#### DESIGN BUILD CONTRACT

#### BETWEEN

#### 

#### (Design-Builder)

#### AND

**BOARD OF REGENTS OF THE**

**UNIVERSITY SYSTEM OF GEORGIA**

#### (Owner)

**For the Use and Benefit of**

**Using Agency** (Institution)

#### FOR

#### PROJECT NO.

**INCLUDES: Executive Summary of Contents** Preface

**Basic Tenets of Contract** Preface

**Design Build Form of Contract** Contract 1 to Contract 4

**Table of Contents** pp i to vii

**General Requirements** pp 1 to 122

**Contract Forms** pp Forms 1 to Forms 17

**Exhibits** pp A to O

**Supplementary General Requirements**

PREFACE

EXECUTIVE SUMMARY

Basic Tenets of the Contract

This Agreement implements the “design-build” project delivery method as described in The State Construction Manual. The usual method of procurement is by solicitation of competitive sealed proposals, although other procurement methods may be utilized, as permitted by law.

The Design Builder is under contract to supply both design services and construction services for the completion of the project and place the Owner in occupancy of the project in a “turnkey” fashion. Once either a Guaranteed Maximum Price (GMP) or a Lump Sum Price is agreed between the Owner and the Design Builder, the Design Builder is “at risk” for project price, project schedule, and completion of all construction as set forth in the Contract Documents. The Design Builder holds all trade contracts and trade supplier contracts.

The Owner will designate a Program Manager to assist the Owner in monitoring the design and cost control for the Project. In some situations the Owner may elect to have the Program Manager perform program management duties. The Program Manager does not take on any of the responsibilities of design or construction and does not relieve the Design Builder from the complete management responsibility for the project. To avoid confusion, the Design-Builder’s management leader is designated the “Project Manager.” The Program Manager acts for the Owner to discharge the Owner’s obligations to the Project and coordinates the interaction of the Project Team. The Program Manager’s agreement is independently drafted to meet the particular management needs of the Project. The Request for Proposals should identify whether a Program Manager will be utilized for the Project.

The price and financial structure of this Agreement is the “cost-plus” method, with an absolute cap on the total price of the contract (the GMP), and certain other maximum price allowances. The sole basis for the “plus” under this Agreement is the Design Builder’s Fee, which is the Design Builder’s “gross profit” as defined in the contract. Certain items of overhead cost, such as home office overhead and bonding of subcontractors, are not permissible overhead costs for the project and are considered a part of the “gross profit” The sole basis for “cost” throughout the Agreement is Actual Cost, as defined therein. In addition to the GMP, there are total cost limitations imposed on Actual Costs for allowable overhead, salary and labor costs. In addition to the GMP, there are total cost limitations imposed on Actual Costs for overhead, salary and labor costs, both as to type of cost and allowable amounts. Actual cost is the only allowable cost under this Agreement, unless and until a Lump Sum Price is agreed between the Owner and Design Builder.

There are two contingency amounts under the GMP. The first is the “construction contingency,” which is largely under the control of the Design Builder pursuant to the terms of this Agreement and has a minimal requirement for Owner approval “not unreasonably withheld.” The second is the “design contingency” pursuant to the terms of this Agreement, in which the Owner retains substantial control. Both contingencies are eliminated if the Owner and Design-Builder ultimately agree to a Lump Sum Price for the project.

EXECUTIVE SUMMARY OF CONTENTS

**DESIGN-BUILDER FORM OF CONTRACT**

**GENERAL REQUIREMENTS**

**SECTION 1 – GENERAL**

Part 1 – General Provisions

Part 2 – Design-Builder’s General Responsibilities and Duties

Part 3 – Owner’s Responsibilities and Rights

Part 4 – Protection Of Persons And Property

# Part 5 – Bonds, Indemnity and Insurance

Part 6 – Hazardous Conditions And Materials

Part 7 – Miscellaneous Provisions

# SECTION 2 – PRECONSTRUCTION PHASE

# Part 1 – Design Services

# Part 2 – Preconstruction Phase Services

Part 3 – Construction Documents and Site Preparation

**SECTION 3 – CONSTRUCTION PHASE**

Part 1 – Construction Services

# Part 2 – Component Change Orders

Part 3 – GMP Change Order

Part 4 – Changes To The Work

Part 5 – Time

Part 6 – Correcting the Work; Inspections; Covering And Uncovering Work

Part 7 – Trade Contractors; Self-Performance

**SECTION 4 – COMPENSATION**

Part 1 – General

Part 2 – Payment For Preconstruction Phase Services

Part 3 – Payment For Construction Phase Services

Part 4 – Cost Of The Work

Part 5 – Liens

**SECTION 5 – CONTRACT ADJUSTMENTS, DISPUTES, AND TERMINATION.**

Part 1 – Owner’s Right to Suspend Work

Part 2 – Contract Adjustments and Disputes

Part 3 – Termination

**SECTION 6 – PROJECT COMPLETION**

Part 1 – Material Completion

Part 2 – Final Completion

Part 3 – Inspections for Completion of the Work

Part 4 – Final Documents

Part 5 – Payment for Material Completion and for Final Payment

Part 6 – Correction of the Work after Final Payment

#### SECTION 7 – CONTRACT FORMS

Performance Bond

Payment Bond

Contractor Affidavit and Certificate of Compliance

Subcontractor Affidavit and Certificate of Compliance

Non-Influence Affidavit

Statutory Affidavit

Five Year Bond on Roofs and Walls

Specimen Certificate of Manufacturer

Certificate of Insurance

Bond to Discharge Claim

Subcontractor Retainage Release Certificate

**EXHIBITS**

Exhibit A Using Agency’s Program and Existing Documents

Exhibit B Owner’s Preliminary Budget

Exhibit C Design Builder’s Project Budget Format

Exhibit C-1 Design Professional’s Statement of Probable Construction Cost

Exhibit C-2 Site Memorandum

Exhibit C-3 Advice on Construction Progress

Exhibit D Monthly Report Format

Exhibit E Design-Builder’s Proposal

Exhibit F Owner’s Preliminary Schedule

Exhibit G Specimen Component Change Order

Exhibit H Specimen GMP Change Order

Exhibit I Specimen Change Order

Exhibit J Wage Rates and Labor Cost

Exhibit K Application for Payment

Exhibit L Final Capital Cost Certification

Exhibit M Certificate of Material Completion

Exhibit N Certificate of Final Completion

Exhibit O Energy Act Checklist and Submittals

**SUPPLEMENTARY GENERAL REQUIREMENTS**

## DESIGN BUILD CONTRACT

**Between Design-Builder And Owner**

THIS DESIGN BUILD CONTRACT (hereinafter the “Contract”) made this  day of , by and between , (hereinafter the “Design-Builder”), whose address is

1. **Design-Builder’s FEIN or Tax Identification Number:**
2. **Design-Builder’s Georgia License Type and Number:**
3. **Design-Builder’s Federal Employment Verification Certification:**

The Design-Builder is registered with, authorization 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:

Date of Authorization:

and the Board of Regents of the University System of Georgia, hereinafter called the “Owner,” for the use and benefit of , hereinafter called the “Using Agency” (Institution).

WITNESSETH, that the Design-Builder and the Owner, for the consideration set forth herein, the adequacy and sufficiency of which is hereby acknowledged by each party, agree as follows:

**Project No.**

**Project Name and Description:** (hereinafter the “Project”).

**1. Existing Documents**. The Using Agency’s Program and Existing Documents, which the Design-Builder has reviewed and taken into consideration in preparing his proposal for fees and general conditions, are set forth on Exhibit A.

**2. Notice**. Notice in accordance with Section 1.1.5 shall be given to the following addresses:

**DESIGN-BUILDER**:

Attention:

Phone Number:

Facsimile Number:

**OWNER:** Board of Regents of the University System of Georgia

Attention: Linda M. Daniels, Vice Chancellor for Facilities

270 Washington Street, SW, 6th Floor

Atlanta, Georgia 30334

Phone No.: (404) 656-2243

Facsimile No.: (404) 657-7433

**USING AGENCY:**

Attention:

Phone Number:

Facsimile Number:

**PROGRAM MANAGER:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(If Applicable) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Facsimile Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**3. Owner’s Representative:** All notices sent to the Owner at the above address shall also be sent to the Owner’s Representative. The Owner’s Representative for this project shall be:

**OWNER’S REPRESENTATIVE:** Board of Regents of the University System of Georgia

270 Washington Street, SW, 6th Floor

Atlanta, Georgia 30334

Attention:

Phone Number:

Facsimile Number:

**4. GMP Cost Limitation:** The maximum amount allowable for the Guaranteed Maximum Price shall in no event exceed the following amount:

DOLLARS ( $ )

**5. Design-Builder Fee.**

a. *Design Fee*: The Design Fee component of the Design-Builder Fee shall in no event exceed the following amount:

DOLLARS ( $ )

b. *Preconstruction Fee*: The Preconstruction Fee component of the Design-Builder Fee shall in no event exceed the following amount:

DOLLARS ( $ )

c. *Construction Fee*: The Construction Fee component of the Design-Builder Fee shall in no event exceed the following amount:

DOLLARS ( $ )

d. *Components:* The above fees contemplate the following components to be designed and incorporated by Component Change Orders: *(List)*

**6. Design-Builder Overhead Costs and Expenses:** The amount allowable for the Design-Builder’s Overhead Costs and Expenses (Preconstruction and Construction COMBINED) shall in no event exceed the following amount:

DOLLARS ( $ )

1. *Preconstruction Costs & Expenses*: The Preconstruction Costs & Expenses component of the Design-Builder Fee shall in not event exceed the following amount:

DOLLARS ( $ )

1. *Construction Overhead Costs*: The Construction Overhead Costs component of the Design-Builder Fee shall in no event exceed the following amount:

DOLLARS ( $ )

**7. The** **Material Completion and Occupancy Date is** \_\_\_ \_\_\_\_\_\_\_\_**.**

**8.** **The agreed daily amount for Liquidated Damages is** $ per day.

**9.** **Energy Efficiency and Sustainable Construction Act of 2008**. This Project [is] [is not]subject to the provisions of the Energy Efficiency and Sustainable Construction Act of 2008 (“Energy Act”). Projects subject to the Energy Act require commissioning, water-use reduction, and use of not less than 10% of Georgia products. Commissioning as required by the Energy Act shall be performed by [a third party commissioning agent] [the Design Professional] [a commissioning agent retained by the Design=-Builder] who shall commission the items listed on the Commissioning Checklist included in Exhibit O and complete the checklist included in Exhibit O. For information regarding the Energy Act requirements, Design Professional shall refer to the *Energy Efficiency and Sustainable Construction Standards for State Buildings* as promulgated by the Georgia Department of Community Affairs, a copy of which is available at <http://www.dca.ga.gov/development/constructioncodes/publications/Energy-Efficiency-and-Sustainable-Construction-Standards-FINAL.pdf>. [*Strike inapplicable terms*].

**10.** **Scope Of Basic Services And The Work.** The Design-Builder shall perform all of the Basic Services and furnish all of the materials and perform all of the Work described in the Contract Documents and shall do everything required by the Contract Documents.

**11. Schedule And Completion.** The Design and Work to be performed under the Contract Documents shall be commenced upon execution of this Contract and shall be completed in accordance with the approved Overall Project Schedule not later than 30 days after the Material Completion and Occupancy Date set forth above.

**12. The Guaranteed Maximum Price (GMP).** A GMP will be established in accordance with Section 3, Part 3 of the General Requirements. The GMP may be replaced by a Lump Sum Price as set forth in Article 3.3.7 of the General Requirements.

**13. Payments.** Payments on account of the Contract shall be made in accordance with Section 4 of the General Requirements. The Payment for Material Completion shall be made by a check payable jointly to the Design-Builder and Surety and shall be mailed to the Surety.

**14. Final Payment.** Final payment will be made in accordance with Section 6, Part 5 of the General Requirements, provided that all other requirements of the Contract Documents shall have been met in full.

**15. The Contract Documents**. The Contract Documents include the executed Contract, any Component Construction Documents, the Construction Documents, and all Change Orders as defined in the General Requirements. (*See* Article 1.1.9)*.*

**16. Surety Bonds.** The Design-Builder shall furnish both a performance bond and a payment bond specified in the General Requirements and shall pay the premiums thereon as a Cost of the Work. The performance bond shall guarantee the full performance of the Contract and Contract Documents.

**17. Full Performance.** The Owner and the Design-Builder hereby agree to the full performance of the Basic Services and the Work , including all the requirements, conditions and stipulations contained in the Contract Documents.

**18. Applicable Law**. This Contract and all rights, privileges and responsibilities shall be interpreted and construed according to the laws of the State of Georgia.

**19. No Conflict Of Interest.** The Design-Builder covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance required under this Contract. The Design-Builder further covenants that, in the performance of this Contract, no person having any such interest shall be employed or contracted with.

**20. Transactions With State Officials.** The parties hereto certify that the provisions of law contained in the Act prohibiting full-time appointive officials and employees of the State from engaging in certain transactions affecting the State as defined in O.C.G.A. Sections 45-10-20 through 45-10-26 have not and will not be violated in any respect in regard to this Contract**.**

**21. No Assignment.** This Contract and the proceeds of this Contract may not be assigned nor may the performance thereunder be assigned, without the prior written consent of the Owner.

**22. No Waiver.** The failure of the Owner at any time to require performance by the Design-Builder of any provision hereof, shall in no way affect the right of the Owner thereafter to enforce any provision or any part of the Contract, nor shall the failure of the Owner to enforce any breach of any provision hereof to be taken or held to be a waiver of such provision, or as a waiver, modification or recession of the Contract itself.

**23. Severability.** If any term or provision of this Contract or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Contract, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Contract shall be valid and enforced to the fullest extent permitted by law.

**24.** **Georgia Security and Immigration Compliance Act Requirements**. The Design-Builder hereby certifies its compliance with the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603 and the Georgia Security and Immigration Compliance Act OCGA 13-10-90 *et seq.* Design-Builder certifies that Design-Builder has registered at <https://www.vis-dhs.com/EmployerRegistration> to verify information of all newly hired employees in order to comply with the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603 and the Georgia Security and Immigration Compliance Act. Design-Builder further certifies that it shall execute any affidavits required by the rules and regulations issued by the Georgia Department of Labor set forth at Rule 300-10-1-.01 *et seq.*   Design-Builder warrants that it has included a similar provision in all written agreements with any subcontractors engaged to perform services under this Contract. Design-Builder 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 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.

**25. Full Agreement:** The Contract Documents supersede all prior negotiations, discussion, statements, and agreements between Owner and Design-Builder and constitute the full, complete, and entire agreement between Owner and Design-Builder. There can be no changes to this Contract by oral means, nor by course of conduct of the parties, nor by custom of the trade. No changes to this Contract will be binding on either party hereto unless such change is properly authorized, in writing, in accordance with Section 3 of the General Requirements.

**IN WITNESS WHEREOF** the parties hereto have executed this Contract the day and year first written above.

Design-Builder

**ATTEST:**

\_ (L.S.) **By:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (L.S.)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, President

(Print Name/Title) (Print Name)

(affix seal over secretary’s signature)

(If not a corporation, signature must be notarized)

**APPROVED: USING AGENCY**

**By:**

Insert Using Agency President, President

Insert Using Agency Name

**Witness:**

(Print Name / Title)

**BOARD OF REGENTS OF THE UNIVERSITY**

**SYSTEM OF GEORGIA, OWNER**

**By:**

Linda M. Daniels

Vice Chancellor for Facilities

**Witness:**

Sheree Wilder Srader

Director of Contracts & Services

Attachments:

1. General Requirements, Forms and Exhibits

2. Supplementary General Requirements