

PROGRAM MANAGER CONTRACT

TO BE USED WITH
REGENTS CM/GC CONTRACT

BETWEEN PROGRAM MANAGER AND OWNER

BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA
Owner

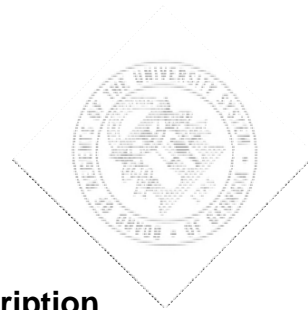


For the Use and benefit of:

INSTITUTION NAME
Using Agency

AND

LEGAL FIRM NAME
Program Manager



PROJECT NO. Project #, Description

**INCLUDES. Program Manager Form of Contract
General Services Requirements
Exhibits**

pp. Contract -1 to Contract - 4
pp. 1 to 16
pp. A to F

**PROGRAM MANAGER CONTRACT
(CONSTRUCTION MANAGEMENT – CM/GC)**

PROJECT NO.: PROJECT #

DESCRIPTION: DESCRIPTION, INSTITUTION, CITY WHERE PROJECT IS TO BE CONSTRUCTED, GEORGIA

THIS PROGRAM MANAGER SERVICES CONTRACT (hereinafter "Contract" is made this _____ day of _____, by and between.

a. **BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA**, hereinafter "Owner."

BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA
270 Washington Street, SW, 6th Floor
Atlanta, Georgia 30334
Attention: Jim James, Vice Chancellor for Facilities
Phone: 404-962-3155
Fax: 404-962-3188

Owner's Representative:

Board of Regents of the University System of Georgia
270 Washington Street, SW, 6th Floor
Atlanta, Georgia 30334
Attention: Samson Oyegunle, Program Manager
Attention: BOR PM Name, Program Manager
Phone:
Fax:



and

b. **LEGAL FIRM NAME**, hereinafter "Program Manager,"

Legal Firm Name
Address 1
Address 2
Attention: PM Firm POC
Phone:
Fax:



Program Manager's SSN or FEIN. _____

Program Manager's Employment Verification Certification:

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

User Identification Number: _____

Date of Authorization: _____

See *also* certification requirements in General Requirements Paragraph 1.2.3 and Exhibit E.

c. For the use and benefit of: **INSTITUTION NAME**, hereinafter "Using Agency."

Institution Name
 Address 1
 Address 2
 Attention: Institution Project POC
 Phone:
 Fax:

OWNER AND PROGRAM MANAGER, with the consent of Using Agency, hereby agree as follows.

1. AMOUNT OF PROJECT BUDGET. AMOUNT PER APPROVED BUDGET DOLLARS (\$)
 GMP COST LIMITATION. AMOUNT PER APPROVED BUDGET DOLLARS (\$)

2. OWNER'S PROJECT MANAGER (OPM). _____

3. NAME OF DESIGN PROFESSIONAL. If not yet selected, list "TBD"

4. FEES.

a The lump sum agreed upon fee, including reimbursables, for Phase I services of the Project is:
AMOUNT PER THE APPROVED BUDGET AND 00/100 DOLLARS (\$).

b. The lump sum agreed upon fee, including reimbursables, for Phase II services of the Project is:
AMOUNT PER THE APPROVED BUDGET AND 00/100 DOLLARS (\$).

c. The lump sum agreed upon fee, including reimbursables, for Phase III services of the Project is:
AMOUNT PER THE APPROVED BUDGET AND 00/100 DOLLARS (\$).

d. Additional Services Fee, fixed price including reimbursables, (at Contract execution) is:
AMOUNT PER THE APPROVED BUDGET AND 00/100 DOLLARS (\$) (See Exhibit A)

e. Additional Services Hourly Rates, as applicable. (See Exhibit B)

f. All Reimbursable Expenses for Phase I, II, III, and Additional Services, are included in the aforementioned fees (4.a, 4.b, 4.c, and 4.d).

g. Any fees already paid for account of Program Manager services on this project pursuant to any or documents or contracts (NONE) in the total paid amount of \$ 0.00 shall be applied as a reduction to any fees which shall be due or which shall become due under this Contract.

h. Total Program Management Fee, including reimbursables, is:
SUM OF 4.A-D AND 00/100 DOLLARS (\$).

5. REPRESENTATIONS. The Program Manager represents that it—

- a. is an organization of professionals experienced in the type of services the Owner is engaging the Program Manager 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.

6. CERTIFICATES. By executing this Contract, the Program Manager agrees that he has reviewed the certificates required by the General Requirements and the Construction Documents, which he must execute with reference to this Project. The Owner and Program Manager agree that the required certifications to be made by the Program Manager do not require knowledge, services or responsibilities that are beyond the scope of this Contract.

7. BUILDING OFFICIAL. The Owner and Program Manager acknowledge that there is no state building official other than for Life Safety, Elevator, Building Accessibility, and Fire Safety rules, regulations, and codes. Local government officials (e.g. county and municipal) have no enforcement powers over state authorities except with regard to certain Georgia Environmental Protection Division permits. Road projects may be delivered pursuant to DOT's General Permit GAR 100001 or GAR 100002, which are available for use by general contractors and are regulated directly by EPD. See 2009 Op. Att'y Gen. 2009-6 The Design Professional, under the supervision of the Vice Chancellor for Facilities, acts as the Building Official for the Project. (See Paragraph 1.2.4.12. of the Design Professional Contract).

8. 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 to be retained by the Program Manager] who shall commission the items listed on the Commissioning Checklist included in Exhibit N of the Design Professional Contract and complete the checklist included in Exhibit O of the Construction Manager Contract. For information regarding the Energy Act requirements, 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.]*

9. FULL PERFORMANCE. The Owner and the Program Manager hereby agree to the full performance of the conditions and stipulations contained herein.

10. ENTIRE CONTRACT. The General Services 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 Program Manager and supersedes all prior negotiations, representations or contracts, either written or oral. This Contract may be amended only by written instrument signed by the Owner, Using Agency and the Program Manager.

[Signatures on next page.]

IN WITNESS WHEREOF, the Owner has caused this Contract to be duly executed in its behalf and Program Manager has caused the same to be duly executed on its behalf to be effective as of the date set forth above.

PROGRAM MANAGER: _____ LEGAL FIRM NAME _____

ATTEST:

_____, SECRETARY

By: _____
_____, PRESIDENT

(SEAL, OVER SIGNATURE)
(If not a corporation, signature must be notarized.)

APPROVED: USING AGENCY

By: _____
PRESIDENT'S NAME, PRESIDENT
INSTITUTION NAME

WITNESS: _____

(PRINT NAME / TITLE HERE)



BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA, OWNER

By: _____
SHARON FERGUSON POPE
ASSISTANT VICE CHANCELLOR
FOR DESIGN AND CONSTRUCTION

WITNESS: _____
TERESA CORSO
DIRECTOR OF CONTRACTS & SERVICES



Attachments:

- 1. Program Manager General Services Requirements
- 2. Exhibits.
 - Exhibit A – List and Description of Additional Services
 - Exhibit B – Schedule of Hourly Rates
 - Exhibit C – Owner’s Program or Predesign Study
 - Exhibit D – Draft Preliminary Schedule
 - Exhibit E – Certificates of Compliance – Federal and State Work Authorization Programs
 - Exhibit F – Program Manager’s Key Personnel and Consultants

GENERAL SERVICES REQUIREMENTS

FOR THE PROGRAM MANAGER

ARTICLE 1 BASIC INFORMATION AND DEFINITIONS,

1.1 General. The Owner intends to complete the Project using a “fast-track” construction process. To accomplish these objectives, Owner intends to employ a team concept in a CM/GC format for the completion of the Construction Documents and, in accordance with such Construction Documents, to accomplish the 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 this Agreement and in the CM/GC Contract with respect to the CM/GC, and in the Design Professional Contract with respect to the Design Professional. All parties to the team shall have access to the respective agreements and to any changes to those agreements as they are adopted. It is the Owner's expectation that the Owner, the Program Manager, the Design Professional, the CM/GC and any Contractor other than CM/GC shall work as a team, in accordance with their respective agreements with Owner, to effect the design of the Project, to effect commencement of and completion of construction in accordance with the Construction Documents and the Project Schedule, and to achieve completion of the Project within the Project Budget. 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 Primary Function of the Program Manager.

1.2.1 Primary Function. The primary function of the Program Manager is to provide strategic guidance and direction to the Project Team and to manage the Project on behalf of the Owner. Program Manager agrees that the services provided by the Program Manager are intended to coordinate and complement the activities of the Project Team, but not to diminish, alter or substitute for any of the services, authority, obligations or responsibilities being provided by the Design Professional and CM/GC under their respective contracts. Nothing herein shall be deemed to impose upon the Program Manager any responsibilities to provide any services constituting the practice of architecture, engineering, or any related design profession, or to provide any services constituting construction or means and methods of construction. The Program Manager should seek to exercise its authority through sound principles of leadership and persuasion to achieve effective coordination of the design and construction of the Project. The Program Manager should use its authority to direct the activities of the Design Professional and CM/GC within the requirements of their respective contracts; or in unusual or ambiguous situations, after consultation with the Owner and under the specific direction of the Owner.

1.2.2 Standard of Care. The Program Manager shall exercise the professional skill and judgment of a construction management executive in similar circumstances in Georgia in the performance of its Program Management services. Program Manager owes Owner the duty of a fiduciary in the performance of Program Manager's responsibilities.

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

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

1.3.1. *PHASE I:* Phase I shall consist of the review of the existing predesign planning documents and programmatic documents, and coordinating the development of the program from which the Design Professional will accomplish the design of the Project. The goal is that detailed design criteria for quality and serviceability (including as applicable, system performance requirements), and building assurance methods and criteria, be developed into a complete and verified "Using Agency's Program" so that the Design Professional, in coordination with the CM/GC, is able to produce full and complete Construction Documents in accordance with the Using Agency's Program.

Major Deliverables:	Using Agency Program Initial Cost Determination and Cost Model
Professional Services:	Engineering and design review services Budget and costing services Project management services

1.3.2 *PHASE II:* Phase II shall consist of the periodic review of the documents prepared by the Design Professional in coordination with the CM/GC 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 Review/recommendation on DP invoices
Professional Services:	Engineering and design review services Budget and costing services Project management services

1.3.3 *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 and all applicable codes and regulations. This phase includes monitoring and management, as appropriate, of all change orders and pay requests, and the implementation of the building assurance program established in the Using Agency's Program.

Major Deliverables:	Review/recommendation on GMP Change Order Review/recommendation on Change Orders Review/recommendation on DP invoices Review/recommendation on CM/GC Pay Applications Periodic Construction IAW Design Reviews Periodic Cost Analysis Updates
Professional Services:	Engineering and design review services Budget and costing services Project management services

1.3.4 *Sequencing of Phases.* The above phases are not mutually exclusive but will overlap as the Project progresses, particularly for Phases II and III. It is the Program Manager's responsibility to ensure that no duties are overlooked or unnecessarily duplicated during periods of overlap.

1.3.5 *Cost and Budget.* The Program Manager acknowledges that the Owner has appropriated a fixed amount of money for the Project. In this regard, the Program Manager shall manage the Total Project Budget, which includes both the design and the construction budget. During Phase I, the Program Manager 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 Program Manager shall regularly submit progress reports, including cost information, to the Owner as the Using Agency's Program is developed. During all Phases the Program Manager

shall process the Design Professional's payment invoices pursuant to the Design Professional's contract and the CM/GC's applications for payment pursuant to the CM/GC's contract and shall advise the Owner as to approval of payments. As the Design Professional's design progresses, the Program Manager shall regularly continue the Program Manager'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 Program Manager agrees to use its best efforts to deliver to the Owner all the information that the Owner needs to (a) ensure that 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 as it may be amended.

1.4 Definitions. The terms set forth below shall have the meanings ascribed to them as follows:

1.4.1 *CM/GC.* The CM/GC is the entity engaged by the Owner for the construction of the Project. The CM/GC shall perform the construction of the Project in accordance with the Construction Documents. The CM/GC shall participate as a team member with the Program Manager and the Design Professional in (i) the design process for the Project, (ii) the scheduling of the construction of the Project, including Components thereof and (iii) in the process of completion and closeout of the Project. The CM/GC has the responsibility of developing the proposed GMP change order.

1.4.2 *CM/GC Contract.* The agreement that provides for a single entity to be responsible for the construction and construction management of the Project, or any Component thereof.

1.4.3 *Contractor.* Any person or entity other than the Design Professional, CM/GC or Program Manager that enters into an agreement directly and solely with the Owner to perform the construction of all or any portion of the construction on the Project. Owner reserves the right to select one or more Contractors to perform Work with respect to the Project or components thereof, and by change order remove such work from CM/GC's responsibility.

1.4.4 *Component.* An element of a Project for which the Design Professional prepares or segregates Construction Documents as a discrete package to permit CM/GC to procure the construction of the described Component of the Project. See the Design Professional Contract and CM/GC Contract.

1.4.5 *Component Construction Documents.* The Construction Documents prepared by the Design Professional and reviewed the Program Manager and approved by the Owner with respect to a Component.

1.4.6 *Contract Documents.* The Contract Documents for the Project. See the Design Professional Contract and CM/GC Contract.

1.4.7 *Construction Documents.* A part of the Contract Documents. See the Design Professional Contract and CM/GC Contract.

1.4.8 *Design Development Documents; Schematic Design Documents.* The Design Development and Schematic Design Documents demonstrate, among other things, the relationship of Project Components. See the Design Professional Contract.

1.4.9 *Design Professional.* The Design Professional shall, in accordance with its contract, include a registered design professional to provide all design services for the Project. All work submitted by the Design Professional is subject to a peer review program established by the Program Manager. The term "Design Professional" includes engineers, surveyors, designers, and the other consultants retained by the Design Professional.

1.4.10 *Guaranteed Maximum Price.* The maximum amount which Owner is obligated to pay the CM/GC for construction of the Project under a GMP Change Order for the Project.

1.4.11 *Notice.*

1.4.11.1 General Requirement. Any notice, election, demand, request, consent, approval, or other communication required or permitted to be given under this Contract shall be in writing signed by an officer or duly authorized representative of the party making same and shall be delivered personally or shall be sent by certified or statutory mail, postage prepaid, return receipt requested, shall be effective as

of the date on which it is received or would have been received but for the refusal of the addressee to accept delivery, and shall be addressed as shown in the Contract. The persons and addresses to which notices should be given may be changed by notice given in accordance with this Paragraph.

1.4.11.2 Copies of Notices to Owner. Wherever the Contract Documents provide that a copy of any notice, request, or demand filed with the Design Professional or Program Manager by the CM/GC shall be furnished to the Owner, such notice, request, or demand shall not become effective until the Owner has received his copy. No notice in writing or given orally to the Design Professional or to the Contract Compliance Specialist is notice to the Owner unless copy of the aforesaid notice in writing shall have been properly served upon the Owner at the address shown in the Contract.

1.4.12 *Owner.* The Owner is the BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA. Owner may, from time to time in writing, designate a specific person as the Owner's Representative under this Agreement. The Owner's Representative shall serve in this capacity until the Owner gives notice in writing of the appointment of a successor. The Owner or Owner's Representative may designate in writing assistants to serve as Owner's Representative with respect to a Project governed by this Contract or in different phases or in specific areas of responsibility with respect to the Project. All requests for consents and approvals required of Owner in connection with the Project, whether by Program Manager, Design Professional or CM/GC shall be submitted to Owner's Representative, or if the matter is within the written designation of authority of his assistant, to his designated assistant. Program Manager, Design Professional, and CM/GC and Contractor may rely upon written consents and approvals signed by the Owner's Representative, or his designated assistant acting within the scope of his written designation, as the consent and approval of Owner.

1.4.13 *Owner's Project Manager.* The primary person designated by the Program Manager to execute or direct the execution of the Program Manager's duties, obligations, and responsibilities under this Contract. The Program Manager may designate subordinate assistant owner's project managers to assist in the performance of the Program Manager's responsibilities.

1.4.14 *Program Manager.* The Program Manager is retained by the Owner in accordance with this Contract for the purposes set forth in recitals above, including the planning, programming, program verification, design review, construction review, overall management of construction administration and building assurance for the Project. The term "Program Manager" includes engineers, surveyors, designers, and the other consultants retained by the Program Manager. The Program Manager is not an employee of the Owner, but is an independent contractor engaged or retained by the Owner for the purpose of performing project management services for the Owner on the Project. Within the powers granted to it by this Contract, the Program Manger is an agent of the Owner.

1.4.15 *Key Personnel and Consultants.* The Program Manger agrees that the Project will be performed substantially with the key personnel and consultants presented at the time of selection. The Program Manager's key personnel and consultants who have been assigned to the Project, along with a description of the role and duties of such personnel are listed in Exhibit F hereof. The Program Manager acknowledges that the Owner has relied upon the designated assignments and roles of the key personnel and consultants in its decision to enter into this Agreement. Without good cause shown, the key personnel and consultants shall remain assigned to the Project throughout the duration of the Project and shall not be changed without the Owner's prior written approval, which approval will not be unreasonably withheld.

1.4.16 *Program, Using Agency's Program.* The program includes the pre-design planning documents and programmatic documents that pre-exist this Agreement and provide the general description of the purposes and requirements of the Project. The program is provided or to be provided to the Program Manager for the purpose of providing a basis for further definition (including as applicable, system performance requirements) and the development of detailed design criteria, specifically addressing serviceability and durability requirements, and building assurance methods and criteria. When Phase I is completed these documents will, upon Owner's approval, constitute the "Using Agency's Program" and the approved Using Agency's Program shall be the contractual basis for evaluation of the Design Professional's design of the Project.

1.4.17 *Subcontractor.* The generic term subcontractor as employed herein includes only those having a direct contract with the CM/GC.

1.4.18 *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.

1.4.19 *Trade Supplier, 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 CM/GC or with a Subcontractor to furnish materials or equipment to be incorporated in the Work by the CM/GC or a Subcontractor.

1.4.20 *User or Using Agency.* The Project has been designed under the direction of and is intended for the benefit of the University System Unit, or institution, shown in Item c. in the Form of Contract, called herein the Using Agency or User. A copy of all matters submitted to Owner shall also be submitted to Using Agency for the Using Agency's information. The Using Agency shall rely on the Program Manager to act as the primary representative for the Using Agency and to participate with the Owner in Owner's activities under this Agreement. The Using Agency may designate one or more other representatives to participate with the Program Manager and the Owner in activities under this Agreement.

ARTICLE 2 PROGRAM MANAGER'S BASIC SERVICES

2.1 General Scope of Basic Services.

The Program Manager 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 Program Manager's basic professional services shall consist of the management of the Project, including 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 Professional to produce complete Construction Documents and for the CM/GC to construct the Project consistent with the requirements and intent of the Using Agency's Program. The Program Manager must 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.

2.2 Basic Services by Phase.

2.2.1 *Phase I Services.* Phase I Services shall mean and include all of the following services:

- a. Develop and refine the concepts and programming for the Project.
 - i. Review the Predesign Study
 - ii. Prepare a synopsis of the Owner's project requirements
 - iii. Consolidate all the project planning actions and supporting documentation that have occurred to date.
 - iv. Review proposals for interior finishes, lighting, furniture, other elements provided as part of this Project to take into consideration Leadership in Energy and Environmental Design (LEED®) elements when appropriate, feasible, and cost effective, including advising.
 - v. 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.
 - vi. Obtain historic and/or archaeological data as necessary.
 - vii. Establish an appropriate meeting schedule and attendance list; prepare an agenda, provide handouts and other materials, and prepare meeting notes for each meeting.
 - viii. Maintain a list of the official campus user-group representatives.
 - ix. Meet with campus facilities staff, user-group representatives, administration, etc., to gain their perspectives of the Owner's project requirements and to explain in detail the process and methods that will be used to construct "their" project
 - x. Create and distribute meeting notes, decision notes, and related project documentation as prescribed.
 - xi. In combination with appropriate campus personnel and in support of the program validation effort, tour and photograph the Project site.
- b. Develop a proposed budget to validate that the Project is financially feasible.

- i. Review the preliminary budget from the Predesign Study
 - ii. Make appropriate estimates and calculations to assure that the expected project scope can be achieved adequately within the available funds
 - iii. Identify any shortfalls and suggest (other than the provision of additional funds) methods of achieving balance between scope and budget.
 - iv. Compile the result of the preceding tasks into a bound report that will be presented to the Owner and Using Agency in draft form for review and approval.
 - v. Upon approval, provide five bound copies of the report to Owner.
- c. Prepare a task-related project delivery schedule. This development should be coordinated with the Design Professional, as soon as the Design Professional is engaged.
- i. Develop a proposed preliminary schedule, from which the Design Professional develops the Preliminary Design and Construction Schedule; the CM/GC develops the Construction Progress Schedule, which results in the Overall Project Schedule.
 - ii. Identify essential or major milestones of interest
 - iii. Suggest other activities for milestones that may be the best interests of the Owner and Using Agency.
 - iv. Prepare a draft "highlight" schedule for the entire Project that shows the major milestones of interest to the Using Agency user community
 - v. Discuss the draft preliminary and "highlight" schedules with the Using Agency (and the Design Professional, if engaged) to assure that these schedules are consistent with the Using Agency's needs.
 - vi. Modify the schedules as necessary to conform to the Using Agency's needs, or negotiate a modified level of expectations with the Using Agency.
 - vii. Upon approval, publish the schedules, providing the draft preliminary schedule to the Design Professional and the "highlight" schedule to the Using Agency.
- d. Assist the Owner and Using Agency in developing Requests for Proposal and in selection of the Design Professional and for selection of the CM/GC, and in the case of selection of the CM/GC, also assist and coordinate with the Design Professional in the selection process.
- i. Ensure that the RFP process complies with Board of Regents policy
 - ii. Assist in identifying potential candidates for receipt of the invitation for proposals within the specialty areas required for the project
 - iii. Assist the Owner in the selection process
- e. The entire compensation of the Program Manager for the performance hereunder of Phase I Services, including any and all compensation in respect to costs or expenses incurred by the Program Manager in the performance hereunder of Phase I Services, shall be the Phase I Compensation Fee set forth in Paragraph 4a of the Contract and any Reimbursable Expenses payable to the Program Manager in respect to the performance hereunder of Phase I Services as set forth in Article 5.

2.2.2 *Phase II Services.* Phase II Services shall mean and include all of the following services:

- a. Develop and implement a design coordination framework to facilitate the design of the project by the Design Professional and the design coordination activities of the CM/GC
 - i. Attend design coordination meetings between the Design Professional and CM/GC
 - ii. Prepare and distribute minutes of design coordination meetings
 - iii. Advise the Owner and Using Agency as to the systems and components of the Project that should be commissioned.
 - iv. If directed by Owner, develop and coordinate with the Design Professional a building commissioning plan consistent with state and Regent's guidelines (See Exhibit A.)
- b. Develop and implement a cost management (cost containment) strategy that will identify and track decisions that have an impact on cost.
 - i. Independently identify the costs associated with each phase of the Project that reflects the program scope

- ii. Develop and implement a cost model.
- iii. Develop and implement a cost tracking methodology that will allow all parties to compare projected costs with actual costs in "real time."
- iv. Include a methodology to inform all parties, including the Design Professional and the CM/GC, if the model projects that expended costs will exceed the planned cost
- v. Identify three suggested methods to regain balance between scope and cost.
- vi. As a minimum, cost containment strategies should include the following considerations:
 - Maintenance of program scope;
 - Maintenance of the Project schedule
 - Construction quality assurance and compatibility with Owner/Using Agency's design standards.
 - Provision of all necessary services and utilities.
 - Keeping the Using Agency fully aware of the progress of the Project.
- vii. Create a project file that tracks all cost-related decisions and includes the rationale for them; provide the Owner with this record in bound form upon the completion of the Project.

c. Represent the interests of the Owner and Using Agency and the user groups during the preparation of schematic drawing, design development documents, and construction documents.

- i. Monitor and document the Design Professional's program validation process and provide Owner and Using Agency (including user-group representatives) with a copy of the validated program, signed-off on by Using Agency and the Design Professional.
- ii. Ensure accomplishment of a hazardous materials assessment including the all necessary environmental review and documentation.
- iii. Ensure accomplishment of an existing utility capacity analysis.
- iv. When appropriate, recommend timely peer review of the developing construction documents, and if approved by Owner, assist in the implementation of peer review.
- v. Monitor the Design Professional's activities concerning applicable state building codes, including fire and life safety, ADA, mechanical, electrical, telecommunications, and other appropriate standards.
- vi. Ensure that all permits and approvals are obtained.
- vii. Monitor Design Coordination meetings for resolving constructability issues in the construction drawings.
- viii. Process invoices from the Design Professional on behalf of the Owner in accordance with the Design Professional Agreement.

d. The entire compensation of the Program Manager for the performance hereunder of Phase II Services, including any and all compensation in respect to costs or expenses incurred by the Program Manager in the performance hereunder of Phase II Services, shall be the Phase II Compensation Fee set forth in Paragraph 4b of the Contract and any Reimbursable Expenses payable to the Program Manager in respect to the performance hereunder of Phase II Services as set forth in Article 5.

2.2.3 *Phase III Services.* Phase III Services shall mean and include all of the following services:

a. Represent the interests of the Owner and Using Agency and the user groups during the construction administration phase of the Project.

b. Develop, in coordination with the Design Professional, a framework for negotiating the guaranteed maximum price (GMP) and, if appropriate, a subsequent lump sum price with the CM/GC.

- i. Schedule meetings between the Owner, Using Agency, the Design Professional, and the CM/GC, to review and negotiate the CM/GC's proposed GMP Change Order.
- ii. Monitor the actions and decisions, as well as the rationale, that result from this negotiation.
- iii. Provide minutes and a "decision log" at the conclusion of each negotiating session.
- iv. Review the proposed GMP Change Order after the Design Professional's approval, and make recommendations to Owner.

- v. When approved, ensure execution by all appropriate parties and distribution of the approved GMP Change Order.
 - vi. Provide similar services if the Owner and Using Agency subsequently desire a lump sum change order.
- c. Develop and implement a construction administration framework to manage, facilitate, and monitor the Design Professional's construction administration activities.
- i. Coordinate construction administration activities to assure consistency with the Contract Documents
 - ii. Maintain an "on-site" presence during all construction activities to represent the interests of the Owner and Using Agency,
 - iii. Assist in clarifying design or construction issues where input from the Owner and Using Agency is required
 - iv. Prepare and distribute minutes of design coordination meetings to assist CM/GC in its design documents coordination role as it maintains and updates the construction documents maintained on the site.
 - v. Ensure timely responses are obtained from the Design Professional to RFPs and Requests for Interpretation of the construction documents as the CM/GC's design coordination role requires.
 - vi. Process all pay applications on behalf of the Owner from the CM/GC that have been certified by the Design Professional.
- d. Act as the Owner's representative and agent for all decisions that will affect the Project's cost and schedule.
- i. Prepare a synopsis for Owner approval of significant decisions.
 - ii. Update the Owner on progress and any changes to the Overall Progress schedule on a biweekly basis.
 - ii. Provide a full and complete cost-expense account (budget reconciliation)
- e. Assist the Design Professional in coordinating the final building punch list, including all operating systems on behalf of the Owner and Using Agency.
- i. Monitor all system run-ups and commissioning activities.
 - ii. Supervise the CM/GC's turnover of the building to the Owner and Using Agency.
- f. Assist the Design Professional and the CM/GC in providing the Owner and Using Agency with a full and complete set of all building-related documents at occupancy.
- i. Ensure any required facilities training is conducted by the CM/GC.
 - ii. Ensure Record Drawings are provided by the Design Professional on computer disk (CD) in AutoCAD® version 2004.
 - iii. Ensure all manufacturer's certificates, guarantees and warranties comply with the Contract Documents
 - iv. Assemble all documents in a tabbed set of notebooks, in three copies.
- g. Perform additional activities not specifically identified but that are necessary and convenient to the best interests of the Owner and Using Agency in completing the Project.
- h. The entire compensation of the Program Manager for the performance hereunder of Phase III Services, including any and all compensation in respect to costs or expenses incurred by the Program Manager in the performance hereunder of Phase III Services, shall be the Phase III Compensation Fee set forth in Paragraph 4c of the Contract and any Reimbursable Expenses payable to the Program Manager in respect to the performance hereunder of Phase III Services as set forth in Article 5.

2.2.4 *Owner's Approval Required for Consultants.* The Program Manager shall, before retaining any party to perform any services required to be performed hereunder by the Program Manager, 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 Program Manager to perform any aspect of the

services required hereunder to be performed by the Program Manager shall be subject to a written agreement between the Program Manager 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 Program Manager under such agreement.

2.3 Time and Schedule.

2.3.1 Preliminary Schedule. A proposed Preliminary Schedule, including major milestones for the production of the design and construction documents, as well as the anticipated time required for construction is attached as Exhibit D. The Program Manager 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. It is of the utmost concern to the Owner that the Contract Documents are fully prepared in sufficient time to permit the construction, considering all anticipated contingencies, to be completed in sufficient time to meet the date that occupancy of the Project by the Using Agency is required. The Program Manager assists the Design Professional and Construction Manager in establishing the Overall Program

2.3.2.1 Preliminary Schedule. The Program Manager assists the Owner in the creation of the Preliminary Schedule. The Program Manager is responsible for timely completion of all its activities, responsibilities and obligations under this Contract in accordance with the Preliminary Schedule, as amended.

2.3.2.2 Preliminary Design and Construction Schedule. The Program Manager assists the Design Professional in the preparation of the Preliminary Design and Construction Schedule, and ensures the Owner's critical schedule milestones are met by the Design Professional. While it is the Design Professional's obligation to create a workable schedule, the Program Manager should advise the owner when it appears that the Owner's schedule objectives may become compromised and should explore with the Design Professional ways of achieving the Owner's schedule objectives. When the Preliminary Schedule is combined into the Design Professional's Preliminary Design and Construction Schedule and approved by the Owner, the Program Manager is responsible for timely completion of all its activities, responsibilities and obligations under this Contract in accordance with the Preliminary Design and Construction Schedule.

2.3.2.3 Overall Project Schedule. The Program Manager, along with the Design Professional, assists the CM/GC in the preparation of the Overall Project Schedule, and ensures the Owner's critical schedule milestones are met by the Design Professional and CM/GC. While it is the CM/GC's obligation to create a workable construction schedule, and the Design Professional's obligation to create a workable design schedule, the Program Manager should advise the owner when it appears that the Owner's schedule objectives may become compromised and should explore with the Design Professional and CM/GC ways of achieving the Owner's schedule objectives. When the Preliminary Design and Construction Schedule is combined into the Overall Project Schedule, the Program Manager is responsible for timely completion of all its activities, responsibilities and obligations under this Contract in accordance with the Overall Progress Schedule approved by the Owner.

2.3.3 Advising the Owner of Progress. The Program Manager shall regularly, on the currently approved schedule, show the Design Professional's and CM/GC's progress to date, confirm the remainder of the schedule, or update the projected schedule, and obtain the written approval of the Owner for any milestone changes.

ARTICLE 3 OTHER BASIC SERVICES, ADDITIONAL SERVICES, AND LIMITATIONS

3.1 Other Basic Services. The Program Manager shall render other basic services that are customary in work of this character and may be conducive to economy and sound construction management.

3.2 Owner's Project Manager As a part of basic services the Program Manager shall designate in writing a full-time and accessible (either on Site or by computer, phone or fax or otherwise) its Owner's Project Manager (OPM) who shall have authority to render decisions and to furnish information required of the Program

Manager. The OPM shall promptly respond to all requests from the members of the Project Team and shall in no event exceed the time limits set forth in this Contract, the Design Professional Contract, and the CM/GC Contract that are applicable to the Owner.

3.3 End-of-Project Assessment. As a part of basic services, the Program Manager shall participate with the Using Agency, the Owner, the Design Professional and the CM/GC in an end-of-project assessment for the benefit of Owner. If Team Evaluation is elected as part of this Contract, all team members agree to participate in good faith in the State of Georgia's formal Team Evaluation Process [copies of which will be made available to any member on request]. By executing this agreement for program management services with the Owner, the Program Manager waives any and all legal rights for defamation, libel, or slander, and covenants not to sue the Board of Regents, the Owner, the Design Professional, the Using Agency, other team members, and their respective representatives and agents for comments, rankings, and results related to the Program Manager's performance posted in good faith as a part of, and in accordance with, said Team Evaluation Process. The Design Professional and other team members, in their agreements with the Owner, have executed, or will execute, a similar agreement.

3.4 Additional Services. Supplemental to those basic services described above and by Phase, the Program Manager 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 Program Manager 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.

3.5 Contract Compliance Specialist (CCS). When desired by the Owner, a Contract Compliance Specialist (CCS) (formerly known as a Resident Engineer Inspector) may be appointed by Owner for contract administration services. Owner may request the Program Manager engage a CCS for and on behalf of the Owner, subject to instructions of the Owner, as an additional service. (See Exhibit A.)

3.6 Limitation on Scope of Services. The Program Manager acknowledges and agrees that neither the Program Manager, Using Agency nor the Owner undertakes to approve or pass upon matters of design. The Program Manager 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 Program Manager.

ARTICLE 4 COMPENSATION AND PAYMENT

4.1 Basic Compensation. For the basic services listed above, the Owner agrees to pay the Program Manager LUMP SUM FEES in the amount shown in Paragraph 4 of this 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 Program Manager shall commence upon receipt of a proceed order from the Owner directing the Program Manager to begin and shall continue until completion of the Project. If the completion of the Project is delayed by more than six months past the established Date of Final Completion set forth in the CM/GC Contract, the Program Manager shall be paid for his services by a mutually agreed lump sum fee or in accordance with the rates listed on Exhibit B; provided, that the facts indicate that the delay is not the result of delinquency of the Program Manager.

4.2 Additional Services Compensation. For Additional Services specified on Exhibit A, the compensation for the Program Manager shall be as set forth on Exhibit A, or if no fee is agreed, in accordance with the rates listed on Exhibit B.

4.3 Reimbursable Expenses.

4.3.1 Travel Expenses. The Owner shall reimburse the Program Manager 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 that 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 days of

the date the expense is incurred; otherwise, the Program Manager 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 Program Manager, the OPM, and its officers, employees and consultants.

4.3.2 Reimbursements Upon Prior Approval 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, courier services, and long distance telephone charges shall, however, be reimbursable at actual invoiced cost to the Program Manager.

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

4.4.1 Phase I Fee.

- 4.4.1.1 When predesign, programming, and planning documents have been assembled and reviewed and the tasks set forth in Article 2.2.1(a) have been completed and approved by the Using Agency, a sum equal to 33% of the Phase I fee.
- 4.4.1.2 When Proposed Budget and preliminary schedule has been completed and approved by the Using Agency and Owner, and the tasks set forth in Article 2.2.1(b) and (c) are completed, a sum sufficient to increase payments to 75% of the Phase I fee.
- 4.4.1.3 When the RFQ/RFPs have completed, and have been approved by the Using Agency and Owner, and the tasks set forth in Article 2.2.1(d) (i) and (ii) are completed, a sum sufficient to increase payments to 95% of the Phase I fee.
- 4.4.1.4 When the Design Professional, CM/GC, and if applicable, the Commissioning Authority, has been selected, and the tasks set forth in Article 2.2.1(d)(iii) is completed, a sum sufficient to increase payments to 100% of the Phase I fee.

4.4.2 Phase II Fee.

- 4.4.2.1 When the Program Manager has developed and implemented a design coordination framework, including, if applicable, commissioning, which has been approved by the Using Agency and Owner, and the tasks set forth in Article 2.2.2(a) are completed, a sum equal to 15% of the Phase II fee.
- 4.4.2.2 When the Program Manager has developed and implemented a cost management strategy which has been approved by the Using Agency and Owner, and the tasks set forth in Article 2.2.2(b) are completed, a sum sufficient to increase payments to 35% of the Phase II fee
- 4.4.2.3 When the Design Professional on behalf of the CM/GC has completed the Construction Documents and the Program Manager certifies that the Documents have been produced in accordance with the Using Agency's Program, and the tasks set forth in Article 2.2.2(c) are completed a sum equal to 95% of the Phase II fee.
- 4.4.2.4 When the Proceed Order to commence construction has been issued to the CM/GC, a sum sufficient to increase payments to 100% of the Phase II fee.

4.4.3 Phase III Fee.

- 4.4.3.1 When the Program Manager has developed and implemented the framework for negotiating the GMP change order, including, if applicable, any component change orders, which has been approved by the Using Agency and Owner, and the tasks set forth in Article 2.2.3(b) are completed, a sum equal to 15% of the Phase III fee.

4.4.3.2 During the execution of the work by the Contractor and in equal proportions to the amount of work certified for payment by the Program Manager on the periodical estimate of the CM/GC, monthly payments sufficient to increase payments 95% of the Phase III fee.

4.4.3.3 When the final certificate has been executed and the Program Manager has completed all requirements of the contract including the furnishing of "As-Built Documents," a sum sufficient to increase payments to 100% of the Phase III fee.

4.5 Alternative Monthly Payments. If the Program Manager so desires, it 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, Program Manager 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 Program Manager 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 Program Manager 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 Program Manager or his engineers as of the date of the transaction for like services. The hourly rates, if any, to be included in the invoices of the Program Manager shall be as set forth on Exhibit B. In no event shall the monthly payments exceed the percentages for each step as set forth in Article 4.4.

4.6 Payments Other Than Fee. Payments to the Program Manager, other than those on his fee (for example, approved reimbursements), shall be submitted and become payable with the next scheduled pay application.

4.7 Payment to Consultants. The Program Manager shall make payments to his consultants within not more than five working days following receipt of payment from the Owner.

4.8 Deductions.

4.8.1 No deductions shall be made from the Program Manager's fee on account of penalty, liquidated damages, or other sums withheld from payments to the Design Professional or CM/GC

4.8.2 Any other provision in this contract to the contrary notwithstanding the Program Manager shall receive no fee for account of change orders caused by oversight, negligence, or neglect of the Program Manager.

4.9 Modifications in Using Agency Program. In the event that the estimates of the cost of the work exceed the project budget, 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 available funds. The Program Manager agrees that modifications made for the purpose of balancing the estimate with the project budget shall not create a claim for additional work under this Program Manager contract.

ARTICLE 5 PROFESSIONAL SERVICES, INDEMNITY AND INSURANCE

5.1 Certification of Skill.

The Program Manager by the execution of this agreement contracts that he is possessed of that degree of care, learning, skill, and ability that is ordinarily possessed by construction managers and 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 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.

5.2 Professional Services Indemnity (Licensed Professionals).

The Program Manager shall indemnify, release and hold the Owner and Using Agency, their officers, members, employees and agents, harmless from and against all liability, damages, costs, expenses (including reasonable

attorney's fees and expenses incurred by the Owner, Using Agency and any of their officers, members, employees and 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 Program Manager, as defined below.

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

5.2.2 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 Program Manager (or by any person or entity, including joint ventures, for whom the Program Manager is liable) that causes liability and fails to meet the applicable professional standard of care, as set forth above in Article 12.1.

5.3 Non-Professional Services Indemnity (Non-licensed Professionals).

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

5.4 Insurance Requirements.

5.4.1 Within ten days after execution of the Program Manager Contract and during the entire period of the Program Manager's responsibility under the contract, the Program Manager shall maintain the insurance required by this paragraph. The Program Manager 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. Each certificate of insurance shall bear an endorsement in words exactly as follows:

Insurer agrees that the coverage shall not be canceled, changed, allowed to lapse, or allowed to expire until thirty calendar days (ten calendar days for nonpayment of premium) after written notice by United States Certified Mail, Return Receipt Requested, postage prepaid, in an envelope addressed to the party to be notified at such party's address as follows:

BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA
Attn: Director of Contracts & Services
270 Washington Street, SW, 6th Floor
Atlanta, Georgia 30334

as evidenced by return receipt of certified mail or statutory mail service.

5.4.2 *Professional Liability Insurance.* Within ten days after execution of this contract and during the entire period of the contract, the Program Manager shall maintain professional liability insurance for the professionals 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.

5.4.3 *Workers Compensation and General Liability insurance.* Within ten days after execution of this Contract and during the entire period of the contract, the Program Manager shall maintain Workers Compensation and Commercial General Liability and Umbrella insurance as provided herein. The Program Manager 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 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. The Commercial General Liability and Commercial General Umbrella policies shall name the Owner and Using Agency as additional insureds.

ARTICLE 6 TERMINATION AND DEFAULT

6.1 Termination or Abandonment of Project.

6.1.1 *Termination for Convenience.* If the Project is terminated for convenience of the Owner or abandoned, or if the CM/GC's contract shall not be executed within one year after execution of this Contract, a sum shall be paid to the Program Manager as set forth below, unless the failure to execute the CM/GC's Contract results from oversight, negligence or delinquency on the part of the Program Manager.

6.1.2 *Payments to Program Manager.* In event of termination under this paragraph, the Owner shall pay to the Program Manager any fee or proportion of 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 Program Manager shall have no claim in excess of what is allowed in this paragraph for any sum of money, however denominated, as a result of or relating to such termination. All records and other documents relating to the design of the Project or Construction Contract Administration of the Work shall be surrendered forthwith by the Program Manager to the Owner. The Program Manager shall be entitled to make and retain copies of all such documents for its own records.

6.2 **Default by Program Manager.** In the event the Program Manager through any cause fails to perform any of the material terms, covenants or provisions of this Contract, or if he for any cause fails to make progress in the services hereunder in a reasonable manner, the Owner shall have the right to terminate this Contract by giving notice in writing of the fact and date of such termination to the Program Manager. The termination date shall be no less than seven calendar days after receipt of the termination notice. Upon termination, all records and other documents relating to the design of the Project or Construction Contract Administration of the Work shall be surrendered forthwith by the Program Manager to the Owner. In such case, the Program Manager shall receive proper compensation for such services that have been satisfactorily performed by the Program Manager up to the date of termination of this Contract. In the event of a dispute, an independent auditor selected and paid for by the Owner shall determine proper compensation. The Owner may take over the services to be provided hereunder and may prosecute the same to completion by separate contract or otherwise, and the Program Manager shall be liable to the Owner for any excess cost occasioned the Owner thereby.

6.3 Default On CM/GC Contract.

6.3.1 *Extra Services Occasioned by Such Default.* If the Owner declares a default on the CM/GC contract, the Program Manager shall receive extra compensation for his services after the CM/GC Contract Time has expired in accordance with Article 4.

6.3.2 *Meaning of Default.* The words "Owner declares a default on the CM/GC contract" as used in this section shall mean when the Owner issues a notice of declaration of default in writing to the surety and CM/GC 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 Program Manager does not have authority (a) to declare the CM/GC in default or (b) to give the CM/GC or surety a notice of termination or notice of intention to terminate.

6.4 **Arbitration.** Arbitration is neither contemplated nor allowed under this Contract.

6.5 **Claims for Consequential Damages.** The Owner retains its right to claim for consequential damages in the event that the Program Manager fails to perform under this Contract.

ARTICLE 7 FORCE MAJEURE

If the Program Manager shall be unable to perform or shall be delayed in the performance of any of the terms and provisions of this Contract as a result of (i) governmental preemption of materials or services in connection with a national emergency declared by the President of the United States; (ii) riot, insurrection, or other civil disorder

affecting performance of the Work; or (iii) unusual and extreme weather conditions constituting Acts of God, then, and in any such event, such inability or delay shall be excused, and the time for completing the affected portions of this Contract, the Project (and the entire Project, if applicable) shall be extended for such reasonable period of time as the delay has affected the performance of the Work hereunder. The Program Manager shall take all reasonable actions to minimize the delay caused by any of the above factors, and shall notify the Owner in writing of any event allowing for excuse or delay not later than seven days after the event the Program Manager first becomes aware of the event, or should have become aware, of the event; otherwise the Program Manager will be deemed to have waived the excuse or delay.

ARTICLE 8 ASSIGNMENT, CHANGE OF BUSINESS FORM

8.1 Assignment. The Program Manager hereby agrees that the Program Manager shall not assign, sublet, or transfer any interest or right in the Program Manager contract as a whole or in part to any party without the written consent of the Owner in advance. Notwithstanding this limitation, the Program Manager 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 Program Manager of such acceptance, the Program Manager 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 Program Manager under this Contract unless and until it shall have notified the Program Manager in writing of such acceptance.

8.2 Change in Business Form. In the event that the Program Manager changes its business form, it shall notify the Owner in writing and include appropriate tax identification information. The Owner shall make all future payments in accordance with such notice and a signed amendment to this Contract.

ARTICLE 9 MISCELLANEOUS PROVISIONS

9.1 Project Name and Number. The Program Manager shall use the identical and full name and number of the project as shown hereinbefore and no others on all correspondence, contract documents, and invoices for fees.

9.2 Time is of the Essence. The Program Manager by execution of this agreement agrees that time is of the essence to the Contract and that the Program Manager 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 Program Manager and Owner.

9.3 Modifications and Amendments. This contract represents the entire and integrated agreement between the Owner and the Program Manager and may be amended only by written instrument signed by both the Owner and the Program Manager. The Program Manager covenants that no modifications or amendments, either written or oral, may be made in the terms and provisions of the Program Manager Contract or the Contract Documents for the Project, without the written consent in advance of the Owner, copy of which consent shall have been furnished to the Program Manager. It is agreed between the Program Manager and the Owner that in the absence of such written consent neither any modifications nor any undertaking to modify the Program Manager Contract or the Contract Documents shall be binding but shall be absolutely null and void.

9.4 Superseding of Earlier Agreement. The parties hereto agree that this Contract takes the place of and supersedes 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 program management of this Project. Any fees already paid for account of Program Manager services on the Project as shown in Item 4(g) of the Contract pursuant to any document or agreement shall be applied as a reduction to any fees which shall be due or which shall become due under the present contract.

9.5 Prohibition Against Contingent Fees. As required pursuant to O.C.G.A. §50-22-6(d), the Program Manager 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.

9.6 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. In addition, the State encourages all companies to sub-contract portions of any State contract to minority business enterprises. Program Managers 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. For more information, please contact the Board of Regents' Office of Business Development by e-mail at BusinessDevelopment@usg.edu.

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

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

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

9.9 Legal Compliance. This Contract shall be governed by the law of Georgia. The Program Manager shall comply with all laws, rules, regulations, ordinances, and orders of any government agency having jurisdiction in the performance of the Work and shall ensure the compliance of its Subcontractors.

EXHIBITS

BEGIN ON NEXT PAGE

- Exhibit A List and Description of Additional Services
- Exhibit B Schedule of Hourly Rates
- Exhibit C The Owner's Program or Predesign Study
- Exhibit D Draft Preliminary Schedule
- Exhibit E Certificates of Compliance – Federal and State Work Authorization Programs
- Exhibit F Program Manager's Key Personnel and Consultants



EXHIBIT A

ADDITIONAL PROGRAM MANAGER 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 services fee; (ii) a dollar amount for an agreed Additional Service not included in the basic 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.]

[Note 2: In the event that 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

_____ Scope of add service.

_____ \$0.00

TOTAL OF ADDITIONAL SERVICE FEES AT CONTRACT EXECUTION

EXHIBIT B – SCHEDULE OF HOURLY RATES

The hourly rates to be included in the invoices of the Program Manager shall be as follows.

1. For Senior Principal – at a rate of \$_____ per hour.
2. For Project Manager – at a rate of \$_____ per hour.
3. For Assistant Program Manager – at a rate of \$_____ per hour.
4. For Administrative Assistant – at a rate of \$_____ per hour.
5. For Project Controls/Cost Manager – at a rate of \$_____ per hour.
6. For Construction Inspector – at a rate of \$_____ per hour.

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

EXHIBIT C
OWNER'S PROGRAM OR PREDESIGN STUDY

See attached.

EXHIBIT D
DRAFT PRELIMINARY SCHEDULE

SEE ATTACHED.

EXHIBIT E

“Contractor” in the following Affidavits shall mean “Program Manager” for the purpose of compliance with O.C.G.A. § 19-10-91, (b).

For the purpose of completing the following Affidavits, please insert the following:

- “Name of Public Employer” shall mean “Board of Regents of the University System of Georgia, Owner, for the use and benefit of Institution Name, Using Agency”
- “Name of Project” shall mean “Project No. Project Number, Project Description”

Contractor Affidavit under O.C.G.A. § 13-10-91(b)(1)

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of Board of Regents of the University System of Georgia for the use and benefit of Institution Name, Using Agency (public employer) has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b). Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Contractor

Project #, Description
Name of Project

Board of Regents of the University System of Georgia
for the use and benefit of Institution Name, Using Agency
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, ____, 20__ in _____(city), _____(state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF _____, 20__.

NOTARY PUBLIC

My Commission Expires:

Subcontractor Affidavit under O.C.G.A. § 13-10-91(b)(3)

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with _____ (name of contractor) on behalf of Board of Regents of the University System of Georgia for the use and benefit of Institution Name, Using Agency (public employer) has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five business days of receipt. If the undersigned subcontractor receives notice that a sub-subcontractor has received an affidavit from any other contracted sub-subcontractor, the undersigned subcontractor must forward, within five business days of receipt, a copy of the notice to the contractor. Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Subcontractor

Project #, Description
Name of Project

Board of Regents of the University System of Georgia
for the use and benefit of Institution Name, Using Agency
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, _____, 20__ in _____(city), _____(state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF _____, 20__.

NOTARY PUBLIC

My Commission Expires:

Sub-subcontractor Affidavit under O.C.G.A. § 13-10-91(b)(4)

By executing this affidavit, the undersigned sub-subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract for _____

(name of subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract) and _____ (name of contractor) on

behalf of Board of Regents of the University System of Georgia for the use and benefit of Institution Name, Using Agency (public employer) has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned sub-subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned sub-subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the sub-subcontractor with the information required by O.C.G.A. § 13-10-91(b). The undersigned sub-subcontractor shall submit, at the time of such contract, this affidavit to _____

(name of subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract). Additionally, the undersigned sub-subcontractor will forward notice of the receipt of any affidavit from a sub-subcontractor to _____

(name of subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract). Sub-subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Sub-subcontractor

Project #, Description
Name of Project

Board of Regents of the University System of Georgia
for the use and benefit of Institution Name, Using Agency
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, ____, 20__ in _____(city), _____(state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF _____, 20__.

NOTARY PUBLIC

My Commission Expires:

EXHIBIT F
PROGRAM MANAGER'S KEY PERSONNEL AND CONSULTANTS

Program Manager's Key Personnel and Role Descriptions

<u>Position</u>	<u>Person</u>	<u>Office Location</u>
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Program Manager's Consultants and Role Descriptions