

(GSFIC)
BUILDING COMMISSIONING SERVICES CONTRACT
BETWEEN OWNER AND COMMISSIONING AUTHORITY

STATE OF GEORGIA
COUNTY OF FULTON

Contract NUMBER:
PROJECT NUMBER:
PROJECT NAME:
PROJECT SITE:

THIS CONTRACT made the _____ day of _____, _____, by and between the **Georgia State Financing and Investment Commission** whose address is Second Floor, 270 Washington Street, Atlanta, Georgia 30334, a commission in the Executive Branch of state government in the State of Georgia, hereinafter called the Owner, and _____ whose address is _____ hereinafter called the Commissioning Authority ("CxA"), for Building Commissioning services for the above referenced project, hereinafter referred to as the Project.

WHEREAS, Owner requires building Commissioning services for the Project; and

WHEREAS, CxA possesses the skills and experience to provide the building Commissioning services for the Project; and

NOW, THEREFORE, Owner and CxA, in consideration of the mutual benefits and promises flowing to each of the parties agree as follows:

ARTICLE 1

1.1 *The CxA's Basic Services* - The CxA's Basic Services are the professional services as set forth in Attachment A, Commissioning Scope of Work, incorporated by reference herein. The CxA shall perform the Basic Services in accordance with the "Building Commissioning Recommended Guidelines," hereinafter referred to as the "Guidelines," which are incorporated by reference.

1.2 *Standards* – CxA shall perform the Basic Services consistent with all applicable laws and codes in effect at the time the Basic Services are delivered to the Owner. The CxA is fully responsible for any work performed by its CxAs the same as if said work were performed, approved, certified, or accepted by it. The CxA, by the execution of this agreement, contracts that it is possessed of that degree of care, learning, skill, and ability that is ordinarily possessed by other members of its profession and further contracts that, in the performance of the duties herein set forth, it 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. The CxA acknowledges and agrees that, in performing the services for the Project called for in this contract, it shall regard sound principles of design, construction, and operations. By signature on this Contract, the CxA certifies that he or the firm's principal in charge of the performance of the Basic Services is professionally qualified, registered, and licensed to practice in the State of Georgia.

1.3 *Content* – The content for the Basic Services shall generally conform to the content outlined in the Guidelines, for those services within the Scope of Commissioning services set forth in Attachment A.

1.4 *Use of and Reliance Upon the Basic and Additional Services* – The CxA acknowledges that the Commissioning services provided to, or for the benefit of, the Owner include reasonable justification or explanation of the Commissioning Authority's professional decisions, and that those decisions may be reasonably relied upon by the Owner, the primary construction contractor(s), any applicable trade contractors or subcontractors, any licensed or registered professionals, or any other

party delivering services to, or installing work for, the Owner in accordance with the Project for which the Owner retained the Commissioning Authority.

1.5 *Ownership and Copyright* – All Commissioning deliverables, information, data, photos, videos, or documents produced hereunder by the CxA, or its CxAs shall be delivered to the Owner, and title thereto shall vest in the Owner regardless of the stage to which the development of the study may have progressed. In addition, the CxA hereby expressly assigns, transfers, and otherwise quitclaims to the Owner, its heirs and assigns forever, all right, title, and interest, including all copyrights and all termination/renewal rights in such copyrights, and all causes of action accruing under such copyrights, in all studies, study calculations, drawings, specifications, other data, embodiments of such studies, documents, or other works of authorship produced hereunder by the CxA, its CxAs, or its employees. The CxA further warrants that this transfer of copyrights and other rights is valid against the world. Finally, all original study deliverables and other technical data shall be furnished to the Owner without cost whether the project for which they are made be executed or not. The CxA may make and retain for its use such additional copies as it may desire.

1.6 *Owner's Approvals* - The CxA acknowledges and agrees that the Owner does not undertake to approve, or pass upon, or undertake to inquire into the adequacy, fitness, suitability, or correctness of any Commissioning conclusions. The CxA acknowledges and agrees that the approval or acceptance of the Commissioning services by the Owner is limited to the function of determining whether there has been compliance with instructions issued to the CxA regarding the Basic and Additional Services to be performed. The CxA agrees that no approval of any Commissioning services, program, document, video, photograph, or deliverables by any person, body, or agency shall relieve the CxA of responsibility for the adequacy, accuracy, fitness, suitability, and correctness of the services performed in accordance with sound and accepted principles applicable to the services.

1.7 *Administrative and Coordination Services Included within Basic Services:*

1.7.1 The CxA shall arrange and conduct all Commissioning meetings that shall include equipment manufacturers, the designer team, and the construction contractor and/or subcontractors. The CxA shall take minutes of the meeting and distribute typewritten copies to all parties attending the meeting within five (5) calendar days.

1.7.2 The CxA, as the representative of the Owner, shall advise and consult with the Owner during all phases of the services provided.

1.7.3 The CxA shall be responsible for the professional quality, technical accuracy, and the coordination of all studies, tests, designs, drawings, specifications, and other services furnished under this Contract. The CxA shall, without additional compensation, correct or revise any errors, deficiencies, or omissions in the analysis, studies, designs, drawings, specifications, estimates, and other services.

1.7.4 The Owner's review of, approval of, acceptance of, or payment for the services required under this Contract shall not be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract. The CxA shall remain liable to the Owner for all damages caused by the CxA's negligent performance of any of the services furnished under this Contract.

1.7.5 The CxA shall submit to the Owner and Design Team a Commissioning specification for inclusion in the construction contract(s).

1.7.6 The CxA shall submit a Commissioning Schedule of the Basic Services for the Owner's review and approval. The Commissioning Schedule shall outline all times, projections and milestones for all reviews, meetings, investigations, and other portions of the Project. The CxA shall develop the Schedule and shall submit the preliminary schedule

within ten (10) working days of execution of this contract. The Project Construction Schedule shall incorporate the Commissioning Schedule as developed by the Design Team and the Constructors. All Commissioning services shall be coordinated with the actual construction progress.

1.7.7 The warranty period shall be as defined in the Specifications (normally one (1) calendar year from the date of Final Acceptance of the Project by the Owner). The CxA shall provide the Basic and Additional Services as needed for the full term of the warranty period. The CxA shall attend the warranty inspection to help determine if any defects in the Work exist. The CxA shall notify the Owner (verbally within 24 hours of the inspection and follow up in writing within five (5) days of the inspection) of any identified defects, and whether or not the defective work is covered by the warranty. The CxA shall notify the Owner in the same fashion of any defective work the CxA may identify at any time on the Project.

ARTICLE 2

2.1 *Fees* –The Owner shall pay the CxA a lump sum amount \$ _____ for the Basic Services and reimbursable expenses in accordance with the Attachment A. The Fee may be increased by mutual agreement if further additional services are needed. Payment shall be as set forth in Article 4 below.

2.2 *Reimbursements* - Reimbursable expenses shall be paid in accordance with the paragraph checked below:

- a. During the term of this Agreement, the CxA shall bill and the Owner shall reimburse CxA for reasonable and ordinary pre-approved out-of-pocket expenses which are incurred in connection with the performance of the Services hereunder, as long as Owner's prior approval is obtained prior to incurring the expense. If travel expenses are to be reimbursed, such expenses must be approved in advance and will be paid in accordance with the State travel regulations issued by the State Auditor, a copy of which is available at:
http://sao.georgia.gov/vgn/images/portal/cit_1210/11/15/184584081Travel_Regs_2011_Policy_Final_v4.pdf
- b. No expenses shall be reimbursed.

2.3 *Time for Completion* – Unless modified in Attachment A, the time for completion of the Basic and Additional Services shall be consistent with the design and construction schedules, and warranty period. Non-warranty services and off-season testing shall be completed prior to the completion of the Project. The Owner, may permit in writing, in its sole discretion, certain designated Commissioning services to be completed after occupancy, but shall set a date certain for completion if such permission is granted. Should Owner-initiated changes in the requirements result in substantial re-work of the Basic Services, the Owner and CxA shall mutually negotiate both an additional fee and any required extensions of time. In no event shall the term of this Agreement continue after _____.

ARTICLE 3

3.1 *Additional Services* –The parties agree that additional services may be required with the compensation to be agreed upon prior to the CxA 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 Attachment A.

ARTICLE 4

4.1 *Payments* - The CxA agrees that:

- (A) Invoices for Fees for Basic and Additional Services shall be submitted monthly for payment by the Owner and shall be based on the CxA's services actually completed at the time of the billing.
- (B) Requests for reimbursable expense shall be submitted with the monthly invoices for fees and allocated by person to whom the expenses apply, accompanied with copies of receipts and invoices as set forth in the latest rules and regulations promulgated by the State Auditor for travel expenses.
- (C) Final payment for Basic Services, Additional Services, and for final reimbursable expenses shall not be due and payable until the Owner has accepted and approved the Basic and Additional Services as complete.

4.2 The CxA shall make payments to its CxAs not more than ten (10) working days following receipt of payment from the Owner. Statements of the CxA for fees subsequent to the first statement must contain a notice that "all CxAs have been paid in full to the extent that the CxA has been paid." If this certification cannot be made, the CxA must affirmatively state for each such CxA the amount not paid and the reasons therefore.

ARTICLE 5

5.1 *Assignment* -The CxA hereby agrees that the Owner may, if it wishes to do so, assign this contract to another governmental entity. The CxA hereby agrees that it shall not assign, or transfer any interest or right in this Contract in whole or in part to any party without the written consent of the Owner in advance.

ARTICLE 6

6.1 *Professional Liability Insurance* - Within ten days after execution of this Contract and during the entire period of the contract, the CxA shall maintain professional liability insurance applicable to the work being performed. The CxA 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 such professional liability insurance (errors and omissions insurance) in limits of not less than \$1,000,000 per claim. If there is no professional liability insurance product applicable to the services, the CxA shall maintain a commercial general liability policy covering his Services.

6.2 *Workers Compensation Insurance* - Within ten days after execution of this Contract, the CxA shall forward proof of Workers Compensation Insurance that meets statutory requirements and shall maintain such insurance during the entire period of the Contract.

6.3 *Commercial General Liability Insurance* – Within ten days after execution of this Contract, the CxA shall forward proof of Commercial General Liability Insurance with limits of not less than \$1,000,000 per occurrence. CxA shall maintain such insurance during the entire period of the Contract.

ARTICLE 7

7.1 *Indemnification* - CxA hereby waives, releases, relinquishes, discharges and agrees to indemnify, protect and save harmless the State of Georgia, the GSFIC and their officers and employees (hereinafter collectively referred to as "Indemnitees"), of and from any and all claims, demands, liabilities, losses, costs or expenses, including attorneys' fees, for any loss or damage for bodily injury, property damage and attorney's fees related thereto caused by, growing out of, or otherwise happening in connection with this Agreement, due to any act or omission on the part of CxA, its agents, employees, subcontractors, or others working at the direction or on behalf of CxA. This indemnification applies notwithstanding the fact that third parties or any of the Indemnitees may be partially responsible for the events giving rise to the claim; or the claim results in a monetary obligation that exceeds any contractual commitment. However, if any of the Indemnitees or third parties are partially responsible for the events giving rise to the claim, CxA's indemnification hereunder shall apply only to the extent that CxA contributed to the events.

7.2 If and to the extent such damage or loss as covered by this Indemnification provision is covered by the State of Georgia Tort Claims Fund (the "Fund"), CxA agrees to reimburse the Fund. To the full extent permitted by the Constitution and the laws of the State of Georgia and the terms of the Fund, CxA and its insured (if any) waive any right of subrogation against the State of Georgia, the Indemnitees and the Fund and insurers participating hereunder, to the full extent of this indemnification.

7.3 CxA shall, at its expense, be entitled to and shall have the duty to participate in the defense of any suit against the Indemnitees. No settlement or compromise of any claim, loss or damage entered into by Indemnitees shall be binding upon CxA unless approved in writing by CxA. No settlement or compromise of any claim, loss or damage entered into by CxA shall be binding upon Indemnitees unless approved in writing by Indemnitees.

7.4 CxA's obligation to indemnify any Indemnitee will survive the expiration or termination of this Agreement by either party for any reason.

ARTICLE 8

8.1 *Termination for Convenience of the Owner (Without Cause)* - The Owner may at any time, and for any reason or without any reason or cause, terminate this contract by written notice to the CxA specifying the termination date, provided that in the event of termination under this provision the Owner shall pay to the CxA all fees properly due (i) for services already properly performed prior to the effective date of the termination and (ii) for all reimbursable expenses properly incurred. In the event of such termination the CxA shall have no claim in excess of what is allowed in this Article 8.1 for any sum of money, however denominated, as a result of or relating to such termination.

8.2 *Termination For Cause* - In the event the CxA through any cause fails to perform any of the terms, covenants, or provisions of this contract on its part to be performed, or if it for any cause fails to make progress in the work hereunder in a reasonable manner or if the conduct of the CxA impairs or prejudices the interests of the Owner or the Firm 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 CxA, and all study deliverables and other documents relating to the Basic Services shall be surrendered forthwith by the CxA to the Owner, PROVIDED, HOWEVER: That the CxA shall have five (5) business days from the date of the notice to cure the defects, and PROVIDED FURTHER: That in such case the CxA shall receive equitable compensation for such services as agreed between the parties, or, in the event of an inability to agree, shall in the opinion of an independent auditor selected by the Owner and paid for by the Owner to which the CxA shall have no reasonable objection, to have been satisfactorily performed by the CxA up to the date of termination of this Contract. The parties agree that the decision of the said auditor concerning the matters set forth in this Article 8.2 shall be final.

ARTICLE 9

9.1 *Personal Work* - In contemplation that the Commissioning services to be performed are personal services, the CxA hereby agrees that no material change in the business organization under which the firm shall perform the present contract may be made without written consent of the Owner in advance, and such consent of Owner may be credited upon retention of the key staff persons of the CxA for performance of the work. The CxA must provide revised tax identification numbers prior to payment of the invoice following any such change.

ARTICLE 10

10.1 *Modifications to the Contract* - The CxA covenants that no modifications, either written or oral, may be made in the terms and provisions of this Contract without the written consent in advance of the Owner. It is agreed between the CxA and the Owner that, in the absence of such written consent, neither any modifications nor any undertaking to modify the contract shall be binding but shall be absolutely null and void.

10.2 *Superseding Of Earlier Agreement And Fees* - 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 CxA and may be amended only by written instrument signed by both the Owner and the CxA.

ARTICLE 11

11.1 *Prohibited Acts* - The CxA by execution of this contract warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fees, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this contract.

11.2 *Minority Participation Policy* - 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 subcontract portions of any State contract to minority business enterprises. CXAs who use qualified minority subcontractors may qualify for a Georgia state income tax deduction for qualified payments made to minority subcontractors. See O. C. G. A. §48-7-38.

11.3 *Drug-Free Work Place* - The CxA acknowledges that it is fully aware of the contents and requirements of O.G.C.A. §34-9-410 *et seq.* of the Official Code of Georgia. The CxA, by execution of the present contract, does hereby certify that it and its CXAs are in compliance with the aforesaid code section.

11.4 *Immigration Reform Compliance* - CxA certifies its compliance with Illegal Immigration Reform and Enforcement Act of 2011 and specifically those provisions codified at O.C.G.A. §13-10-90 *et seq.* CxA warrants that it has registered with and uses the federal work authorization program commonly known as "E-Verify." CxA further agrees that it will contract for the physical performance of services in satisfaction of this contract only with subcontractors who present an affidavit as required by O.C.G.A. §13-10-91. CxA warrants that it will include a similar provision in all contracts entered into with subcontractors for the physical performance of services in satisfaction of this contract.

11.5 *Full Performance* - The Owner and the CxA hereby agree to the full performance of the terms, duties, obligations, responsibilities, conditions and stipulations contained herein.

11.6 *Governing Law* - This Agreement shall be construed and enforced according to the laws of the State of Georgia.

IN WITNESS WHEREOF, the parties have each caused these presents to be duly signed, sealed, and delivered by their duly authorized representatives on the day, month, and year first above written.

COMMISSIONING AUTHORITY:

[SEAL]

By: _____

Name: _____

Title: _____

OWNER: GEORGIA STATE FINANCING AND INVESTMENT COMMISSION

By: _____

Name: Marty W. Smith

Title: Director, Construction Services

ATTACHMENT A
COMMISSIONING SCOPE OF WORK

Commissioning Services - The CxA shall provide the following commissioning services described below and incorporated herewith as Attachment A.