

**IDIQ
DESIGN PROFESSIONAL SERVICES CONTRACT
BETWEEN DESIGN PROFESSIONAL AND OWNER**

INDEFINITE DELIVERY-INDEFINITE QUANTITY

for

Professional Services

BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA

For the Use and Benefit of:

**Georgia Institute of Technology
Atlanta Georgia**

and

DESIGN PROFESSIONAL

Company Name

Address

City, State, Zip

Contract No. XXXX-XX

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**IDIQ
DESIGN PROFESSIONAL SERVICES CONTRACT
(FOR DESIGN-BID-BUILD PROJECT DELIVERY)**

CONTRACT NUMBER. XXXX-XX

THIS IDIQ DESIGN PROFESSIONAL SERVICES CONTRACT (hereinafter "Contract") made this [redacted] day of [redacted], 20XX and terminating on the [redacted] day of [redacted], 20XX, by and between.

The Board of Regents of the University System of Georgia, hereinafter "Owner" for the use and benefit of Georgia Institute of Technology, hereinafter "Using Agency" and

[redacted], hereinafter "Design Professional."

(List Design Professional's form of business) [redacted]

Design Professional's SSN or Business FEIN: [redacted]

Design Professional's Employment Verification Certification:

The Design Professional is registered with, authorized to use, is using and will continue to use, the federal work authorization program throughout the term of the contract, and holds the following authorization:

User Identification Number: [redacted]

Date of Authorization: [redacted]

See also certification requirements in General Requirements Paragraph 1.2.4.6.

This award is based on the one year renewal option contained in Section I. of the IDIQ advertisement dated [redacted] which Design Professional entered under contract [redacted] dated [redacted].

1. AMOUNT OF DESIGN TOTAL COST LIMITATION: \$600,000.00. In no event shall the total cost of services under this Contract, inclusive of all Design Orders, CCA Orders, Change Orders and amendments, exceed this Design Total Cost Limitation.

2. OWNER'S AUTHORIZED AGENT: D. Scott Jones, AIA, LEED AP

3. NAME OF DESIGN PROFESSIONAL OF RECORD:

Design Professional
Address
City, State, Zip
Phone: [redacted]
Email: [redacted]

Georgia State Registration Number of the Registered Professional: [redacted]

4. FEES:

N/A% for design and N/A% for Construction Contract Administration multiplied by the cost of the work of the change, unless the fee is not commensurate with the services required, in which case payment shall be based on the hourly rates shown in Exhibit B plus reimbursable expenses as set forth in Article 4.1.3 or on agreed upon lump sum. PROVIDED that the Design Professional shall have given notice in writing prior to execution of the extra services due to the Change Order, and the Owner shall have consented in advance in writing, and PROVIDED FURTHER that no fees shall be paid for redesign accomplished under the Design Professional's Limited Design Warranty. (Paragraph 1.2.4.)

- f. Record Drawings ("as-built" drawings) as required by Owner pursuant to Article 2.2.7 of the General Requirements.
5. **SITE VISITS.** All Site Visits by the Design Professional and consultants during the Construction Contract Administration Phase are included in the CCA Order Fee
6. **APPROVAL OF CONSTRUCTION DOCUMENTS.** When the design is completed with all review comments incorporated, the Design Professional shall furnish five complete sets of Construction Documents including plans and specifications as directed by the Owner, two of which are furnished directly to the Owner and shall furnish one set each to the Using Agency. The Design Professional must receive the written approval of the Owner prior to issuance. In addition, a digital copy of the final deliverables and all associated back-up shall be provided. Additional copies will be furnished at reproduction cost. (See also Para. 2.2.1.3)
7. **SCHEDULE.** The Design Professional shall provide the services required by this Contract in conformance with the approved Preliminary Design and Construction Schedule, to be attached to each Design Order. The Design Professional agrees to complete the Construction Documents not later than 90 calendar days following execution of this Contract, unless otherwise stated in the Design Order. Individual Milestones for completion of construction documents will be mutually agreed by the Owner and Design Professional.
8. **REPRESENTATIONS.** The Design Professional represents the following:
- It is an organization of professionals experienced in the type of services the Owner is engaging the Design Professional to perform;
 - It is authorized and licensed to provide professional services in the State of Georgia;
 - It is qualified, willing, and able to perform professional services for the Project;
 - It has the expertise and ability to provide professional services that will meet the Owner's objectives and requirements; and
 - It has the expertise to comply with the requirements of all governmental, public, and quasi-public authorities and agencies having jurisdiction over the Project.
9. **Certificates.** By executing this Contract, the Design Professional agrees that it has reviewed the certificates required by the Design Professional Services Requirements and the Construction Documents, which it must execute with reference to this Project. The Owner and Design Professional agree that the required certifications do not require knowledge, services, or responsibilities that are beyond the scope of this Contract.
10. **BUILDING OFFICIAL.** The Owner and Design Professional acknowledge that there is no state building official other than for Life Safety, Elevator, Building Accessibility, and Fire Safety rules, regulations, and codes. Local government officials (e.g. county and municipal) have no enforcement powers over state authorities except with regard to certain Georgia Environmental Protection Division permits. The Design Professional, under the supervision of the Vice Chancellor for Facilities, acts as the Building Official for the Project.
11. **CONTRACT INTERPRETATION.** The Contract Documents shall be interpreted in substantial compliance with the corresponding provisions in the current full form Design Professional Services Contract, a copy of which may be obtained from the Owner, and shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.
12. **ENTIRE CONTRACT.** The Design Professional Services Requirements and all Exhibits are incorporated into and made a part of this Contract by reference. Each Design Order and Construction Contract Administration Order (CCA Order) shall be incorporated into and made a part of this contract by reference. This Contract represents the entire and integrated Contract between the Owner and the Design Professional and supersedes all prior negotiations, representations or contracts, either written or oral. This Contract may be amended only by written instrument signed by both the Owner and the Design Professional.

IN WITNESS WHEREOF the parties hereto, by their duly authorized representatives, have executed this Contract the day and year first written above.

DESIGN PROFESSIONAL: _____

ATTEST:

_____, Secretary

By: _____

SEAL (Over Signature)

OWNER:

**BOARD OF REGENTS OF THE
UNIVERSITY SYSTEM OF GEORGIA**

ATTEST:

SEAL (Over Signature)

N-A
By: _____
N-A (L.S.)

APPROVED:

Charles G. Rhode, Vice President, Facilities Management

Using Agency: Georgia Institute of Technology

- 1. Design Professional Services Requirements
- 2. Exhibits.
 - Exhibit A Form of Design Order/CCA Order
 - Exhibit B Schedule of Hourly Rates
 - Exhibit C Certificates of Compliance – Federal and State Work Authorization Programs

Reference 1: Regents' Building Project Procedures Manual or GSFIC Process Guide or Georgia Tech Guidelines

**IDIQ DESIGN PROFESSIONAL SERVICES REQUIREMENTS
FOR DESIGN-BID-BUILD CONSTRUCTION DELIVERY**

SECTION 1 – GENERAL

PART 1 – PRELIMINARY MATTERS

1.1.1 Project Parameters.

1.1.1.1 Physical Parameters. The project will be constructed on public property of the State of Georgia administered by the State Agency identified in the Contract as the Owner. If appropriate, a plat of boundary line survey of the property shall be furnished to the Design Professional by the Owner, and the Design Professional is entitled to rely on such information. The project will be occupied and is for the benefit of the Using Agency identified in the Contract. The construction of the Project shall be procured by using the Design-Bid-Build delivery method with a single bid package.

1.1.1.2 Owner's Project Development File. The Design Professional will design the project in accordance with the Owner's Project Development File, if any, as amended, a copy of which shall be attached to the Design Order.

1.1.1.3 Time and Schedule. A Preliminary Design and Construction Schedule, including major milestones for the production of the design and construction documents, as well as the anticipated time required for construction is to be attached to each Design Order as Exhibit B and is incorporated into and made a part of this Contract by reference.

1.1.1.4 Delays. The Design Professional is responsible for the timely performance of its design and administrative services, but shall not be responsible for delays due to persons or conditions beyond the Design Professional's control. The Design Professional assumes full responsibility for the timely performance of its consultants. If the completion of the Project is delayed by reason of ordinary negligence on the part of the Design Professional, the Design Professional shall indemnify the Owner against all reasonable costs, expenses, liabilities, or damages resulting from such delay and, in addition, shall provide accelerated services at its own expense to make up time lost. If the Design Professional is delayed by the owner in performance of its services or by a delay authorized by the Owner, then he may request an adjustment in the project schedule and his fees.

1.1.2 Project Team.

1.1.2.1 Owner's Authorized Agent. For the purpose of administration of this Contract, the Owner's Authorized Agent is the Owner's Representative.

1.1.2.2 Review of Services of the Design Professional. The Design Professional agrees that the Owner may engage consultants for the purpose of checking, reviewing, and commenting upon the deliverables provided under this Contract.

1.1.2.3 The Owner's Consultants. Design Professional agrees to cooperate with any Owner's consultant in the professional services provided under this Contract. If the Design Professional is to manage the delivery of the consultant's services, he will be provided a copy of the consultant's contract.

1.1.2.4 The Design Professional's Team.

- Design Professional of Record. The individual identified in the Contract who shall not be changed without approval by the Owner.
- Key Personnel and Consultants. The Design Professional's key personnel and consultants who have been assigned to the Project, along with a description of the role and duties of such personnel are listed in Exhibit B.
- Design Team. The Design Professional represents (i) that it has or will secure at its own expense, all personnel required in the performance of this Contract, (ii) that all of the services required hereunder will be performed by the Design Professional or under its supervision, and (iii) all personnel shall be fully qualified and shall be authorized under State or local law to perform such services.

1.1.3 Construction Contract General Conditions.

A copy of the General Conditions to the Construction Contract may be obtained from the Owner and is incorporated herein by reference. If the Design Professional is authorized by the Owner to perform Construction Contract Administration, the Design Professional shall perform all of the duties of the Design Professional called for in the General Conditions in addition to the duties called for in this Contract. The General Conditions, including all definitions, are expressly adopted and incorporated into this Contract.

1.1.5 Insurance.

1.1.5.1 Insurance Provisions. From insurers authorized to provide the required insurance in Georgia, the Design Professional shall provide the following kinds of insurance in the minimum amount of coverage set forth below, to cover all loss and liability for damages on account of bodily injury, including death therefrom, and injury to or destruction of property caused by or arising from any and all operations carried on and any and all work performed by the Design Professional under this Contract. Within ten (10) calendar days after execution of the Contract and during the entire period of the Design Professional's responsibility under the Contract, the Design Professional shall maintain professional liability insurance for claims arising from the negligent performance of professional services under this contract as provided herein. The Design Professional shall file with the Owner a certificate of insurance from an insurance company rated at least A- by Best's and licensed to do business in the State of Georgia showing evidence of insurance as follows:

1.1.5.1.1 Worker's Compensation and Employer's Liability. Statutory coverage; Employer's liability in the minimum amount of \$1,000,000 per occurrence;

1.1.5.1.2 Commercial General Liability Insurance. Commercial General Liability Insurance with a General Aggregate not less than \$2,000,000, at least \$1,000,000 per occurrence, including Automobile Comprehensive Liability Coverage to cover vehicles, owned, leased or rented by Design Professional. The Design Professional shall require its consultants to maintain Commercial General Liability insurance with business automobile liability coverage with companies and limits as stated above. The Commercial General Liability policy shall name the Owner and Using Agency as additional insureds.

1.1.5.1.3 Professional Liability (Errors and Omissions) Insurance. :

- (a) Limits shall not be less than – \$1,000,000 per claim and \$1,000,000 in aggregate coverage;
- (b) The professional liability insurance that shall be either a practice policy or project-specific coverage. Professional liability insurance shall contain prior acts coverage for services performed by the Design Professional for this Project. If project-specific coverage is used, these requirements shall be continued in effect for two years following the issuance of the Certificate of Final Completion for the Project.

1.1.5.1.4 Maximum Deductible. No policy shall specify a deductible of more than \$100,000 per claim. If demanded in writing by the insurer and with the Owner's approval, the deductible limit may be increased to an amount not in excess of the limit established under the usual deductible guidelines of the insurer.

1.1.5.2 Insurance Premiums and Deductibles. The Design Professional shall pay the insurance premiums All deductibles shall be paid by the Design Professional.

1.1.5.3 Waiver of Subrogation. There is no waiver of subrogation rights by either party with respect to insurance.

1.1.6 Meaning of Terms. Terms defined in other owner-executed documents associated with this Project, shall have the same meaning as in this Contract. A full set of definitions is found in Article 1.1.6.3 of the current full form Design Professional Services Contract and in Article 1.1.8 of the current full form Design-Bid-Build construction contract. Unless specifically defined, words used shall have the same meaning as in common usage and defined in a standard dictionary.

PART 2 – RESPONSIBILITIES OF THE PARTIES

1.2.1 Cooperation and Working Relationships. The parties to this Contract agree to reasonably cooperate to fulfill their respective obligations under this Contract and shall endeavor to maintain good working relationships with the other members of the project team.

1.2.2 Responsibilities of the Owner.

- To provide reasonable access to available necessary records, reasonable cooperation of officials and employees, and to render expeditious decisions on matters affecting the progress of work.
- To review and respond with reasonable promptness to requests for additional information, comments, or approvals that the Design Professional requires to complete the Construction Documents and maintain the schedule.
- To report to the Design Professional any errors, inconsistencies, or omissions that the Owner discovers in the Construction Documents, without, however, relieving the Design Professional of responsibility for its own errors, inconsistencies, and omissions.

1.2.3 Responsibilities of the Design Professional.

- The Design Professional of Record is authorized to act on the Design Professional's behalf with respect to the Project, however, he is not a representative or agent of the Owner and has no authority to act on behalf of the Owner except as stated in the General Conditions of the construction contract.
- No reports, information or other material given to or prepared by the Design Professional under this Contract shall be made available to any person not directly or indirectly involved with the construction or design of the Project without the prior written approval of the Owner unless otherwise required by law.
- To comply with all applicable laws, codes, and regulations in effect at the time the Construction Documents are completed.
- To make reasonable efforts to obtain written approval of the appropriate authority of all proposed connections to private or public utility systems or public and private roads and streets, and to design such connections planned as part of the Project.
- To design all connections to public roads and streets as required by applicable ordinances and codes.
- To receive no fee for Change Orders caused by failure to comply with the obligations in this Contract.
- To ask the owner for additional time, if he is unable to meet a specified time period.
- To provide Construction Documents that conform to applicable building codes, zoning codes, laws, regulations and generally accepted construction industry standards.

1.2.4 Warranty, Standard of Care, Insurance and Indemnity.

1.2.4.1 Limited Design Warranty. The Design Professional 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 Design Professionals under similar circumstances, and the resulting design is constructible by a qualified Contractor using appropriate construction methods. The Design Professional further warrants to the Owner that the technical specifications of the equipment specified by the Design Professional meet 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. The Design Professional does not undertake to make any manufacturer's warranty, such as a warranty as to the materials, design, manufacture, or workmanship of the equipment. As between the Owner and the Design Professional, the sole remedy for breach of this Limited Design Warranty during the design and Construction Contract Administration phase of the Project by the Design Professional is that (i) the Design Professional shall redesign the defective design, consistent with the Program or Project Development File, at no expense whatsoever to the Owner; and, (ii) if construction of the defectively designed component has commenced, to the extent its remediation cost exceeds the cost that the Owner would have reasonably incurred without the breach of this Limited Design Warranty, the Design Professional shall indemnify the Owner for such additional cost. This Limited Design Warranty does not enlarge or diminish the Design Professional's liabilities as the result of a Negligent Professional Act in the performance of professional services as defined below.

1.2.4.2 Design Professional Standard of Care and Indemnity. The Design Professional makes the following Professional Indemnity:

1.2.4.2.1 Standard of Care. The Design Professional by the execution of this Contract warrants that he is possessed of that degree of care, learning, skill, and ability which is ordinarily possessed by other members of its profession and further warrants that in the performance of the duties herein set forth he will exercise such degree of care, learning, skill, and ability as is ordinarily employed by licensed professionals under similar conditions and like circumstances and shall perform such duties without neglect, and shall not be liable except for the failure to exercise such degree of care, learning, skill, or ability or as otherwise set forth in this Contract.

1.2.4.2.2 Professional Services Indemnity. The Design Professional shall indemnify, release, and hold harmless the Owner, its officers, members, employees, and agents, from and against all liability, damages, costs, expenses (including reasonable attorney's fees and expenses incurred by the Owner and any of the Owner's officers, members, employees or agents), claims, suits and judgments to the extent arising or resulting from the delivery of Professional Services under this Contract, as defined below, but such indemnity is limited to those liabilities arising from a Negligent Professional Act of the Design Professional, as defined below.

(i) For the purposes of the Professional Services Indemnity Professional Services means those services performed by a licensed professional in Design Professional's employ.

(ii) For the purposes of the Professional Services Indemnity Negligent Professional Act means a negligent act, error, or omission in the performance of Professional Services by Design Professional (or by any person or entity, including joint ventures, for whom the Design Professional 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.

1.2.4.2.3 Non-Professional Services Indemnity. To the extent of the contractual liability provisions of the Commercial General Insurance policy required above, Design Professional hereby agrees to indemnify and hold harmless the Owner, the State of Georgia and its departments, agencies and instrumentalities and all of their respective officers, members, employees and directors (hereinafter collectively referred to as the "Indemnitees") from and against any and all claims, demands, liabilities, losses, costs or expenses, including attorneys' fees, due to liability to a third party or parties, for any loss due to bodily injury (including death), personal injury, and property damage arising out of or resulting from the performance of this Contract or any act or omission on the part of the Design Professional, its agents, employees or others working at the direction of Design Professional or on its behalf, or due to any breach of this Contract by the Design Professional or due to the application or violation of any pertinent Federal, State or local law, rule or regulation. This indemnification does not extend to claims for breach of Professional Services or Negligent Professional Acts as set forth above. This indemnification also does not extend to claims for losses or injuries or damages incurred directly by the Indemnitees due to the sole negligence of any Indemnitee.

1.2.4.5 The Owner's Approval. The Design Professional acknowledges and agrees that the Owner does not undertake to approve or pass upon matters of professional service and the Owner, therefore, assumes no responsibility for such.

1.2.4.6 Compliance with Federal and State Work Authorization and Immigration Laws. The Design Professional, all subcontracted design professionals, and all consultants must comply with all federal and state work authorization and immigration laws, and must certify compliance using the form set forth in Exhibit C attached hereto. Upon contracting with a subcontractor or consultant, the Design Professional shall provide the Owner notice of the identity of any and all subcontractors or consultants. Design Professional shall provide the Owner with notice of the identity of any and all subcontractors or consultants within five days of entering into the subcontract. The notice shall include an affidavit from the subcontractor or consultant attesting to the subcontractor or consultant's name, address, user identification number, date of authorization to use the federal work authorization program and certification that the subcontractor or consultant shall verify the information of all newly hired employees. State officials, including officials of the Georgia Department of Audits and Accounts and officials of the Owner, retain the right to inspect and audit the Project Site and employment records of the Design Professional, all subcontracted design professionals, and all consultants without notice during normal working hours until Final Completion, and as otherwise specified by law and by Rules and Regulations of the Georgia Department of Audits and Accounts. See, e.g. O.C.G.A §13-10-90, 91.

1.2.5 Access to Records and Documents.

1.2.5.1 Access and Audit. The Owner shall have reasonable access to all books, documents, papers, and records of the Design Professional concerning the Project in order to make audit examinations, excerpts, and transcripts relative to this Contract.

1.2.5.2 Open Records Act. The Design Professional acknowledges the application of the Open Records Act (O.C.G.A. §50-18-70) to his records on the Project and must inform Owner within 24 hours of a request falling under the Act.

1.2.5.3 Instructions and Guidelines. Reference 1 contains the current version of “The Regents’ Building Project Procedures Manual or The GSFIC Process Guide or the Georgia Tech Guidelines”. Design Professionals shall become familiar with and shall follow the instructions and guidelines unless either impractical or inconsistent with professional standards. In the event of such impracticalities or inconsistencies, he shall promptly notify the Owner and provide the rationale and recommended practice the Design Professional desires to implement.

SECTION 2 – BASIC SERVICES

PART 1 – DESIGN SERVICES

2.1.1 General. Basic Services shall include all normal and customary professional services of the Design Professional and its consultants required for the Schematic Design, Design Development, Construction Documents, Bidding and Construction Contract Administration Phases of the Project. Design services shall be provided consistent with the Regents' Building Project Procedures Manual or the GSFIC Process Guide. He shall furnish or provide the architectural and engineering services necessary to design the Project in accordance with the Owner's requirements. The Design Professional agrees to prepare drawings, specifications, and other documents that are adequate, complete, coordinated, and fit for construction. The Design Professional shall call for no result unless he has furnished complete, definite, and clear drawings and specifications as to the construction results to be achieved. In particular, the Design Professional shall require of its Consultants the level of quality recommended by industry standards (e.g., ASCE for structural engineers). The Owner and Design Professional, in this regard, acknowledge and agree that the Contract Documents are addressed to skilled tradesmen in the construction profession who shall be required to use their special skills and experience, through submittals and shop drawings, to translate the Design Professional's design intent into a completed structure. The Design Professional shall prepare suitable Bidding Documents adequate for the preparation of bids.

2.1.1.1 Considerations for Design. The Design Professional shall review the Project Development File or the Program with the Owner to confirm its understanding of the Owner's.

2.1.1.2 Meetings and Presentations. The Design Professional shall attend meetings, take appropriate minutes, distribute minutes to Owner, attendees and interested parties, and otherwise explain its work product as may be necessary to its implementation.

2.1.1.3 Approval of Governmental Authorities. The Design Professional shall assist the Owner in filing any required documents for the approval of governmental authorities having jurisdiction over the Project.

2.1.1.7 Project Budget.

2.1.1.7.1 Preparation of Statement of Probable Construction Cost. A Statement of Probable Construction Cost for each Design Order shall include the information and matters required in ASTM Standard Practice E 1804-02, "Performing and Reporting Cost Analysis During the Design Phase of the Project," August 2007, and shall be submitted with the Construction Documents.

2.1.1.7.2 No Calculated Risks. The Design Professional agrees that budgetary limitations are not a justification for breach of sound principles of architectural and engineering design. The Design Professional shall take no calculated risks in the design of the work.

2.1.2 Instruments of Service.

2.1.2.1 Definition of Instruments of Service. Instruments of Service are those drawings, specifications, and other documents, including those in electronic form, prepared specifically for this Project by the Design Professional and its consultants. In recognition of the public ownership of the Project, the Design Professional and its consultants 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 in the Owner, 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.

2.1.2.2 Copyright. Upon execution of this Contract, the Design Professional 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 payment, under this Contract. The Design Professional shall obtain similar grants, assignments, transfers, and quitclaims from its consultants consistent with this Contract.

2.1.2.3 Reserved Rights and License to the Design Professional. Notwithstanding the rights, ownership, grants, assignments, transfers, and quitclaims set forth in this Article, the Design Professional shall retain its rights to all its previously created standard design elements included within the Instruments of Service, including its standard details, standard specifications and other standard design documents generated and authored by the Design Professional for its repeated and regular use in other instruments of service for its other clients, *provided however*, that Design Professional grants and transfers an irrevocable license to Owner to use, reuse, and create derivative works of such standard design elements for use in the buildings, improvements, structures and the campus of the Project. Moreover, the Owner expressly grants, assigns, and transfers a permanent and exclusive license to the Design Professional, its

successors, and assigns, for his Instruments of Service, and to each consultant and its successors and assigns) for its Instruments of Service, to use, copy, sell, transfer, and accomplish derivative works therefrom, for any and all purposes.

2.1.2.4 Release of Liability. The Owner agrees and hereby forever releases the Design Professional from all liabilities that might arise from the Owner's use of the Instruments of Service or other licensed portions of the Construction Documents 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.

2.1.2.5 Use of Instruments of Service. Except for the rights and 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.

2.1.3 Design Documents. In general a Design Order shall call for preparation of final Construction Documents. However, the Owner may request in the Design Order for provision of the design in the form of Concept Design, Preliminary Design, Schematic Design, and or Design Development Services. Such services are defined in the full services design professional contract, and are available from the Owner upon request.

2.1.4 Construction Documents.

2.1.4.1 General. The Design Professional shall prepare the Construction Documents consisting of working drawings and specifications and setting forth in detail the architectural and engineering work required to result in a complete and fully functional Project. The Design Professional must provide all design documents required for regulatory approvals necessary to receive operating permits/authorizations and a Certificate of Occupancy (See ASTM Standard Practice E 1804-02, August 2007, Section 8.4 for guidance).

2.1.4.2 Free from Leaks. The Design Professional shall design the work in a non-negligent manner such that the building will be free from leaks if all components are installed in accordance with the Construction Documents.

2.1.4.3 Specification Format. Unless otherwise required in the Design Order the Construction Specifications must be in the full Construction Specifications Institute (CSI) Division 17 Three Part Format as established in the CSI Manual of Practice and must provide all supplemental information and requirements covered by the Contract Documents.

2.1.4.4 Working Drawings. Unless otherwise specified in the Design Order, Working Drawings consists of those drawings necessary to describe the Project and its design, construction, materials, finishes, fixtures, civil, structure, mechanical systems and electrical systems and other related work. The Working Drawings must include, where applicable, the following:

- Engineering documents – grading, storm drainage, erosion control, paving, fencing, sanitary and water system;
- Architectural floor plans, exterior elevations, interior elevations, building sections, wall sections, reflected ceiling plans, interior and exterior details, door and finish schedules, and roof plans;
- Wall sections and interior elevations to illustrate with detail and clarity the intended work;
- Reflected ceiling plans at the same scale as the respective floor plans, coordinated with engineering disciplines showing all required ceiling lights, diffusers, access panels, returns, fans, smoke detectors, sprinkler heads (per NFPA standards) and any other required devices on the ceiling;
- Drawings for structural steel and cast-in-place concrete work, foundation reinforcing steel and any other structural elements, including top of foundation elevations;
- HVAC, plumbing, and fire protection layouts showing major equipment and mains with typical distribution branches, riser diagrams, supply and return grilles, fire dampers, and a schedule of plumbing fixtures valves, and all other "end product" elements and features, all coordinated with the floor and reflected ceiling plans;
- Electrical systems and separate signal and data/telecom conduit systems layouts; coordinated with the floor and reflected ceiling plans; and
- Current availability must exist for any specialty products, materials and supplies specified by the Design.

2.1.5 Bidding Documents. If required in the Design Order, the Design Professional shall prepare the Bidding Documents utilizing the format provided by the Owner.

PART 2 – CONSTRUCTION CONTRACT ADMINISTRATION SERVICES

2.2.1 General Administration.

This function covers the overall Project administrative duties performed by the Design Professional during the construction phase and includes the use of the Design Professional's powers to require that the Contractor comply with the Contract Documents. It includes all duties that constitute the Design Professional's administration of the Construction Contract. The Contractor, however, shall be solely responsible for safety as well as the means and methods of construction.

2.2.2 Basic Office Services. The basic office services performed during the construction phase include:

- Administering the construction contract
- Recommending withholding payments to the Contractor, as appropriate;
- Issuing certificates of payments
- Reviewing and commenting on shop drawings and submittals for conformance with design intent
- Making revisions, corrections or clarifications to the Contract Documents by bulletins or change orders
- Reviewing / evaluating and processing of change order requests and claims
- Issuing Change Orders as described in the General Conditions for changes in the work. (No changes in the Contract Documents shall be made except with the prior written consent of the Owner.)
- Responding to all RFI's (Requests For Information)
- Executing all other duties required of the Design Professional in the General Conditions
- Reviewing the certificates, manuals and guarantees assembled by the Contractor as provided in the Contract Documents; and
- Recommending acceptance of the completed project

2.2.3 Basic Field Services. The professional services performed during the construction administration comprise on-site observation, evaluation, and documentation by the Design Professional and its consultants to guard against incomplete or nonconforming Work. In addition, the Design Professional shall observe and document appropriately any compliance concerns with agreed construction schedules, the superintendence of the work, or the qualifications of skilled workers.

2.2.3.1 Observations, Evaluations and Documentation. A principal of the Design Professional's firm or a consultant's firm shall perform observations, evaluations and documentation. The Design Professional shall engage registered professional consultants licensed in the State of Georgia (i) to make periodic and final observation and evaluation of the work; (ii) to assist its in administration of the construction contract and (iii) to advise the Owner in writing from time to time and as the work progresses as to (i) the accepting, (ii) the consenting to the covering of, and (iii) the certifying for payment of Work in their fields of practice. A monthly written report shall be submitted to the Owner apprising it of the progress and condition of the Work.

2.2.3.2 Construction Progress Meetings. The Design Professional shall attend Construction Progress Meetings periodically held at the job site and shall review and provide written comments on the minutes within seven days.

2.2.3.3 Contracts with Consultants. Upon request, the Design Professional shall furnish the Owner a copy of each contract with its consultants, and such contracts (i) must detail the services to be performed by the consultants, and (ii) bind the consultant to the terms of this Contract which apply to the services of the consultants.

2.2.4 Monitoring Contractor Performance. The responsibility of Design Professional for its basic field services and for enforcing the performance of the contract is not diminished in any respect by or shared with any contract compliance specialist at the site or by inspections by other employees or contractors of the Owner. The Design Professional shall have entered into the Project Diary the date on which the Design Professional approves of or consents to the covering of any Work.

2.2.5 Changes in the Work.

2.2.5.1 The Design Professional's Review of Change Orders. The Design Professional shall review, coordinate and submit for approval of the Owner, Change Orders to the Construction Contract, as conditions warrant, utilizing the forms provided in the General Conditions of the Construction Contract.

2.2.5.2 Determination of Cost. The Design Professional shall review and comment the Contractor's proposed cost of work, time to complete, effect upon time dependent costs and Overall Progress Schedule within 14 calendar days.

2.2.5.3 Time. The Design Professional shall review all requests for extensions of time, whether for change orders or unforeseen conditions or compensation for delay. He shall make the initial decision on such requests as instructed in in the General Conditions. Compensation for delay shall include Time Dependent Overhead Costs at an approved daily rate, utilizing one of the three methods specified in the General Conditions and Supplementary Conditions.

2.2.5.4 Approval of the Owner. The Design Professional shall order no changes in the Work without Owner's approval.

2.2.6 Project Completion.

2.2.6.1 Inspection for Material Completion. Material Completion is specifically defined in the General Conditions and all references to substantial completion or the concept of substantial completion are deleted and of no force and effect in the Contract Documents. The Design Professional shall cooperate with the Contractor in preparing for and implementing the Inspection for Material Completion, and shall conduct and document its inspections and evaluations for Material Completion within ten business days from notice of request. Upon successful completion of the Inspection for Material Completion as specified in the General Conditions, the Design Professional shall issue a Certificate of Material Completion. The Certificate of Material Completion shall include the Final Punch List that shall specify each item that constitutes either a Minor Item or Permitted Incomplete Work, as defined in the General Conditions, and shall additionally specify a value for each.

2.2.6.2 Payment for Material Completion. Upon receipt of the Certificate of Material Completion, the Contractor may make Application for Payment for Material Completion (which includes retainage) with supporting documentation as required in the General Conditions. Before certifying such payment, the Design Professional shall withhold from the amount certified 200 percent of the value of each Minor Item or Permitted Incomplete Work and shall require the Contractor to provide the Statutory Affidavit, the Non-Influence Affidavit, and supporting documentation called for in the General Conditions. If the Contractor has shown any exceptions on the Statutory Affidavit, the Design Professional shall also make appropriate deductions to the Certificate of Payment.

2.2.6.3 Final Inspection and Evaluation. Upon receipt of the request for Inspection for Final Completion, the Design Professional shall conduct and document its inspections and evaluations for Final Completion in accordance with the General Conditions. The Design Professional shall confirm that the Final Punch List and all Minor Items and Permitted Incomplete Work are successfully accomplished. Upon successful completion of such inspection, shall issue to the Owner and to the Contractor a Certificate of Final Completion.

2.2.6.4 Final Payment. Upon issuance of the Certificate of Final Completion and receipt of an application for Final Payment, the Design Professional, shall certify Final Payment for the funds withheld at Material Completion.

2.2.7 Record Drawings and Final Documents and Closeout Services.

2.2.7.1 Record Drawings and Final Documents. The Design Professional shall, upon final completion of the Project, revise the original drawings and specifications based upon documents incorporated by Change Orders, additional sketches, answered RFI's and marked up documents provided by the Contractor to show the project "as built". The Design Professional shall furnish and deliver the Record Drawings to the Owner not later than sixty (60) calendar days after execution of its Certificate of Final Completion. Record Drawings and Final Documents shall reflect all changes caused by addenda, field changes, change orders or observed changes by the Design Professional, the Contractor, or subcontractor(s) made in the building during its construction, and shall show the Design Professional's understanding of the locations of all utility lines to the extent such observations are communicated in writing to the Design Professional. The Design Professional shall furnish the Owner, the following sets of Contract Drawings:

- One set of full-size reproducible documents, or half size as required per task.
- Electronic media (CD-ROM including CADD) files in PDF Format and AutoCAD
- Provide the Archive Entry_Sheet.XLS filled out for all documents provided at close out.

2.2.7.2 Review of Operating Instructions. The Design Professional shall review and confirm that all equipment and systems operation and maintenance manuals provided by the Contractor are in compliance with the Specifications and shall forward the review to the Owner with all equipment and systems operation and maintenance manuals provided by the Contractor in compliance with the Specifications.

SECTION 4 – COMPENSATION AND CONTRACT ADJUSTMENTS

PART 1 - COMPENSATION

4.1.1 Compensation for Services.

4.1.1.1 Compensation for Design Services. The Design Professional agrees to perform for the Owner the work and the professional services hereinbefore denominated as Basic Design Services. The Owner agrees to pay the Design Professional for such services a LUMP SUM FEE specified in the Design Order. If the Owner does not elect to procure construction services, then there shall be no payment for construction procurement services.

4.1.1.2 Compensation for Construction Contract Administration Services. If the Owner elects to require the Design Professional to provide Basic Construction Contract Administration services the Owner agrees to pay the Design Professional for such services rendered, an additional LUMP SUM FEE specified in the CCA Order.

4.1.1.3 Hourly Rates. For additional services not provided in the Design Order or CCS Order, the hourly rates for Additional Services as shown on Exhibit B, shall be utilized.

4.1.2 Payments to the Design Professional.

4.1.2.1 Periodic Payments. Payment of fees under Design Orders and CCA Orders may be made monthly with the amount of the payment prorated over the anticipated time required to complete a particular Order, or based upon the percentage of work completed. In no case shall the total of the partial payments for a particular phase exceed the fee established for that Order. The Design Professional shall make payments to its consultants within five (5) business days following receipt of payment from the Owner.

4.1.2.2 Payment Due Dates and Interest. Should the Owner fail to pay a proper invoice within thirty calendar days of receipt, the Design Professional shall notify the Owner in writing by Certified or Statutory mail. If the Owner fails to pay within five business days of receipt of the notice, the Design Professional shall receive, in addition the sum named in the proper invoice, interest thereon at the rate of one half (½) percent per month on the unpaid balance as may be due.

4.1.2.3 Statement Requirements. Statement or invoices for the Design Professional fees before award of the Construction Contract must be accompanied by a current Statement of Probable Construction Cost.

4.1.2.4 Deductions; Payments Withheld. No deduction shall be made from payments to the Design Professional on account of penalties, liquidated damages or other amounts assessed against the Contractor. The Owner reserves the right to withhold payments to the Design Professional for losses connected with the Project caused by the negligent errors, omissions, delinquencies or wrongful acts of the Design Professional in performing its duties under this Contract.

PART 2 - CONTRACT ADJUSTMENTS

4.2.1 **General.** The duties, responsibilities and limitations of authority of the Design Professional under this Contract shall not be restricted, modified or extended without a written contract amendment signed by the parties.

4.2.2 **Modifications and Supplemental Fee Agreements.** Changes in the Design Professional fees resulting from a modification in the scope of services defined in this Contract are not valid or effective until a contract amendment and supplemental fee agreement are executed by the Owner and the Design Professional. Until such execution there shall be no obligation to pay nor any obligation on the part of the Design Professional to commence services on the modified work.

4.2.3 **Claims for Additional Fees.** Any claim for additional fees shall be made to the Owner no more than twenty (20) calendar days after the occurrence of the event giving rise to the claim. The Owner may not honor claims made after twenty (20) calendar days. In the event the Owner and the Design Professional cannot agree on the additional fee requested, the dispute will be resolved according to Section 5.

SECTION 5 – DISPUTES, TERMINATION AND MISCELLANEOUS PROVISIONS**PART 1 - DISPUTES**

5.1.1 Initial Dispute Resolution. If a dispute arises out of or relates to this Contract or its breach, the parties shall endeavor to settle the dispute first through direct discussions between the Owner and the Design Professional representatives, who shall have the authority to settle the dispute. If the Owner and the Design Professional representatives are not able to promptly settle the dispute, the senior executives of the Owner and the Design Professional, who shall have the authority to settle the dispute, shall meet within twenty-one (21) calendar days after the dispute first arises. If the dispute is not settled within seven (7) calendar days from the referral of the dispute to the senior executives, the Owner and the Design Professional may submit the dispute to mediation in accordance with Paragraph 5.1.2.

5.1.2 Mediation. Any claim, dispute or other matter in question arising out of or related to this Contract may be subject to mediation.

5.1.2.1 Requests for Mediation. The Owner and the Design Professional shall endeavor to resolve claims, disputes, and other matters in question between them by impartial mediation. Requests for mediation shall be filed in writing with the other party to this Contract.

5.1.2.2 Fees and Enforceability. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Atlanta, Georgia, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

5.1.3 No Arbitration. Arbitration is not contemplated nor allowed under this Contract.

5.1.4 Claims for Consequential Damages. The Owner retains its right to claim for consequential damages in the event the Design Professional fails to perform under this Contract.

PART 2 - TERMINATION**5.2.1 Termination or Suspension by the Owner.**

5.2.2.1 Suspension of Contract by the Owner. Upon receipt of a notice to suspend services from the Owner, the Design Professional shall immediately suspend services and may request payment for all services performed and expenses incurred through the date of suspension. The Design Professional shall have no liability to the Owner for damage or the delay of the Project resulting from the suspension. Owner will pay reasonable costs incurred by the Design Professional as a result of the suspension. Upon payment, all drawings, specifications, and other documents relating to the design of the Project or Construction Contract Administration of the Work shall be surrendered forthwith by the Design Professional to the Owner. If the services are resumed, reasonable adjustments will be made to the Project schedule and the Design Professional's compensation and reimbursable expenses for the balance of its services.

5.2.2.2 Termination Without Cause or For Convenience of the Owner. The Owner may at any time, and for any reason or without any reason or cause, terminate this Contract by written notice to the Design Professional specifying the termination date that shall be no less than seven calendar days after receipt of the notice of termination. In event of termination under this paragraph, the Owner shall pay to the Design Professional any fee properly due (i) for services already properly performed prior to the effective date of the termination and (ii) for any reimbursable expenses properly incurred. In the event of such termination the Design Professional shall have no claim in excess of what is allowed in this paragraph for any sum of money, however denominated, as a result of or relating to such termination. All Instruments of Service, including all drawings, models, specifications and other documents relating to the design of the Project or Construction Contract Administration of the Work shall be surrendered forthwith by the Design Professional to the Owner. The Design Professional shall be entitled to make and retain copies of all such documents and use all such design as set forth pursuant to Article 2.1.2, Instruments of Service.

5.2.2.3 Termination by the Owner for Nonperformance. In the event the Design Professional through any cause fails to perform any of the material terms, covenants or provisions of this Contract, or if he for any cause fails to make progress in the services hereunder in a reasonable manner, the Owner shall have the right to terminate this Contract by giving notice in writing of the fact and date of such termination to the Design Professional. The termination date shall be no less than seven (7) calendar days after receipt of the termination notice. Upon termination, all instruments of service, including all drawings, models, specifications and other documents relating to the design of the Project or Construction Contract Administration of the Work shall be surrendered forthwith by the Design Professional to the Owner. In such case, the Design Professional shall receive proper compensation for such services that have been satisfactorily performed by the Design Professional up to the date of termination of this Contract. In the event of a dispute, proper

compensation shall be determined by an independent auditor, to whom the Design Professional shall have no reasonable objection, selected and paid for by the Owner. The Owner may take over the services to be provided hereunder and may prosecute the same to completion by contract or otherwise, and the Design Professional shall be liable to the Owner for any excess cost occasioned the Owner thereby.

5.2.2.4 Use of Documents After Termination. In the event the Design Professional is terminated without cause or for convenience of the Owner and the Project continues the Owner will be required to retain another qualified Design Professional to complete the Project, and the Owner will release the Design Professional from any and all damage had the Design Professional exercised the appropriate standard of care in the performance of its services.

5.2.3 Force Majeure. If the Design Professional shall be unable to perform or shall be delayed in the performance of any of the terms and provisions of this Contract as a result of (i) governmental preemption of materials or services in connection with a national emergency declared by the President of the United States; (ii) riot, insurrection, or other civil disorder, acts of terror or terrorism affecting performance of the Work; or (iii) unusual and extreme weather conditions constituting Acts of God, then, and in any such event, such inability or delay shall be excused, and the time for completing the affected portions of this Contract, the Project (and the entire Project, if applicable) shall be extended for such reasonable period of time as the delay has affected the performance of the Work hereunder. The Design Professional shall take all reasonable actions to minimize the delay caused by any of the above factors, and shall notify the Owner in writing of any event allowing for excuse or delay not later than seven (7) calendar days after the event the Design Professional first becomes aware of the event, or should have become aware, of the event; otherwise the Design Professional will be deemed to have waived the excuse or delay.

PART 3 – MISCELLANEOUS PROVISIONS

5.3.1 Matters of Interpretation.

5.3.1.1 Using Agency. The Design Professional hereby acknowledges that the Owner shall require the agency that will make use of the Project to cooperate with the Design Professional during the progress of design, subject to the provisions of this Contract, and to provide the Owner with written recommendations for approval of the services of the Design Professional.

5.3.1.2 Masculine Gender. Throughout this document, both the Owner and the Design Professional are referred to in the masculine gender for the convenience of both parties.

5.3.1.3 No Estoppel. No course of action or failure to act by the Owner or any of its officers, members, employees, agents or other representatives shall serve to modify this Contract, waive rights under it or arising from its breach, or to stop the Owner from enforcing its terms.

5.3.1.4 Captions. The Caption of each numbered provision hereof is for identification and convenience only and shall be completely disregarded in construing this Contract.

5.3.1.5 Notices. Any notice to be given hereunder shall be in writing and shall be given by delivery in person or by depositing the notice in United States Certified Mail, Return Receipt Requested, postage prepaid, or statutory mail in an envelope addressed to the parties to be notified at such party's address as shown in the Contract.

5.3.2 Matters of Law

5.3.2.1 Drug Free Work Place. The Design Professional acknowledges that he is fully aware of the contents and requirements of Chapter 24 of Title 50 of the Official Code of Georgia concerning the maintenance of a Drug Free Workplace. The Design Professional by execution of this Contract does hereby certify that, to the best of its knowledge, information and belief, the Design Professional and its consultants are in compliance with the aforesaid code section.

5.3.2.2 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 its, 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 its, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or the making of this Contract.

5.3.2.3 Minority Participation. It is the policy of the State of Georgia that minority business enterprises shall have the maximum opportunity to participate in the State purchasing and contracting process. Therefore, the State of Georgia encourages all minority business enterprises to compete for, win, and receive contracts for goods, services, and construction. Also, the State encourages all companies to sub-contract portions of any State contract to minority business enterprises. Design Professionals who utilize qualified minority subcontractors may qualify for a Georgia state income tax deduction for qualified payments made to minority subcontractors. See O.C.G.A. §48-7-38. For more information, please contact the Board of Regents' Office of Business Development by e-mail at BusinessDevelopment@usg.edu.

5.3.2.4 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.

5.3.2.5 Gratuities. The Design Professional agrees that neither he nor any of its employees nor consultants shall accept any gratuities nor receive any compensation from the Contractor, subcontractors, or suppliers involved in the construction of the Project. The Design Professional shall notify each of its employees and all consultants of the Design Professional's commitments under this provision of this Contract. This provision expressly precludes any compensation to the Design Professional, including any employee and consultant, by the Contractor, subcontractors, or material suppliers involved in the construction of the Project for preparation of detail drawings, preparation of shop drawings, checking shop drawings or any other service for work performed by the Design Professional under the Contract without prior written approval of the Owner.

5.3.2.6 Applicable Law. The law of Georgia shall govern this Contract. In case any dispute or controversy arises between the Design Professional and the Owner, either party may exercise those legal remedies as may be available to them. The venue for any proceedings is herein agreed to be the Superior Court of Fulton County, State of Georgia, unless otherwise specifically agreed. The Design Professional shall carry on the services required under this Contract, and the Owner shall continue to pay the Design Professional for such services during any legal proceedings unless otherwise agreed by the Design Professional and the Owner in writing.

5.3.2.7 Statute of Limitations / Statute of Repose. The Statute of Limitations or Statute of Repose on any cause of action by either party to this Contract shall commence to run on the date of the Design Professional's Certificate of Final Completion or upon a judicial determination of substantial completion of the Project.

5.3.2.8 Compliance with Executive Orders Concerning Ethics. The Design Professional warrants that he and its firm have complied in all respects with the Governor's Executive Orders concerning ethics matters, including, but not limited to, Executive Order dated February 13, 2003 (establishing Code of Ethics for Executive Branch Officers and Employees, including provisions governing former officers and employees); Executive Order dated October 1, 2003 (governing vendors to state agencies and disclosure and registration of lobbyists); and O.C.G.A. §§ 21-5-70(5), 21-5-71 and 21-5-73, all as amended effective February 9, 2006 (requiring registration and disclosure filings by state agency vendor lobbyists). In this regard, the Design Professional certifies that any lobbyist employed or retained by the Design Professional or its firm has both registered and made the required disclosures required by the Executive Orders, as amended.

5.3.2.9 Compliance with Federal and State Work Authorization and Immigration Laws. The Design Professional and all subcontractors, suppliers and consultants must comply with all federal and state work authorization and immigration laws, and must certify compliance using the form set forth in Section 7 ("Affidavit and Certificate of Compliance – Federal and State Work Authorization"). The required certificates must be filed with the Owner and copied maintained by the Design Professional as of the beginning date of this contract and each subcontract, supplier contract, or consultant contract, and recertified as of July 15 of each year, and upon final payment to the subcontractor or consultant. State officials, including officials of the Georgia Department of Labor, officials of the Owner, retain the right to inspect and audit the Project Site and employment records of the Design-Builder, subcontractors and consultants without notice during normal working hours until Final Completion, and as otherwise specified by law and by Rules and Regulations of the Georgia Department of Labor.

5.3.3 Miscellaneous Contract Provisions.

5.3.3.1 **Third Party Beneficiary.** The Design Professional acknowledges, stipulates, and agrees that the Owner is a public department, agency, or commission of the executive branch of government of the State of Georgia performing an essential public and governmental function by means of the Contract. The Design Professional acknowledges, stipulates, and agrees that the Using Agency is an express third party beneficiary of this Contract. There are no individual or personal third party beneficiaries of this Contract.

5.3.3.2 Hazardous Materials. Unless specifically provided otherwise in this Contract, the Design Professional shall have no responsibility concerning the discovery, removal or handling of hazardous materials, including but not limited to, asbestos or lead paint, or hazardous waste in soil or ground water.

5.3.3.3 Advertising by the Design Professional. The Design Professional shall not use any photographic representation or verbal description of the Owner, the Using Agency or the Project in a derogatory manner.

5.3.3.4 Successors and Assigns.

(a) Jointly Bound. The Design Professional binds itself jointly and severally, its successors, executors, administrators and assigns to Owner and all covenants of this Contract. The Design Professional shall not assign, sublet or otherwise transfer its interest in this Contract without the prior written consent of the Owner.

(b) Assignment. The Design Professional hereby agrees that the Owner may, if he wishes to do so, assign this Contract to another state agency, authority, or commission and agrees further that, upon notice in writing to the Design Professional of such assignment, the Design Professional is and shall be bound to the state agency, authority, or commission by all the terms and conditions hereof the same as if said Contract had originally been entered into with the state agency, authority or commission.

5.3.3.5 Modifications or Changes. Modifications to this Contract, if any, must be by written amendment executed with the same formalities as the original Contract.

5.3.3.6 Time of Essence. Time is of the essence in the performance of the duties and obligations of this Contract.

EXHIBIT A
FORM OF DESIGN ORDER OR CCA ORDER

DESIGN ORDER **CONTRACT OR PROJECT NO.** _____
 CONSTRUCTION CONTRACT ADMINISTRATION ORDER **DATE:** _____

1. **Job Name and Location:** _____

2. **Lump Sum Fee:** \$ _____

3. **Completion Date:** _____

4. **Scope of Work:**

5. **Special Stipulations:**

6. **Preliminary Design and Construction Schedule Attached:** YES NO

APPROVED:

DESIGN PROFESSIONAL:

USING AGENCY: Georgia Institute of Technology,
a unit of the Board of Regents University System of Georgia

Charles Rhode
Vice President, Facilities Management

EXHIBIT B – SCHEDULE OF HOURLY RATES

The hourly rates for Additional Services not included in the Additional Service Fee (See Paragraph 4(c), page Contract -1) to be included in the invoices of the Design Professional shall be as follows:

Name & TITLE:

HOURLY RATE:

Name	\$
Name	\$
Name	\$
Name	\$
Name	\$
Name	\$
Name	\$

These hourly rates may be adjustable annually on the anniversary date of this Contract subject to the customary salary policies of the Design Team member firms and the approval of the Owner.

EXHIBIT C

DESIGN PROFESSIONAL AFFIDVIT AND CERTIFICATE OF COMPLIANCE
GEORGIA SECURITY AND IMMIGRATION CERTIFICATION
(FEDERAL AND STATE WORK AUTHORIZATION PROGRAMS)

STATE OF GEORGIA;
COUNTY OF _____:

BOR PROJECT NO. _____ PROJECT NAME: _____

DESIGN PROFESSIONAL AFFIDAVIT, CERTIFICATE AND AGREEMENT

COMES NOW before me, the undersigned officer duly authorized to administer oaths, the undersigned design professional ("Design Professional"), who, after being duly sworn, states, warrants, agrees and certifies as follows to the Board of Regents of the University System of Georgia ("Owner"), and _____ ("Using Agency"):

1.

By executing this affidavit, Design Professional verifies and warrants its compliance with O.C.G.A. §13-10-90 et seq. and Georgia Department of Labor Rule 300-10-1-.01, and the U.S. Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603. Design Professional must register and verify information of all new employees at https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES (the E Verify program) or any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program to verify information of newly hired employees, pursuant to the IRCA. Design Professional affirmatively certifies that it has registered [or will register] with and is [or will] participate in a federal work authorization program in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91 and Georgia Department of Labor Rule 300-10-1-.02, as initialed below.

2.

Design Professional verifies and warrants it employs the following federal verification program(s):

_____ https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES (E Verify program)

_____ Other: _____

Verification Program User ID or Registration No. _____

3.

The Design Professional further warrants and agrees that all subcontractors, suppliers and consultants contracted in connection with the provision of materials and equipment or performance of services or work for the Project described above shall be required prior to the commencement of any work on the project to supply the Subconsultant Certification verifying compliance with O.C.G.A. §13-10-90 et seq. and Georgia Department of Labor Rule 300-10-1-.01, and the U.S. Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603 and paragraph 5 below. Subconsultant must register and verify information of all new employees at https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES (the E Verify program) or other federal verification program. The affidavit must contain the certifications required by Georgia Department of Labor Rule 300-10-1-.08 and the requirements set forth herein. The Design Professional shall maintain records of compliance and provide a copy of each such certification to the Owner and Using Agency as set forth in paragraph 5 below. Design Professional warrants that Design Professional has included this requirement in all written agreements with any subcontractors engaged to perform services for this Project.

4.

The Design Professional further warrants and agrees to comply with the President's Executive Order 13224, which mandates that no U.S. company shall do business with any person (Prohibited Person) who has been determined to have committed, or pose a risk of committing or supporting terrorist acts, and those identified on the list of Specially Designated Nationals and Blocked Persons, generated by the Office of Foreign Assets Control ("OFAC"). The OFAC list is updated regularly, and an up-to-date OFAC list can be obtained from the U.S. Department of the Treasury website at <http://www.ustreas.gov/ofac>. This Executive order extends to "Affiliates," which includes any other person or entity that, directly or indirectly, is in control of, is controlled by or is under common control with any Prohibited Person. A copy of the Executive Order can be obtained at <http://www.ustreas.gov/offices/enforcement/ofac/sanctions/terrorism.html> and the USA Patriot Act of 2001, restricting terrorist groups' access to financial resources in the United States can be obtained at http://www.fincen.gov/pa_main.html for review. The Design Professional agrees to review its subcontracts and other agreements annually with the Treasury website for compliance, and maintain a record of its reviews.

5.

Design Professional warrants and agrees that it shall submit, and shall ensure all its subcontractors and suppliers submit, the required certifications and verifications (i) at contract execution prior to commencing work or services; (ii) upon the completion or termination of the contract; and (iii) and recertified as of July 15 of each year during the term of the Project. The required certificates must be filed with the Owner and Using Agency and copies maintained by the Design Professional in its Project files and retained for audit as specified in the Project contract. State officials, including officials of the Georgia Department of Labor, officials of the Owner, retain the right to inspect and audit the Project Site and employment records of the Design Professional, subcontractors, suppliers and consultants without notice during normal working hours until Final Completion, and as otherwise specified by law and by Rules and Regulations of the Georgia Department of Labor.

Design Professional Name: _____

Street/Mailing Address: _____

Telephone Number: _____

Facsimile Number: _____

Email Address: _____

FURTHER AFFIANT SAYETH NOT.

Design Professional Name

By: _____

Signature of Authorized Officer or Agent

Printed Name of Authorized Officer or Agent

Title of Authorized Officer or Agent

Sworn to and subscribed before me
by the affiant named above as of this

_____ day of _____, 200_____

Notary Public

My commission expires: _____

**CONSULTANT AND
SUBCONSULTANT AFFIDAVIT AND CERTIFICATE OF COMPLIANCE
GEORGIA SECURITY AND IMMIGRATION CERTIFICATION
(FEDERAL AND STATE WORK AUTHORIZATION PROGRAMS)**

STATE OF GEORGIA;
COUNTY OF _____:

BOR PROJECT NO. _____ PROJECT NAME: _____

CONSULTANT AFFIDAVIT, CERTIFICATE AND AGREEMENT

COMES NOW before me, the undersigned officer duly authorized to administer oaths, the undersigned consultant, supplier or subconsultant ("Consultant"), who, after being duly sworn, states, warrants, agrees and certifies as follows to the Board of Regents of the University System of Georgia ("Owner"), and to _____ ("Using Agency"):

1.

By executing this affidavit, Consultant verifies and warrants its compliance with O.C.G.A. §13-10-90 *et seq.* and Georgia Department of Labor Rule 300-10-1-.01, and the U.S. Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603. Consultant must register and verify information of all new employees at <https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES> (the E Verify program) or any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program to verify information of newly hired employees, pursuant to the IRCA. Consultant affirmatively certifies that it has registered [or will register] with and is [or will] participate in a federal work authorization program in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91 and Georgia Department of Labor Rule 300-10-1-.02, as initialed below.

2.

Consultant verifies and warrants it employs the following federal verification program(s):

_____ <https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES> (E Verify program)

_____ Other: _____

Verification Program User ID or Registration No. _____

3.

The Consultant further warrants and agrees that all subcontractors, suppliers and consultants contracted in connection with the provision of materials and equipment or performance of services or work for the Project described above shall be required prior to the commencement of any work on the project to supply the Consultant Certification verifying compliance with O.C.G.A. §13-10-90 *et seq.* and Georgia Department of Labor Rule 300-10-1-.01, and the U.S. Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603 and paragraph 5 below. Consultant must register and verify information of all new employees at <https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES> (the E Verify program) or other federal verification program. The affidavit must contain the certifications required by Georgia Department of Labor Rule 300-10-1-.08 and the requirements set forth herein. The Consultant shall maintain records of compliance and provide a copy of each such certification to the Owner and Using Agency as set forth in paragraph 5 below. Consultant warrants that Consultant has included this requirement in all written agreements with any subcontractors engaged to perform services for this Project.

4.

The Consultant further warrants and agrees to comply with the President's Executive Order 13224, which mandates that no U.S. company shall do business with any person (Prohibited Person) who has been determined to have committed, or pose a risk of committing or supporting terrorist acts, and those identified on the list of Specially Designated Nationals and Blocked Persons, generated by the Office of Foreign Assets Control ("OFAC"). The OFAC list is updated regularly, and an up-to-date OFAC list can be obtained from the U.S. Department of the Treasury website at <http://www.ustreas.gov/ofac>. This Executive order extends to "Affiliates," which includes any other person or entity that, directly or indirectly, is in control of, is controlled by or is under common control with any Prohibited Person. A copy of the Executive Order can be obtained at <http://www.ustreas.gov/offices/enforcement/ofac/sanctions/terrorism.html> and the USA Patriot Act of 2001, restricting terrorist groups' access to financial resources in the United States can be obtained at http://www.fincen.gov/pa_main.html for review. The Subcontractor agrees to review its subcontracts and other agreements annually with the Treasury website for compliance, and maintain a record of its reviews.

5.

Consultant warrants and agrees that it shall submit, and shall ensure all its subcontractors and suppliers submit, the required certifications and verifications (i) at contract execution prior to commencing work or services; (ii) upon the completion or termination of the contract; and (iii) and recertified as of July 15 of each year during the term of the Project. The required certificates must be filed with the Owner and Using Agency and copies maintained by the Consultant in its Project files and retained for audit as specified in the Project contract. State officials, including officials of the Georgia Department of Labor, officials of the Owner, retain the right to inspect and audit the Project Site and employment records of the Consultant, subcontractors, suppliers and consultants without notice during normal working hours until Final Completion, and as otherwise specified by law and by Rules and Regulations of the Georgia Department of Labor.

Consultant Name: _____
Street/Mailing Address: _____
City, State, Zip _____
Telephone Number: _____
Facsimile Number: _____
Email Address: _____

FURTHER AFFIANT SAYETH NOT.

Consultant Name
By: _____
Signature of Authorized Officer or Agent

Printed Name of Authorized Officer or Agent

Title of Authorized Officer or Agent

Sworn to and subscribed before me
by the affiant named above as of this
_____ day of _____, 200_____

Notary Public

My commission expires: _____

REFERENCE 1

**Regents' Building Projects Procedures Manual or GSFIC Process Guide
Or Other Guidelines**

**Georgia Institute of Technology
Architecture and Engineering Design Standards
for Building Technology
(GT-Yellow Book)**

**The Design Professional will provide design documents in electronic form and
provide Archive
Entry_Sheet.XLS file.**