

EXECUTIVE ADMINISTRATOR CONTRACT

BETWEEN EXECUTIVE ADMINISTRATOR AND OWNER

**TO BE USED WITH
ENGINEERING DESIGN-BUILD CONTRACT**



**Office of Facilities
270 Washington Street, SW, 6th Floor
Atlanta, Georgia 30334**

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EXECUTIVE ADMINISTRATOR CONTRACT

**STATE OF GEORGIA;
COUNTY OF FULTON**

PROJECT NO. _____

DESCRIPTION: _____

THIS EXECUTIVE ADMINISTRATOR CONTRACT (hereinafter "Contract" is made this _____ day of _____, 2006, by and between.

- a. **OWNER'S NAME AND ADDRESS, hereinafter "Owner":**
 THE BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA
 270 Washington Street, SW, 6th Floor
 Atlanta, Georgia 30334
 Attention: Linda M. Daniels, Vice Chancellor for Facilities
 Telephone: 404-656-2243
 Fax: 404-657-7433

and

- b. **EXECUTIVE ADMINISTRATOR'S NAME AND ADDRESS, hereinafter "Executive Administrator",**
 Insert EA Firm Here
 Address
 Address
 Attention:
 Telephone:
 Fax:

Executive Administrator's SSN or FEIN. _____

- c. For the benefit of. **USING AGENCY'S NAME AND ADDRESS, hereinafter "Using Agency".**
 Insert Using Agency Name Here
 Address
 Address
 Attention:
 Telephone:
 Fax:

OWNER AND EXECUTIVE ADMINISTRATOR, with the consent of Using Agency, hereby agree as follows.

- 1. **AMOUNT OF DESIGN-BUILD COST LIMITATION.** \$ _____
- 2. **OWNER'S AUTHORIZED AGENT.** _____
- 3. **NAME OF ENGINEER OF RECORD.** _____

4. FEES.

- a. The lump sum agreed upon fee for Phase I services of the Project is \$_____.
- b. The lump sum agreed upon fee for Phase II services of the Project is \$_____.
- c. The lump sum agreed upon fee for Phase III services of the Project is \$_____.
- d. Additional Services Fees (at Contract execution) are \$_____ (See Exhibit A)
- e. Additional Services Hourly Rates, as applicable. (See Exhibit B)
- f. Reimbursable Expenses as set forth in Article 3.2 of the General Requirements.

g. Any fees already paid for account of Executive Administrator services on this project pursuant to any or documents or contracts _____ in the total paid amount of \$_____ shall be applied as a reduction to any fees which shall be due or which shall become due under this Contract.
(List documents)

5. SITE VISITS. Number of site visits by the Executive Administrator and consultants during Construction Contract Administration Phase included in the fee for Basic Services shall be _____ site visits. Additional site visits shall be performed in accordance with Exhibit A plus reimbursable expenses, as set forth in Article 3 of the General Requirements.

6. REPRESENTATIONS. The Executive Administrator represents that it
- a. is an organization of professionals experienced in the type of services the Owner is engaging the Executive Administrator to perform;
 - b. is authorized and licensed to do business in the State of Georgia;
 - c. is qualified, willing and able to perform professional services for the Project;
 - d. has the expertise and ability to provide professional services which will meet the Owner's objectives and requirements; and
 - e. has the expertise to comply with the requirements of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.

7. APPROVALS. By executing this Contract, the Executive Administrator agrees that he has reviewed the approvals required by the General Requirements and the Construction Documents, which he must execute with reference to this Project. The Owner and Executive Administrator agree that the required certifications do not require knowledge, services or responsibilities that are beyond the scope of this Contract.

9. BUILDING OFFICIAL. The Owner and Engineer acknowledge that there is no State Building Official for other than the Life Safety, Building Accessibility and Fire Safety rules, regulations and codes, and that the Board of Regents has identified the Vice Chancellor for Facilities as the Building Official for its Projects.

10. ENTIRE CONTRACT. The General Requirements and all Exhibits are incorporated into and made a part of this Contract by reference. This Contract represents the entire and integrated Contract between Owner and Executive Administrator 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 Engineer.

(Signatures on Next Page)

GENERAL REQUIREMENTS

FOR THE EXECUTIVE ADMINISTRATOR

ARTICLE 1 BASIC INFORMATION AND DEFINITIONS,

1.1 General. The Owner intends to complete the Project using the Design-Build delivery method. To accomplish these objectives, Owner intends to employ a team concept for the completion of the Construction Documents and construction of the Project. The basic roles and general responsibilities of team members are set forth in general terms below but are more fully set forth in the Design Build. All team members shall have access to all contracts and to any changes to those contracts. It is the Owner's expectation that the Owner, the Executive Administrator, the Design Builder, Commissioning Agent and any Separate Contractor shall work as a team, in accordance with their respective contracts to effect the design of the Project, to effect commencement of and completion of construction in accordance with the Construction Documents and the Overall Project Schedule, and to achieve completion of the Project within the Design Build Cost Limitation. Each team member shall communicate with all other team members to assure overall coordination, cooperation and efficiency. Each team member shall cooperate fully with and coordinate fully with each other team member in order to achieve Project completion in an expeditious and economical manner.

1.2 Outline of Principle Services. The Executive Administrator agrees to perform for the Owner the executive administration and professional services hereinafter stated. The Executive Administrator's responsibilities to the Owner are to further the interests of the Owner by furnishing the Executive Administrator's professional skill and best judgment. The services of the Executive Administrator will be provided throughout the planning, programming, design and construction of the Project and will be divided into three phases.

PHASE I: Phase I shall consist of the review and augmentation of the existing pre-design planning documents and programmatic documents, development of detailed design criteria for quality and serviceability (including as applicable, performance requirements), and building assurance methods and criteria, into a complete and verified "Using Agency's Program" so that the Engineer on behalf of the Design Builder is able to produce full and complete Construction Documents in accordance with the Using Agency's Program.

Major Deliverables:	Augmented Project Program Initial Cost Determination and Cost Model
Professional Services:	Management Professionals Budget and Costing Professionals

PHASE II: Phase II shall consist of the periodic review of the documents prepared by the Engineer on behalf of the Design Builder to ensure that the Construction Documents are proper and correct developments of the Using Agency's Program.

Major Deliverables:	Periodic Design Compatibility Reviews Periodic Cost Analysis Updates
Professional Services:	Management Professionals Budget and Costing Professionals

PHASE III: Phase III shall consist of the monitoring of the construction of the Project to ensure that the work is installed in accordance with the requirements of the Construction Documents, a Guaranteed Maximum Price is established, and the costs are accurate, reasonable and within the GMP. This phase includes review and processing, as appropriate, of all change

orders and applications for payment, and the implementation of the building commissioning program established in the Using Agency's Program.

Major Deliverables:	Review/recommendation on Applications for Payment Review/recommendation on Component Change Orders Review/recommendation on GMP Change Order Review/recommendation on Change Orders Periodic Construction Reviews for Design Conformity Periodic Cost Analysis Updates
Professional Services:	Management Professionals Budget and Costing Professionals Contract administration personnel

The above phases are not mutually exclusive, but will overlap as the Project progresses

The Executive Administrator acknowledges that the Owner has appropriated a fixed amount of money for the Project. In this regard, the Executive Administrator shall manage the Total Project Budget, which includes the construction budget. During Phase I, the Executive Administrator shall, as a part of its budget and cost control services, review, coordinate, and process for Using Agency and Owner approval all proposed program changes. The Executive Administrator shall regularly submit progress reports, including cost information, to the Owner as the Using Agency's Program is developed. During Phases II and III, the Executive Administrator shall monitor the Design Builder's applications for payment according to the established contract amount and shall advise the Owner as to approval of payments. As the Design-Builder's design process progresses, the Executive Administrator shall regularly continue the Executive Administrator's cost and budget analysis and keep the Owner apprised of the design progress, change requests and the potential budgetary impact. Notwithstanding anything to the contrary contained in this or any other provision of this Agreement, the Executive Administrator agrees to use its best efforts to deliver to the Owner all the information that the Owner needs to (a) insure the Using Agency's Program is accomplished with the established level of construction quality, (b) control the Total Project Budget and (c) ensure that construction of the Project is completed within the Total Budget.

1.3 Basic Definitions *(From Design Build Contract)*.

1.3.1 *Addenda*. Written or graphic instruments issued by the Engineer that clarify, correct, or change any of the component parts of the Contract Documents.

1.3.2 *Affiliate*. With respect to Design-Builder, any firm, partnership, corporation or other legal entity that is owned by, under common ownership or control with, or having a common principal or shareholder with, the Design-Builder, whether such relationship is direct or indirect. In addition, unless the consequences of such relationship for the purposes of this Contract are expressly waived in writing by the Owner after full disclosure by the Design-Builder, the term "Affiliate" also includes any entity currently affiliated with Design-Builder as a partner or joint venturer with respect to any commercial venture, whether or not such venture includes the Project. See O.C.G.A. §13-10-23.

1.3.3 *Affiliated Contract*. Any agreement concerning the Project between the Design-Builder and an Affiliate, including all modifications and amendments thereto.

1.3.4 *Application for Payment*. The form acceptable to Owner that is to be used by the Design-Builder during the course of the Work in requesting payment from the Owner and that is to be accompanied by such supporting documentation as is required by the Contract Documents.

1.3.5 *Asbestos*. Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

1.3.6 *Authorization for Using Agency to Enter*. The Notice from Owner to the Design-Builder and the Using Agency, upon issuance of a Certificate of Material Completion, that the Using Agency is authorized to take possession of the Project.

1.3.7 *Basic Services.* The preconstruction, consultation, design, construction and related services required to be provided by the Design-Builder for the design, construction and completion of the Project or a Component thereof in accordance with the Contract Documents. Basic Services does not include the term "Work."

1.3.8 *Bulletin* Written or graphic material issued after the award of the contract that clarifies, corrects, or proposes a change in any of the component parts of the Contract Documents.

1.3.9 *Business Day.* A business day is each calendar day other than Saturday, Sunday, and any holiday observed by Owner.

1.3.10 *Change Order.* A document issued on or after the Effective Date of the Contract, signed by the Design-Builder and the Owner and ordinarily with recommendations by the Executive Administrator, which may authorize a change or changes, including but not limited to a change to the Contract Sum, the Contract Time, or the Contract Documents.

1.3.11 *Claim.* A demand or assertion by the Owner or the Design-Builder seeking an adjustment of the Contract Sum or Contract Time, or both, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and the Design-Builder arising out of or relating to the Contract. The responsibility to substantiate a Claim shall rest with the party making the Claim. A demand for money or services by a third party, including a Trade Design-Builder, Supplier, or subcontractor to the Design-Builder, is *ipso facto* not a Claim against the Owner.

1.3.12 *Component.* An element of a Project for which the Engineer agrees to prepare or segregate Construction Documents as a discrete package to permit procurement of the described items or the commencement of the Work for construction of the described element of the Project.

1.3.13 *Component Change Order.* A change order authorizing the Design-Builder to proceed to construct a Component pursuant to the Component Construction Documents.

1.3.14 *Component Construction Documents.* The Construction Documents issued by the Engineer with respect to a Component.

1.3.15 *Construction Documents.* The architectural and engineering documents setting forth the complete design for the Project prepared by the Engineer. Construction Documents include, but are not limited to, the Specifications, the Drawings, the Supplementary General Requirements, the General Requirements, and all Addenda.

1.3.16 *Construction Progress Schedule.* A schedule indicating proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, preparation, submittal, and processing of Shop Drawings and Samples, delivery of materials or equipment requiring long-lead time procurement, and proposed date(s) of Material Completion and Occupancy and Final Completion. The schedule will be developed to represent the sixteen or seventeen CSI Specification Divisions. It shall have a minimum number of activities as required to adequately represent to Owner the complete scope of work and define the Project's critical path and associated activities. If the Project is to be phased, then each individual Phase should be identified from start through completion of the overall Project and should be individually scheduled and described, including any Owner's occupancy requirements and showing portions of the Project having occupancy priority. The format of the schedule will have dependencies indicated on a monthly grid identifying milestone dates such as construction start, phase construction, structural top out, dry-in, rough-in completion, metal stud and drywall completion, equipment installation, systems operational, Material Completion and Occupancy Date, final inspection dates, Punchlist, and Final Completion date.

1.3.17 *Contract.* The written document that is the evidence of the Contract between the Owner and the Design-Builder.

1.3.18 *Contract Compliance Specialist.* A person, if so designated by the Owner, to record daily events at the Site, including deliveries of equipment and supplies, and the progress of the Work. The Contract Compliance Specialist is not an inspector, and has no authority or power to act as agent for the Owner or to approve or disapprove any action of the Design-Builder. The Contract Compliance Specialist has no authority to and shall not

be requested to sign or initial documents such as delivery receipts, drayage or hauling receipts, or time and materials tickets, or other similar documents evidencing transactions among the Design-Builder and Subcontractors. (Formally called a Resident Engineer Inspector, "REI.")

1.3.19 *Constructor*. The Design-Builder shall, in accordance with this Agreement, include as a part of its business organization or employ a skilled and competent Constructor to construct the Project in strict accordance with the Contract Documents.

1.3.20 *Contract Documents*. The Contract Documents include the executed Contract, any Component Construction Documents, the Construction Documents, and all Change Orders.

1.3.21 *Contract Time*. The period of time established for completion of the Project by the Contract Documents. Contract Time commences upon the date specified in the Proceed Order and ends upon the Material Completion and Occupancy Date, as it may be amended.

1.3.22 *Cost of the Work*. The sum of all allowable costs necessarily incurred and paid by Design-Builder in the proper performance of the Work.

1.3.23 *Day*. Unless otherwise stated, reference to the terms "day," "days," "month," or "months" mean calendar day, calendar days, calendar month, and calendar months, respectively.

1.3.24 *Defective Work*. Work that, for any reason, is not in compliance with the Contract Documents. Defective Work is usually identified in a Notice of Non-Compliant Work.

1.3.25 *Design-Builder*. The person or entity responsible for the proper completion of the activities described in the Contract Documents and who executes the Contract.

1.3.26 *Engineer*. The Design-Builder shall, in accordance with this Agreement, include as a part of its business organization or employ a registered Engineer to provide all design services for the Project. All work submitted by the Engineer is subject to peer review by the Executive Administrator. The terms "Engineer" also includes engineers, surveyors, designers and the other consultants retained by the Engineer.

1.3.27 *Executive Administrator Contract*. The Contract between the Owner and the Executive Administrator for the design of the Project.

1.3.28 *Executive Administrator*. The Executive Administrator is retained by the Owner in accordance with a Contract executed between the Executive Administrator and the Owner for the purposes of (i) peer review of the design documents provided by the Design-Builder for the Project, and (ii) review of elements of architectural or engineering administration of the Work (including change orders) under the Contract Documents. The term "Executive Administrator" includes engineers, surveyors, designers and the other consultants retained by the Executive Administrator. The Executive Administrator is not an employee of the Owner, but is engaged or retained by the Owner for the purpose of performing administrative services for the project.

1.3.29 *Drawings*. That part of the Contract Documents prepared or approved by the Engineer that graphically show the scope, extent, and character of the Work to be performed by Design-Builder. Shop Drawings and other Design-Builder submittals are not Drawings as so defined.

1.3.30 *Effective Date of the Contract*. The date indicated on the Contract or as otherwise specified therein.

1.3.31 *Final Certificate, Executive Administrator's Certificate of Final Completion*. The Certificate issued by the Executive Administrator acknowledging that all work has been completed in accordance with the terms of the Contract Documents. See Section 6, Project Completion.

1.3.32 *Final Completion*. The full and final completion of all Work in accordance with the Contract Documents.

1.3.33 *Final Notice of Non-Compliant Work*. The Final Notice of Non-Compliant Work issued as a result of the Inspection for Material Completion, also known as the Final Punch List. Upon the completion or correction of this Non-Compliant Work ("punch list" work) the Executive Administrator will issue the Final Certificate.

1.3.34 *Guaranteed Maximum Price.* The maximum amount that Owner is obligated to pay Design-Builder for construction of the Project under the GMP Change Order and includes all costs and fees to be paid to Design-Builder in connection with such the Work and the Project.

1.3.35 *Guaranteed Maximum Price (GMP) Change Order.* The change order setting the Guaranteed Maximum Price and authorizing the Design-Builder to proceed to construct the Project pursuant to the Construction Documents. The GMP Change order supercedes all prior Component Change Orders unless specific provisions in the GMP Change Order express otherwise.

1.3.36 *Hazardous Substances.* See Section 1 Part 6.

1.3.37 *Material Completion and "Material Completion and Occupancy Date".* See Section 6 Part 1.

1.3.38 *Milestone.* A principal event specified in the Contract Documents including the Material Completion and Occupancy Date and other events relating to an intermediate completion date or time.

1.3.39 *Notice.* Written notice. See Article 1.1.5.

1.3.40 *Notice of Non-Compliant Work.* A Notice of Non-Compliant Work shall be in writing, shall be dated, shall be signed by the Engineer, and shall be addressed to the Design-Builder with a copy to the Owner and Executive Administrator, as set forth in Section 3, Part 6 (Correcting the Work) and Section 6, Part 6 (Correcting the Work after Final Payment).

1.3.41 *Owner.* The Board of Regents, or a Unit of the University System of Georgia, identified as such in this Contract with whom Design-Builder has entered into the Contract and for whom the Work is to be completed.

1.3.42 *Owner's Representative.* Owner may from time to time in writing designate one individual as Owner's Representative under this Contract. Owner's Representative so designated in writing shall serve as Owner's Representative unless and until Owner gives notice in writing of the appointment of his successor. All requests for consents and approvals required of Owner in connection with the Project, whether by the Executive Administrator, Design-Builder, Engineer, Design Builder's Project Manager, Owner's Construction Inspector, or Separate Contractor, shall be submitted to Owner's Representative. The Executive Administrator, Design-Builder, Engineer, Design Builder's Project Manager, Owner's Construction Inspector, and Separate Contractor may rely upon written consents and approvals signed by the Owner's Representative, as the consent and approval of Owner.

1.3.43 *Overall Project Schedule.* The combined Preliminary Design and Construction Schedule and the Construction Progress Schedule that is approved by the Owner.

1.3.44 *Pre-Commencement Phase Services.* The services required to be provided by the Design-Builder for the Pre-Commencement Phase of the Project in accordance with the Contract Documents.

1.3.45 *Preliminary Design.* The initial step in the design process. The Engineer will fix and illustrate the size and character of the entire project in its essentials as to kinds of materials, type of structures, design criteria, results of studies, general utility requirements, and such other work as may be required.

1.3.46 *Preliminary Design Documents.* Initial documents consisting preliminary design information, including final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.

1.3.47 *Proceed Order.* The Proceed Order is a written notice from the Owner that includes a specified date upon which the Design-Builder is authorized to commence physical work on the Site. A Proceed Order is a condition precedent to the execution of any Work on the site by the Design-Builder. The Proceed Order was formerly referred to as the "Notice to Proceed."

1.3.48 *Project.* The total and complete undertaking for the public works facility to be constructed under this Contract.

1.3.49 *Project Manager.* The Design-Builder shall, in accordance with this Agreement, include as a part of its business organization or employ a skilled and competent Project Manager (as distinguished from the Owner's

Program Manager) to coordinate and manage the Project in strict accordance with the Contract Documents and to serve as the initial representative of the Design-Builder.

1.3.50 *Project Manual*. A bound manual prepared by the Engineer. It includes the Request for Proposals, the Specifications, the General Requirements and Supplementary General Requirements, and Addenda.

1.3.51 *Reasonable Termination Expenses*. The (i) salary cost for Design-Builder's staff during a period not exceeding two weeks from the date of termination and (ii) the cost to Design-Builder to terminate any lease of equipment (other than motor vehicles) required specifically for the purposes of providing services under this Contract provided that prior notice of such acquisition was given to Owner. See also Paragraph 1.7.2.1.3, Record Documents.

1.3.51 *Samples*. Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged. The Design-Builder shall furnish for approval all samples required by the Contract Documents. The Work shall be in accordance with approved samples.

1.3.52 *Separate Contractor*. Any person or entity other than Design-Builder that enters into an agreement with Owner to perform the construction of all or any portion of the construction on a Project.

1.3.53 *Site*. Lands or areas indicated in the Contract Documents as being furnished by the Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by the Owner that are designated for the use of the Design-Builder. Also referred to as Project Site, Job Site and Premises.

1.3.54 *Specifications*. That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto. The term "Specifications" shall also include all written matter in the Project Manual or on the drawings and any Addenda or Change Orders thereto.

1.3.55 *Subcontractor*. The generic term subcontractor as employed herein includes only those having a direct contract with the Design-Builder.

1.3.56 *Submittals*. Shop Drawings, schedules, data, catalogue cuts, manufacturers' published recommendations, charts, bulletins, brochures, illustrations, circulars, roughing drawings or formulae, etc., that are specifically prepared, distributed, or assembled by or for Design-Builder or by Subcontractors, manufacturers, or Suppliers and submitted by Design-Builder to illustrate some portion of the Work or for use in installing the Work. The Contract Documents shall specify when shop drawings or submittals require the seal of a specialty consultant.

1.3.57 *Supplier*. A manufacturer, fabricator, distributor, supplier, or vendor of goods or equipment in connection with the Work, or any other party having a Contract or Purchase Order with the Design-Builder or with a Subcontractor to furnish materials or equipment to be incorporated in the Work by the Design-Builder or a Subcontractor.

1.3.58 *Trade Contractor*. A Subcontractor who furnishes and installs materials according to the plans and specifications of this Project but does not include one who merely furnishes materials. See 1.3.51.

1.3.59 *Underground Facilities*. All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including without limitation those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

1.3.60 *Unit Price Work*. Work to be paid for on the basis of unit prices as defined and described in the Contract Documents. A percentage markup for overhead or profit shall be included in all unit prices.

1.3.61 *Using Agency*. The State entity for which the Project is being constructed. The term may include an institution (e.g., University of Georgia) that is a part of the Board of Regents of the University System of Georgia.

1.3.62 *Using Agency's Representative.* The Using Agency may designate from time to time a Using Agency's Representative, who shall work with the Executive Administrator and the Owner's Representative as a liaison with the Using Agency.

1.3.63 *Using Agency's Program.* The Using Agency's Program, consisting of the preliminary program including the pre-design planning documents and programmatic documents which provide the general description of the purposes and requirements of the Project, as augmented by the Executive Administrator. The preliminary program documents are provided to the Executive Administrator for the purpose of adding a measurable basis for program verification and the development of detailed design criteria along with building assurance methods and criteria. When review and work of the Executive Administrator is completed the resulting document will, upon User's and Owner's approval, constitute the "Using Agency's Program" and shall be the contractual basis for evaluation of the Design Builder's design, construction and completion of the Project.

1.3.64 *Work.* All labor, materials, and services necessary to produce the construction of the Project in accordance with the Contract Documents, including the entire construction or the various separately identifiable parts thereof. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all equipment, fixtures, and supplies into such construction, all as required by the Contract Documents.

ARTICLE 2
EXECUTIVE ADMINISTRATOR'S BASIC SERVICES

2.1 Basic Services.

2.1.1 General Scope of Services. The Executive Administrator shall consult with the Using Agency and the Owner as to the Using Agency's requirements for the Project and have a clear understanding with the Owner as to said requirements and the Owner's cost budget and time schedule requirements. The Executive Administrator's basic professional services shall consist of the necessary conferences, review of planning, programmatic and pre-design documents, the preparation of estimates, preliminary studies and the completion of detailed design criteria such that the Using Agency's Program can be developed and approved by the Using Agency and Owner. The level of detail must be sufficient for the Design Builder to produce complete Construction Documents and construct the Project consistent with the requirements and intent of the Using Agency's Program. The Executive Administrator must then monitor and review the design phase and the construction phase of the Project to ensure that the Project is designed and constructed in accordance with the Using Agency's Program as augmented under Phase I activities.

2.1.2 Certification Of Skill. The Executive Administrator by the execution of this agreement contracts that he is possessed of that degree of care, learning, skill, and ability which is ordinarily possessed by other members of his profession and further contracts 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 failure to exercise such degree of care, learning, skill, and ability.

2.2 Basic Services by Phase. The Executive Administrator shall promptly review the Design Builder's contract and shall become familiar with the respective services, authorities, obligations and responsibilities of the parties therein. Executive Administrator agrees to coordinate, assist and develop a working relationship with the Design Builder to effectuate the purposes of the Project.

2.2.1 Phase I Services:

a. Prepare the Owner's Preliminary Schedule:

- (1) Identify key or major points of interest to the Owner and users and suggest other activities that may have been overlooked or may be in the Owner's best interest.
- (2) Prepare a draft schedule for the entire project that shows the Owner and Using Agency's points of interest.

- (3) Discuss the draft schedule with the Owner and Using Agency to assure that the schedule is consistent with the Using Agency's needs; modify the schedule as necessary to conform to Using Agency's needs or negotiate a revised level of expectations with the user-group; document conclusions.
- b. Review program concept and budget constraints and advise the Owner with respect to the financial feasibility of the project;
- (1) Identify the Using Agency-group representative(s) and prepare a program validation schedule that will be followed by the Firm;
 - (2) Develop a schedule for this phase of work; establish an appropriate meeting schedule, attendance list and agenda, and prepare meeting notes for each meeting.
 - (3) Acquire, consolidate and document the existing project documentation from planning, programming, and pre-design activities that have occurred to date.
 - (4) Meet with the Using Agency's facilities staff, Using Agency-group representatives, administration, etc., to gain their perspective of the project intent.
 - (5) In combination with appropriate campus personnel and in support of the program validation effort, tour and photograph the project site.
 - (6) Document existing physical conditions and determine the adequacy of the available water, telephone, gas, electricity, wastewater and other required utilities services for the needs of the Project.
 - (7) Obtain historic and/or archaeological data as necessary.
- c. Develop the Using Agency's Program.
- (1) Advise the Using Agency and Owner with respect to the quality criteria for electrical, plumbing, heating, ventilating, air conditioning, fire protection, laundry, food service, security and other systems to be incorporated into the Project, including as applicable, system performance requirements.
 - (2) Advise the Using Agency and the Owner with respect to the use of materials and equipment to be incorporated into the Project and establish the criteria for quality of the materials and equipment, specifically addressing serviceability and durability requirements and including, as applicable, system performance requirements.
 - (3) Advise the Using Agency and Owner with respect to the obtaining of cost savings through the use of alternate materials and equipment for the Project.
 - (4) Prepare a synopsis of the project intent and make appropriate estimates and calculations to assure that the expected Project can be achieved adequately within the available funds; identify any shortfalls and suggest (other than the provision of additional funds) methods of achieving balance between scope and budget.
 - (5) Provide a final draft of the Using Agency's Program incorporating the above for approval of Owner and Using Agency. The Using Agency's Program is critical to the success of the Project as it forms the benchmark upon which the Design-Builder's design and construction documents will be contractually based and evaluated and thereby control the construction and quality level of the Project. It will also serve as the basis from which changes in the Project will be evaluated and as such, has the potential for significant cost impact upon the Project.
 - (6) Compile the approved result of the preceding tasks into a bound report that is presented to the Owner and Using Agency in five (5) bound copies.

d. Develop and implement a cost management (cost containment) strategy that will identify and track cost-impacting decisions, including but not limited to the following:

- (1) Identification of the appropriate costs associated with each phase of the Project.
- (2) Identification of a cost tracking methodology that will allow all parties to compare projected costs with actual costs in "real time".
- (3) Development of a methodology to inform all parties if it is expected or projected that expended costs will exceed the cost model. This methodology must include methods to regain balance between scope and cost. As a minimum, cost containment strategies shall include the following considerations:
 - i. Maintenance of program scope;
 - ii. Environmental review & documentation;
 - iii. Hazardous materials assessment;
 - iv. Existing utility capacity analysis;
 - v. Evaluation of the compatibility of the identified project site to the proposed project;
and
 - vi. Peer review of the project drawings.
- (4) Creation of a project file that tracks all cost-related decisions and includes the rationale for them; provide owner with this record in bound form upon the completion of the project.

e. Advise the Using Agency and the Owner with respect to the preparation of documents necessary and appropriate for the process of selection of the Design-Builder for the Project, including, but not limited to, the following:

- (1) Assist the Owner and Using Agency in developing the criteria for selection of the Design-Builder that will result in a "short list" of qualified organizations created from the pool of respondents to the RFQ/RFP.
- (2) Assist the Owner and Using Agency in developing the criteria that will be used to evaluate the short listed candidates for the Design-Builder; arrange site visit and interview schedules, and coordinate as necessary to assure a successful interview process.
- (3) Coordinate execution of the Design-Builder's contract that will be executed between Owner and Design-Builder utilizing contract documents provided as a part of the state-wide construction manual. The Using Agency's Program must be fully approved by Owner and Using and must be incorporated and made a part of the Design-Builder's contract.
- (4) Schedule and coordinate a "kick off" meeting with the selected Design-Builder and all interested parties, including the Using Agency and identified user-group.

f. Develop the Building Assurance Program.

- (1) Advise the Owner and Using Agency as to the systems and components of the Project which should be commissioned.
- (2) Review the state guidelines for building commissioning develop a draft Commissioning Plan for the Project. The Commissioning Authority's role should begin during the design phase and the design review process, and will encompass activities in both Phases II and III.
- (3) If the Owner and Using Agency approve the use of Building Commissioning and the Commissioning Plan, accomplish the following:
 - i. Assist the Owner and Using Agency in developing the criteria for selection of the Commissioning Authority that will result in a "short list" of qualified organizations created from the pool of respondents to the RFQ;

ii. Using a process similar to that in subsection e above, coordinate the selection of the Commissioning Authority;

iii. Assist the Owner and Using Agency in coordinating the activities of the Commissioning Authority to ensure the proper performance of its duties and obligations; and

(4) Integrate the activities of the Commissioning Authority into the Executive Administrator's project task-related schedule. See section a above.

2.2. Phase II Services:

a. The Executive Administrator is responsible for coordination and cooperation with the Design Builder for the development of the design of the Project within the budgeted cost and schedule and coordinates the Owner's, Using Agency's and user-group's interests during the preparation of the schematic, design development, and construction documents. The objectives are to assure that the design meets the Using Agency's Program in all respects, including but not limited to the following areas:

- Cost containment and cost monitoring;
- Cost-effective decisions;
- Compatibility with Owner's and Using Agency's architectural standards
- Consistency with the Owner's, Using Agency's and user-group's scope expectations as documented in the Using Agency's Program;
- The appropriate provision of all necessary services and utilities;
- The necessary level of environmental review and documentation;
- That construction quality complies with the Using Agency's Program;
- That the Construction Documents are reviewed for constructability; and
- That all permits and approvals are obtained for occupancy by the Using Agency.

b. The Executive Administrator shall coordinate with the Design Builder the development of the Overall Project Schedule from the Preliminary Design Schedule and the Construction Progress Schedule so that it includes a realistic sequence of design, construction, and procurement activities necessary to achieve completion of design and commencement and completion of construction of the Project in accordance with the Design Build Contract.

c. In the event the Owner and Using Agency propose a change to the Using Agency's Program, the Executive Administrator shall review the proposed revision to determine its budgetary impact.

2.2.3 Phase III Services:

a. At appropriate intervals prior to agreement on the GMP change order, the Executive Administrator shall review the Design and Construction Budget provided by the Design Builder and with the Design Builder reconcile the Design and Construction Budget with the Owner's Budget as validated by the Executive Administrator. If at any time the Executive Administrator's judgment, the budgets are not reconcilable or exceed corresponding Component Costs of the Project Budget or the GMP Cost Limitation, the Owner, the Executive Administrator and the Design Builder shall confer to resolve such differences. If such differences cannot be resolved, The Executive Administrator shall recommend to the Owner such actions as may be necessary or appropriate to resolve such differences.

b. When the use Component Construction Documents are contemplated, the Executive Administrator shall request that the Design Builder submit a Component Change Order under the Design Builder's Contract for the construction or procurement of the Component under the Component Construction Documents. Upon receipt of the proposed Component Change Order, the Executive Administrator shall review the proposed Component Change Order to determine its compliance with the Design Build Contract, the Using Agency's Program, and the Owner's Budget.

c. The Executive Administrator shall review the Design-Builder's Application for Payment and shall make a recommendation to the Owner concerning approval and payment.

- (1) The recommendation is a representation by the Executive Administrator to the Owner that to the best of his knowledge, information or belief, the Work has progressed to the point indicated, and that the quality of Work is in accordance with the Using Agency's Program and existing Construction Documents, the payment is consistent with the Owner's Budget and the Design Builder's Design and Construction Budget, and that the Design-Builder is entitled to payment in the amount requested. If the Executive Administrator declines to recommend all or a portion of the amounts requested by the Design-Builder, he shall state the reasons therefore, and shall provide written notice to the Design-Builder of the same. When requested by the Owner, the Engineer shall require lien waivers prior to approving the Design-Builder's Application for Payment.
 - (2) Advice on Construction Progress. To each Application for Payment forwarded to the Owner, the Engineer shall attach its Advice on Construction Progress, in the format provided at Exhibit C-3 to the Design Build Contract, and provide a copy to the Design-Builder.
- d. The Executive Administrator is responsible for the development of a framework for negotiating the guaranteed maximum price (GMP) and, if appropriate the subsequent lump sum contract with the Design-Builder. These duties include, but are not limited to:
- (1) Monitoring the GMP and/or lump sum contract on behalf of the Owner and taking appropriate actions to assure that the Design Builder maintains consistency with the terms and conditions of the contract(s).
 - (2) Monitoring construction activities to assure consistency with the contract's project and quality specifications expectations.
 - (3) Monitoring construction activities to represent the Owner's interests, assist in clarifying design or construction issues where the Owner's input is required, and in general, assuring the Owner that the project is well and duly constructed.
 - (4) If the GMP Change Order is based upon assumptions concerning the design of the Project, the Executive Administrator shall identify such design or assumptions and make appropriate recommendations to the Owner.
 - (5) If the GMP Change Order proposes a Guaranteed Maximum Price which, taking into account recommended contingency reserves, exceeds the GMC Cost Limitation for construction of the Project, Executive Administrator shall recommend such corrective action which the Executive Administrator believes is necessary to reduce such price so that it is within the GMC Cost Limitation or which is necessary to alternatively procure such work. If the Owner agrees to a Guaranteed Maximum Price that exceeds the GMP Cost Limitation, then the GMP Cost Limitation shall be thereafter equal to the Guaranteed Maximum Price but there shall be no increase in the compensation of Executive Administrator under this Agreement as a result of such change to the GMP Cost Limitation. The Executive Administrator shall make recommendations to the Owner concerning the maintaining of or enlargement of the Owner's contingency sums in the Owner's Budget.
 - (6) Upon approval of the GMP Change Order, the Owner will issue to the Design Builder a Notice to Proceed.
- e. The Executive Administrator will process and make recommendations to the Owner concerning approval for all other changes, similar to the process utilized for processing of a component change order. In all such cases, the Executive Administrator shall determine if the proposed change is in fact a deviation from the Using Agency's Program, and develop the cost data relative thereto. If the Owner approves a change requiring redesign of Construction Documents issued after a GMP Change Order, the Executive Administrator shall monitor the Engineer undertaking of such redesign. The Executive Administrator shall develop an appropriate cost accounting for the cost of the change and shall, in the event the change affects the critical path or scope of the project, then coordinate an appropriate and reasonable extension of the Project Schedule.
- f. Pursuant to Paragraph 3.6.2.2 of the Design-Build Contract, a Notice of Non-Compliant Work may be issued by the Executive Administrator for failure of the Design-Builder to supply enough workers or enough

materials or proper materials to prosecute the Work. A Notice of Non-Compliant Work in such event may be based deficiencies in management of time.

g. As the construction of the Project nears completion, the Executive Administrator is responsible for coordinating the completion of building commissioning, completion of the final building punch list, and coordination of all required warranties, waivers, affidavits, certificates of occupancy, and so forth on behalf of the Owner and Using Agency. These duties include, but are not limited to, the following:

- (1) Representing the Owner's and Using Agency's interests during the punch list phase of the project and expediting this process whenever possible; accepting all guarantees and warranties on behalf of the Owner; monitoring all commissioning activities and "system run-up's," and supervising the Design-Builder's turnover of the Project to the Owner.
- (2) At occupancy, reviewing and forwarding to the Owner a full and complete set of all building-related documents, record documents, and a fully accurate set of "as built" documents for the Project as required in the Contract Documents.
- (3) Providing a full and complete cost/expense account (budget reconciliation) that is separated by both phase of the project and major contractor.
- (4) Provide, in accordance with the Commissioning Plan, the Commissioning Agent's certification that each of the building's mechanical and electrical systems has been properly installed and that each system is operating to its design expectations.
- (5) Provide and/or undertake any other activities reasonably appropriate or necessary to represent the Owner's and Using Agency's interests as part of the project's wrap-up.

2.2.3 Consultants.

a. The Executive Administrator shall, before retaining any party to perform any services required to be performed hereunder by the Executive Administrator, obtain the approval of the Owner as to the retention of such party, it being specifically understood and agreed that no such approval shall be unreasonably withheld by the Owner. All parties retained by the Executive Administrator to perform any aspect of the services required hereunder to be performed by the Executive Administrator shall be subject to a written agreement between the Executive Administrator and such party which is reasonably acceptable to the Owner and which permits the Owner to look directly to such party for the performance and satisfaction of all obligations of such party to the Executive Administrator under such agreement.

b. Upon demand of the Owner, the Executive Administrator shall furnish the Owner a copy of each contract between the Executive Administrator and his consulting engineers (if any) and such contracts must indicate (i) completely, definitely, and clearly the supervision services to be performed by the consulting engineers, and (ii) agreement by the engineers to the terms of this contract which apply to the services of the engineers.

2.3 **Time and Schedule.**

2.3.1 Preliminary Schedule. The Owner's Preliminary Schedule, including major milestones for the production of the design and construction documents, as well as the anticipated time required for construction shall be provided by the Owner and is incorporated into and made a part of this Contract by reference. The Executive Administrator and the Owner agree that the time limits shown in the schedule are reasonable and achievable and that each will use its best efforts to meet the deadlines shown in the schedule. Changes in the major milestone dates will require the consent of both parties, which shall not reasonably be withheld.

2.3.2 Keeping the Project on Schedule. The Executive Administrator is responsible for timely completion of all his activities, responsibilities and obligations under this agreement in accordance with the Preliminary Schedule, as amended and approved by the Owner. It is of the utmost concern to the Owner that the Contract Documents be prepared to permit the construction, considering all anticipated contingencies, to be completed in sufficient time to meet the Material Completion and Occupancy Date established for the Project.

2.3.3 **Design and Construction Schedule.** The Executive Administrator shall regularly, on the approved Overall Project Schedule, as amended, show the Design Builder's progress to date, confirm the remainder of the Design Builder's design and construction schedule, update the projected design and construction schedule, and obtain the written approval of the Owner for any milestone changes.

2.3.4 **Responding to the Design Builder.** The Executive Administrator shall designate in writing a full time and accessible (either on Site or by computer, phone or fax or otherwise) representative who shall have authority to render decisions and to furnish information required of the Executive Administrator. The Executive Administrator shall promptly respond to all requests and shall in no event exceed the time limits set forth in this agreement and in the Design Build Agreement.

2.3.5 **End of Project Assessment.** The Executive Administrator shall participate with the Using Agency, the Owner and Design Builder in an end of project assessment for the benefit of Owner.

2.4 Limitation Concerning Design. The Executive Administrator acknowledges and agrees that neither the Using Agency nor the Owner undertakes to approve or pass upon matters of design. The Executive Administrator acknowledges and agrees that the approval or acceptance of plans and specifications by the Using Agency or Owner is limited to the function of determining whether there has been compliance with the Using Agency's Program, based upon the review and advice of the Executive Administrator.

2.5 Additional Services. Supplemental to those services described under Basic Services by Phase, the Executive Administrator and his consultants may be called upon to provide certain Additional Services during the course of the Project. For the purposes of this Contract, a list of potential Additional Services is set forth on Exhibit A, including any stipulated payment amounts for those Additional Services for which compensation can be projected and agreed upon in advance. The parties agree that other Additional Services may be required or requested by the Owner, with the compensation to be agreed prior to the Executive Administrator undertaking the Additional Services; provided, however, that if such compensation cannot be agreed, the Additional Services shall be performed at the hourly rates set forth listed in Exhibit B, plus reimbursable expenses as set forth in Article 5.

ARTICLE 3
COMPENSATION AND PAYMENTS

3.1 Basic Compensation. For the services listed under Article 2, the Owner agrees to pay the Executive Administrator the LUMP SUM FEES in the amount shown in Paragraph 4 of the Contract. Said lump sum fees shall include all professional services for supervision including the supervision of work required by all change orders. The services of the Executive Administrator shall commence upon receipt of a letter from the Owner requesting the Executive Administrator to begin and shall continue until completion of the Project. If the completion of the Project is delayed by more than six (6) months past the established Date of Final Completion set forth in the design-build agreement, as amended by approved extensions of time, the Executive Administrator shall be paid for his services in accordance with the rates listed in Exhibit B, PROVIDED, that the facts indicate that the delay is not the result of delinquency of the Executive Administrator.

3.2 Reimbursable Expenses. The Owner shall reimburse the Executive Administrator for the cost of transportation and living expenses incurred by him and his assistants while traveling in the discharge of duties connected with the work provided the travel is at the direction of the Owner and the Owner approves the cost before it is incurred. Statements for travel and living expenses must be submitted to the Owner for reimbursement within ninety (90) days of the date the expense is incurred; otherwise the Executive Administrator waives his right to reimbursement. The latest rules and regulations promulgated by the State Auditor for travel expenses, a copy of which may be obtained from the Owner, is incorporated herein by reference and shall apply to travel of the Executive Administrator, his consultants, officers, and his employees. The Owner will not make reimbursement for any other expenses unless the Owner requests the services for which the expense will be incurred and the Owner approves the expense before the service is rendered. Reproduction costs, except as provided for in Article 9, courier services, and long distance telephone charges shall not be reimbursable unless approved in advance in writing by the Owner.

3.3 Payments.

Request for payment must be made in the administrative format prescribed by the Owner. Payments to the Executive Administrator on account of his fee shall be made as follows, subject to additional provisions this contract:

3.3.1 When predesign, programming, and planning documents have been assembled and reviewed and the tasks set forth in Article 2.2.1, items a through c(1) have been completed and approved by the Using Agency, a sum equal to 33% of the Phase I fee.

3.3.2 When the Using Agency's Program has been completed and have been approved by the Using Agency and Owner, a sum sufficient to increase payments to 73% of the Phase I fee.

3.3.3 When the RFQ/RFPs have completed, and have been approved by the Using Agency and Owner, a sum sufficient to increase payments to 85% of the Phase I fee.

3.3.4 When the Design Builder, and if applicable, the Commissioning Authority, has been selected, a sum sufficient to increase payments to 100% of the Phase I fee.

3.3.5 When the Engineer on behalf of the Design Builder has completed the Construction Documents and the Executive Administrator certifies that the Documents have been produced in accordance with the Using Agency's Program, a sum equal to 95% of the Phase II fee.

3.3.6 When the notice to proceed with construction has been issued to the Design Builder, a sum sufficient to increase payments to 100% of the Phase II fee.

3.3.7 During the execution of the work by the Contractor and in equal proportions to the amount of work certified for payment by the Executive Administrator on the periodical estimate of the Design Builder, monthly payments until the sum of payments equal 95% of the Phase III fee.

3.3.8 When the Certificate of Final Completion has been delivered and the Executive Administrator has completed all requirements of the contract including reviewing and forwarding of "As-Built Documents", a sum sufficient to increase payments to 100% of the Phase III fee.

3.4 Monthly Payments.

If the Executive Administrator so desires he may request monthly payments for services rendered; otherwise payments shall be made on a lump sum basis in accordance with the subparagraphs set forth hereinabove. For monthly payments, if so elected, to be made approximately every thirty days during the term of this contract Executive Administrator must submit to the Owner an original invoice covering the prior month's services. Each invoice must contain an itemization of all services performed by Executive Administrator during prior month with applicable prices listed. Each invoice shall be accompanied by time sheets showing the name, date of performance of services, accurate description of the service performed by each person, and the number of hours assigned to each person. Invoices shall contain a certificate of the Executive Administrator that he has verified (a) the accuracy of the information contained in the accompanying time sheets and (b) the salary rates paid to persons shown by the accompanying time sheets are not in excess of the salary rates in force in the office of the Executive Administrator or his engineers as of the date of the transaction for like services. The hourly rates to be included in the invoices of the Executive Administrator shall be as set forth in Article 7 hereinbefore. In no event shall the monthly payments exceed the percentages for each step as set forth in Article 7.1.

3.5 Payments Other Than Fee.

Payments to the Executive Administrator, other than those on his fee, shall become payable as his work is completed.

3.6 No Deductions.

No deductions shall be made from the Executive Administrator's fee on account of penalty, liquidated damages, or other sums withheld from payments to Design Builder.

3.7 Abandonment Of Project.

If construction of the building is abandoned, or if the Design Builder's Agreement shall not be executed within (9) months after execution of this Agreement, a sum shall be paid to the Executive Administrator which shall be prorated based upon services actually performed by the Executive Administrator, unless the failure to execute the Design Builder's Agreement results from oversight on the part of the Executive Administrator.

3.8 Default On Design Build Contract.

3.8.1 If the Owner declares a default on the Design Build contract, the Executive Administrator shall receive extra compensation for his services after the contract time has expired in accordance with the rates in Paragraph 3.3.

3.8.2 The words "Owner declares a default on the Design Build contract" as used in this section shall mean when the Owner issues a notice of declaration of default in writing to the surety and Design Builder and demands that the surety shall give written notice of its election (i) to remedy or (ii) to perform as fully set out in the performance bond. The Executive Administrator does not have authority (a) to declare the Design Builder in default or (b) to give the Design Builder or surety a notice of termination or notice of intention to terminate.

3.9 Payment To Consultants.

The Executive Administrator shall make payments to his consultants within not more than five (5) working days following receipt of payment from the Owner.



ARTICLE 4 CONTRACT COMPLIANCE SPECIALIST (CCS)

When desired by the Owner, a Contract Compliance Specialist (CCS) (formerly known as a Resident Engineer Inspector) to whom the Executive Administrator shall make no reasonable objection, shall be engaged by the Owner for and on behalf of the Owner, subject to instructions of the Owner and paid by the Owner.

ARTICLE 5 ASSIGNMENT

The Executive Administrator hereby agrees that the Executive Administrator shall not assign, sublet, or transfer any interest or right in the Executive Administrator contract as a whole or in part to any party without the written consent of the Owner in advance. Notwithstanding this limitation, the Executive Administrator hereby agrees that the Owner may, if he wishes to do so, assign this Contract to another public entity or agency, and agrees further that, in the event the aforesaid agency accepts the assignment and gives notice in writing to the Executive Administrator of such acceptance, the Executive Administrator is and shall be bound to the aforesaid agency by all the terms and conditions hereof the same as if said Contract had originally been entered into with the aforesaid agency. The aforesaid agency shall have no liability to the Executive Administrator under this Contract unless and until it shall have notified the Executive Administrator in writing of such acceptance.

ARTICLE 6 TIME IS OF THE ESSENCE

The Executive Administrator by execution of this agreement agrees that time is of the essence to the Contract and that the Executive Administrator shall provide all services set forth in the Contract within the time limits set forth in the Preliminary Schedule (Exhibit D), as amended or subsequently agreed to by the Executive Administrator and Owner.

ARTICLE 7 INSURANCE

7.1 Insurance Requirements. – Within ten days after execution of the Executive Administrator contract and during the entire period of the Executive Administrator's responsibility under the contract, the Executive Administrator shall maintain the insurance required by this Article. The Executive Administrator shall file with the Owner a certificate of insurance from an insurance company licensed to do business in the State of Georgia

showing evidence of required coverages in a format similar to the Certificate of Insurance in the Design Build Contract.

7.2 Professional Liability Insurance. – Within ten days after execution of this contract and during the entire period of the contract, the Executive Administrator shall maintain professional liability insurance for the Engineers in its employ performing work under this contract. Such professional liability insurance (errors and omissions insurance) shall provide coverage limits of not less than \$1,000,000 per claim . Any deductibles and self-insurance retention may not be greater than \$25,000.

7.3 Workers Compensation and Commercial General Liability Insurance.-- Within ten days after execution of this Contract and during the entire period of the contract, the Executive Administrator shall maintain Workers Compensation and Commercial General liability insurance as provided herein. The certificate of insurance shall show workers compensation insurance meeting statutory requirements and commercial general liability insurance and umbrella limits of not less than \$1,000,000 per person, \$3,000,000 per occurrence, and for the CGL basic policy, \$2,000,000 in the aggregate. Any deductibles and self-insurance retention may not be greater than \$25,000.

ARTICLE 8 INDEMNITY

8.1 Professional Services Indemnity.

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

8.1.1 For the purposes of the Professional Services Indemnity set forth above, Professional Services means those services performed and sealed by a licensed professional in the Executive Administrator's employ, and provided to the Owner, as an architect, engineer, land surveyor, landscape architect, or other licensed professional.

8.1.2 For the purposes of the Professional Services Indemnity set forth above, Negligent Professional Act means an act, error, or omission in the performance of Professional Service by the Executive Administrator (or by any person or entity, including joint ventures, for whom the Executive Administrator is liable) that causes liability and fails to meet the applicable professional standard of care, as set forth above in Article 8.1.

8.2 Non-Professional Services Indemnity.

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

ARTICLE 9 MODIFICATION OF THE USING AGENCY'S PROGRAM

In the event the estimates of the cost of the work exceed the stated cost limitation stated in the recital to this contract, the Using Agency and/or the Owner may at its discretion modify the Using Agency's Program sufficiently to permit balancing the estimate with the stated cost limitation. In the event the estimate exceeds the stated cost limitation, the Executive Administrator agrees that modifications made for the purpose of balancing the estimate with the stated cost limitation shall not create a claim under this Executive Administrator contract. This Article 9 shall not diminish the rigidity of the Executive Administrator's obligations.

ARTICLE 10
TERMINATION FOR CONVENIENCE

The Owner may at any time, and for any reason or without any reason or cause, terminate this contract by written notice to the Executive Administrator specifying the termination date which shall be effective within seven days from the date to be stated by the Owner in the notice to the Executive Administrator except that in the event of termination under this provision the Owner shall pay to the Executive Administrator 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 Executive Administrator shall have no claim in excess of what is allowed in this Article 10 for any sum of money, however denominated, as a result of or relating to such termination.

ARTICLE 11
TERMINATION FOR CAUSE

In the event the Executive Administrator through any cause fails to perform any of the terms, covenants, or provisions of this contract on his part to be performed, or if he for any cause fails to make progress in the work hereunder in a reasonable manner or if the conduct of the Executive Administrator impairs or prejudices the interests of the Owner or the Executive Administrator violates any of the terms, covenants, or provisions of this contract, 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 Executive Administrator, and all drawings, specifications, and other documents relating to the design or supervision of the work shall be surrendered forthwith by the Executive Administrator to the Owner, PROVIDED, HOWEVER: That in such case the Executive Administrator shall receive equitable compensation for such services as shall in the opinion of an independent auditor selected by the Owner and paid for by the Owner to which the Executive Administrator shall make no reasonable objection have been satisfactorily performed by the Executive Administrator up to the date of termination of this contract, such compensation to be fixed by the said auditor, and PROVIDED FURTHER: That the Owner may take over the work to be done hereunder and may prosecute the same to completion by contract or otherwise, and the Executive Administrator shall be liable to the Owner for any excess cost occasioned the Owner thereby. The parties agree that the decision of the said auditor in regard to the matter set forth in this Article 11 shall be final.

ARTICLE 12
MODIFICATIONS TO THE CONTRACT

The Executive Administrator covenants that no modifications, either written or oral, may be made in the terms and provisions of the Executive Administrator contract without the written consent in advance of the Owner, copy of which consent shall have been furnished to the Executive Administrator. It is agreed between the Executive Administrator and the Owner that in the absence of such written consent neither any modifications nor any undertaking to modify the Executive Administrator contract shall be binding but shall be absolutely null and void.

ARTICLE 13
SUPERSEDING OF EARLIER AGREEMENT

The parties hereto agree that these presents take the place of and supersede entirely any existing contracts, agreements, arrangements, understandings, undertakings, courses of dealing, or customs and practices, either implied or express and whether written or oral, in regard to the Project. This contract represents the entire and integrated agreement between the Owner and the Executive Administrator and may be amended only by written instrument signed by both the Owner and the Executive Administrator. Any fees already paid for account of Executive Administrator services under this Contract previously performed on the Project pursuant to any other document or documents or agreement or agreements shall be applied as a reduction to any fees which shall be due or which shall become due under the present contract.

ARTICLE 14
PROHIBITION AGAINST CONTINGENT FEES

As required pursuant to O.C.G.A. §50-22-6(d), the Executive Administrator by execution of this contract warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure this contract and that he has not paid or agreed to pay any person, company, corporation,

individual, or firm, other than a bona fide employee working solely for him, any fees, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this contract.

ARTICLE 15
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. Consultants 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. Section 48-7-38.

ARTICLE 16
DRUG-FREE WORK PLACE ACT

The Executive Administrator acknowledges that he is fully aware of the contents and requirements of Chapter 24 of Title 50 of the Official Code of Georgia. The Executive Administrator by execution of the present contract does hereby certify that he and his consultants are in compliance with the aforesaid code section.

ARTICLE 17
FULL PERFORMANCE

The Owner and the Executive Administrator hereby agree to the full performance of the conditions and stipulations contained herein.

ARTICLE 18
FUNDS LIMITATION AND AGREEMENT FOR LIMITED PERFORMANCE

If a funding limitation (hereinafter referred to as the "Allocation") has been placed upon the performance of this contract, Owner and Executive Administrator recognize and agree that insufficient funding is available to cover the full amount of the sums stated in Paragraph 4 of the Contract for the services contemplated herein. The Executive Administrator agrees to perform for the Owner the work and the professional services in the manner set forth in this Article. Executive Administrator agrees that the Contract will be performed in three or more phases, as outlined in Article 2, with the minimum goal of furnishing the services necessary to coordinate with the Design Builder and produce GMP Construction Documents which are approximately 60% complete so that a estimate of the anticipated construction cost can be jointly prepared and agreed to by the Design Builder and the Executive Administrator. The Owner shall give successive written notices of the portions of services to be accomplished, commensurate with the Allocation. Executive Administrator specifically agrees that the Owner shall not be obligated to pay in excess of the Allocation for such services. Executive Administrator agrees that, without specific written approval from the Owner, no additional services shall be provided under this Agreement.

EXHIBIT A

ADDITIONAL EXECUTIVE ADMINISTRATOR SERVICES

Additional Services shall be provided only upon prior written authorization by the Owner and shall be paid for by the Owner as provided in this Exhibit. The descriptions or scope of work of the Additional Services included in this Contract at Contract execution are to be included on this Exhibit A, or if appropriate, on a later following exhibit. Additional Services added after Contract execution, if any shall be added by Contract amendment.

[Note 1: An Additional Service may include services in both the design and the construction contract administration phases. Each blank should be filled with one of the following three choices: (i) "Included," for a service included within the Basic Design Services Fee or Basic Construction Contract Administration Services Fee; (ii) a dollar amount for an agreed Additional Service not included in the Basic Design Services Fee or Basic Construction Contract Administration Services Fee; or (iii) "N/A" for a service not included in the Contract. Each dollar amount must be followed by an indication whether it is a fixed price lump sum (FP) or a guaranteed maximum price (GMP). Allowable reimbursable expenses for the selected Additional Services shall be included in the description of scope of work description. Reimbursable expenses are additional to a fixed price lump sum fee, but are included within a GMP.]

[Note 2: In the event the actual construction of the Project is not commenced, no Additional Services related to Construction Contract Administration shall be incurred without a written amendment to this Contract.]

ADDITIONAL SERVICES.

DESIGN	CONTRACT ADMINISTRATION
_____	_____ Feasibility Studies/Analysis
_____	_____ Value Analyses/ Life Cycle Cost Analyses
_____	_____ Master Planning
_____ N/A	_____ Additional Site Visits – Number of Visits Added _____
_____ N/A	_____ Cost for Executive Administrator
_____ N/A	_____ Cost for consulting architect or engineer
_____ N/A	_____ Cost for Other: _____
_____	_____ Program Management Services
_____ N/A	_____ Full Time Construction Inspection Services
_____ N/A	_____ Post Occupancy Warranty Observations/Evaluations
_____	_____ Facility Operation/Training Services
_____	_____ Historic Preservation Services
_____	_____ Other Specialty Design Consultants

_____ **TOTAL OF FP AND GMP ADDITIONAL SERVICE FEES AT CONTRACT EXECUTION**

DESCRIPTIONS/SCOPES OF WORK FOR ADDITIONAL SERVICES.

1. Program Management Services.

a. The Owner has also retained the Executive Administrator to be the Program Manager to perform Program Management services in respect to the design and construction of the Project. The designated person exercising the authority of the Program Manager is _____ . To the extent, and only to the extent, authorized by the Owner in writing, the Program Manager shall act as the representative of the Using Agency (or Institution) and of the Owner during the design and construction of the Project. The Executive Administrator shall cooperate with the Program Manager in connection with the services required hereunder to be performed by the Executive Administrator. The Executive Administrator and the Design Builder shall communicate with each other in respect to the Project under the direction of the Program Manager. It is specifically understood and agreed that any procedure relating to such communications established by the Owner, Program Manager, Executive Administrator or Design Builder shall not be applied in a manner that would limit, hinder or otherwise discourage free communication among the Institution, the Owner, the Executive Administrator, the Design Builder and the Program Manager as to any problems affecting the Project and/or the development of solutions by the Executive Administrator, the Design Builder or the Program Manager to such problems. It is further specifically understood that whenever possible the Program Manager shall encourage such free communication and the development of such creative solutions. The Executive Administrator shall give the Program Manager a copy of all notices, instructions, applications, requests, demands and/or other communications given by the Executive Administrator to the Owner and/or to the Design Builder, at the same time that such communications are given by the Executive Administrator to the Owner and/or to the Design Builder.

b. Approval by the Owner or any party retained by the Owner, including the Program Manager, of any plans, drawings, specifications or other documents prepared by the Executive Administrator under this Contract shall not relieve the Design Builder of the responsibility for the design of the Project. No plans, drawings, specifications or other documents prepared by the Design Builder under this Contract and approved by the Owner shall be materially changed or revised by the Executive Administrator without the prior written consent of the Owner. The Design Builder shall make all working drawings and specifications available to the Owner, the Program Manager, the Executive Administrator and to the Using Agency (Institution) and shall advise the Owner and the Program Manager when the Design Builder intends to approve shop drawings that deviate in detail from the Contract Documents approved by the Owner.

c. The Program Manager shall provide construction administration services to monitor and manage construction activities that will affect the project's cost and schedule. Tasks typical to these duties include:

- Administering the Design Build Contract on behalf of the Owner and taking appropriate actions to require that the Design Builder performs in accordance with the terms and conditions of the Contract.
- Monitoring design and construction activities to require consistency with the Contract's project and quality specifications expectations.
- Maintaining an "on-site" presence during all construction activities to represent the Owner's interests, assist in clarifying design or construction issues where the Owner's input is required, and in general, observing for the Owner that the Project is well and duly constructed.

2. Master Planning.

Prior to commencing design of the Project, the Executive Administrator shall develop a master plan showing how the Project will relate to the existing site context as well as any identified future projects contemplated at the site. Considerations shall include at a minimum, as applicable:

- Access to public transit
- Visitor, user and service vehicular circulation
- Parking
- Site pedestrian and bicycle circulation
- Cycle parking
- Site utilities

- Site utilities expansion zones
- Natural and landscape areas
- Hardscape
- Water features
- Detention and retention facilities
- Building(s) placement and orientation
- Building(s) expansion zones
- Areas available to contractors during construction
- Temporary access and features during construction
- Future demolition
- Construction phasing
- Phasing of future facilities

The Executive Administrator shall engage the necessary consultants to address the listed considerations and shall document all master plan conclusions in a format and medium acceptable to the Owner to serve as a guide to the final design of the Project.

3. Full Time Inspection Coordination and Support Services.

The Executive Administrator shall provide coordination and support services to the Owner's independent construction inspectors, whether full or part time.

4. Facility Operations and Training Services.

The Executive Administrator, upon request of the Owner, shall coordinate with the Design Builder to provide operations instructions and training for the Owner's facilities personnel to include normal operation of all building systems, emergency operations, and normal maintenance operations. Training shall include class training objectives, hand-on training exercises, and training manuals.

- The Executive Administrator shall develop a training program for existing O&M personnel of the Owner, consisting of, for example, an eight-hour course, including both platform instruction and hands-on training of the commissioned systems on the Project.
- The Executive Administrator shall develop and provide to the Owner a Training Manual to supplement the training program and provide for Owner-led training of new employees.
- The Executive Administrator shall present the training course two times to facilitate attendance by all of the Owner's O&M personnel and appropriate administrative personnel. While administrative personnel may attend, the training is to be structured most effectively for O&M personnel. The Owner shall provide a training room adequate for the platform training, and shall provide services for copying training materials as needed.
- The Executive Administrator shall coordinate all training provided by the Design Builder.
- The Executive Administrator shall provide a videotape and catalogue of each training session.

5. Facility Observation and Evaluation – Warranty Services.

a. Observations and Evaluations during Guaranty-Warranty Period. If the Owner requests, during the guarantee period of the Design Build Contract, the Executive Administrator shall work with a representative of the Owner in securing remedy of defects that become apparent and shall make a guarantee-warranty observation and evaluation of the project prior to expiration of the guarantee-warranty period and report observed discrepancies to the Design Builder for correction. Decisions with respect to complaints about work after occupancy of the project by the Owner shall be rendered in accordance with and on forms furnished by the Owner, and in the event of noncompliance, including omission of work or faulty workmanship, the Executive Administrator shall recite in the decision the paragraph number or article of the specifications and/or the detail or drawing which has been violated, indicating precisely in which respect there has been deviation from the methods and/or material of construction required by the Contract Documents.

b. Corrections and Remedies. The Executive Administrator shall include in his decision suitable specifications and/or drawings indicating precisely the methods and materials to be used in executing the correction or remedy of non-compliant Work.

c. Services after Guaranty-Warranty-Period. For this service, beginning one year after execution of the final certificate, the Owner shall pay the Executive Administrator as set forth in this Exhibit, provided that the facts indicate that the complaint is not the result of delinquency of the Executive Administrator.



EXHIBIT B – SCHEDULE OF HOURLY RATES

The hourly rates to be included, when applicable, in the invoices of the Executive Administrator shall be as follows.

Principal-in-charge	\$
Owner's Executive Administrator	\$
Sr. Program Manager	\$
MIS/Technical/Project Doc.	\$
Project Controls Director	\$
Project Controls Sr. Project Manager	\$

These hourly rates shall 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

OWNER'S PREDESIGN STUDY



EXHIBIT D

OWNER'S PRELIMINARY SCHEDULE

[See ATTACHED]



EXHIBIT E
OWNER'S PRELIMINARY BUDGET

[See ATTACHED]

