technical consultant.
 - ii) For the purposes of the Professional Services Indemnity in paragraph 7b above, Negligent Professional Act means an act, error, or omission in the performance of Professional Services by Consultant (or by any person or entity, including joint ventures, for whom Consultant is liable) that causes liability and fails to meet the applicable professional standard of care, skill and ability under similar conditions and like surrounding circumstances, as is ordinarily employed by others in their profession.

- b) **Non-Professional Services Indemnity.** The Consultant shall indemnify, release and hold the Authority, its officers, members, employees and agents, harmless from and against all liability, damages, costs, expenses (including reasonable attorney's fees and expenses incurred by the Authority and any of the Authority's officers, members, employees or agents), claims, suits and judgments to the extent arising from any non-professional services and activities of Consultant under this agreement, which would not be considered Professional Services, and involve bodily injury or property damage, provided, however, the Authority shall not be indemnified for the results of its sole negligence or in the case of multiple negligence for the share caused by the Authority's negligence.

8) INSURANCE.

- a. **GBA Insurance.** GBA acknowledges and affirms that it has adequate self-insurance through state self-insurance programs and the state tort claims fund to cover its own property losses and any third-party claims arising from the damage and implementation of the consultant's solution.
- b. **Consultant's Professional Liability (Errors and Omissions) Insurance.** Limits shall not be less than \$1,000,000 per claim and \$1,000,000 in aggregate coverage. All coverages shall not exceed a maximum of \$250,000 deductible per claim. If demanded in writing by the insurer, the deductible limit may, with the Owner's approval, be increased to an amount not in excess of the limit established for the Consultants under the usual deductible guidelines of the insurer.
- c. **Consultant's Worker's Compensation and Employer's Liability.** Statutory coverage plus Employer's liability in the minimum amount of \$1,000,000 per occurrence.
- d. **Consultant's Commercial General Insurance.** Coverage shall be a minimum of \$1,000,000 per person and \$2,000,000 per occurrence, with Commercial General Umbrella coverage of \$2,000,000 per occurrence.

- 9) CONFIDENTIALITY AND OPEN RECORDS.** No reports, information or material given to or prepared by the Consultant under this Agreement shall be made available to any person by the Consultant without the prior written approval of the Authority. Consultant acknowledges and agrees that all documents collected or produced for use by a private person, firm, or corporation pursuant to a contract or other agreement or understanding with any governmental entity, including Owner, are public records and are subject to disclosure under the Open Records Act (see O.C.G.A. 50-18-70). The Open Records Act makes it mandatory that any contract with a private person, firm, or corporation provide for the inspection or copying of public records within three business days of the receipt of an open records request. Details and procedures, including permissible exemptions and the means of claiming such exemptions, are contained in the Act. Consultant acknowledges that non-compliance with the Act may constitute a criminal act. Consultant must promptly advise Owner in writing within 24 hours of a request for records falling under the Act. Failure to comply with the Act is a material breach of this Contract which may result in termination for cause.

- 10) TERMINATION.** If, through any cause, the Consultant shall fail to fulfill in timely and proper manner the obligations under this Agreement, the Authority without limiting its other remedies may terminate this Agreement by written notice. In this event, the Consultant shall be entitled to just and equitable compensation for any satisfactory work completed less set off for expense incurred by the Authority as a result of early termination. In any event the Authority may also terminate this agreement for convenience by giving written notice of at least twenty (20) working days. In this event, the Consultant shall be entitled to just and equitable compensation for any satisfactory work completed less set off for expense incurred by the Authority as a result of early termination.

- 11) **SECURITY.** 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.
- 12) **CAPTIONS.** The caption of each numbered provision hereof is for identification and convenience only and shall be completely disregarded in construing this Agreement.
- 13) **TIME OF THE ESSENCE.** All time limits stated herein are of the essence. A reference to day, month or year shall mean calendar day, month or year.
- 14) **NOTICE.** Any notice (the word "notice", as used herein shall include, but not be limited to, statements, demands, requests, consents, approvals and authorizations) hereunder given by either party to the other party shall be in writing and shall be sent by United States Certified Mail, return receipt requested, postage prepaid, addressed to the party to be notified as follows:

In case of the Authority, to:

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

In case of the Consultant, to:

Name of Contact
Title
Firm Name
Firm Address
City, State, Zip Code

The sender of such notice shall require the United States Postal Service to "show to whom, date and address of delivery" of said notice. The day upon which any such notice is so mailed shall be treated as the date of service. Either party may from time to time by notice to the other party designate a different address to which notices shall be sent.

- 15) **DRUG FREE WORKPLACE.** The Consultant acknowledges that it is fully aware of the contents and requirements of Chapter 24 of Title 50 of the Official Code of Georgia. The Consultant does hereby certify that it and its subcontractors are in compliance with the aforesaid code section.
- 16) **ASSIGNMENT.** Consultant shall not transfer or assign all or any of its right, title or interest in this Agreement or delegate any of its duties or obligations hereunder without the prior written consent of the Authority.

- 17) **NO AGENCY.** This Agreement shall not be construed as making either party the agent of the other, or as creating a partnership, joint venture or similar relationship between the parties, and neither party shall have the power to obligate or bind the other party in any manner whatsoever. Neither party shall represent to third parties that it is an agent, partner or joint venture with the other party.
- 18) **PROHIBITION AGAINST CONTINGENT FEES.** As required pursuant to O.C.G.A. §50-22-6(d), the Design Professional warrants that he has not employed or retained any company or person, other than a *bona fide* employee working solely for him, to solicit or secure this contract and that he has not paid or agreed to pay any person, company, corporation, individual or firm, other than a *bona fide* employee working solely for him, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or the making of this Contract.
- 19) **CONFLICTS OF INTEREST.** The Design Professional acknowledges and certifies that the provisions of O.C.G.A. 45-10-1 *et seq.* concerning conflicts of interest and prohibitions of certain state officials and employees dealing with state agencies have not been and will not be violated.
- 20) **“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.”
- 21) **SEVERABILITY.** If any provision of this Agreement should be ruled void or unenforceable or contrary to public policy by any court, then the remaining part of such provision and all other provisions of this Agreement shall survive and be enforceable, and any invalid portion shall be construed or reformed to preserve as much of the original words, terms, purpose and intent as shall be permitted by law.
- 22) **ENTIRETY.** The making, execution and delivery of this Agreement have been induced by no representations, statements or warranties other than those herein expressed. This instrument embodies the entire understanding of the Authority and Consultant and there are no further or other agreements or understandings, written or oral, in effect between the Authority and Consultant, relating to the subject matter hereof. This Agreement may be amended or modified only by a written instrument of equal formality signed by both the Authority and Consultant.
- 23) **GEORGIA LAW.** This agreement will be governed, construed, performed and enforced in accordance with the laws, other than the choice of law provisions, of the State of Georgia.

IN WITNESS WHEREOF, Authority and Consultant, acting by and through their duly authorized representative, have signed, sealed and delivered these presents the day, month and year first above written.

Authority:

GEORGIA BUILDING AUTHORITY

Steven L. Stancil, Executive Director

By: _____
(Signature)

Date: _____

Witness: _____
(Signature)

Consultant:

COMPANY NAME

Printed Name: _____

Title: _____

By: _____
(Signature)

Date: _____

Witness: _____
(Signature)