

BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA

REQUEST FOR PROPOSALS

No. BR-97-1601

**REAL ESTATE BROKERAGE
SERVICES**

TABLE OF CONTENTS

Section 1 – General Information

- A. Overview of BOR's needs
- B. Scope of Services and Requirements
- C. Contract Pricing
- D. Schedule of Events
- E. General Terms

Section 2 – Instructions to Respondents

- A. Submittal of Questions and Requests for Clarification
- B. Proposal Requirements
- C. Submittal of Proposals

Section 3 – Selection Process and Award

- A. Evaluation Criteria
- B. Evaluation Process

Section 4 – Contracting Requirements

Exhibits

- Exhibit A Certification Form
- Exhibit B Disclosure Statement
- Exhibit C BOR Protest Procedures
- Exhibit D Contract

SECTION 1

GENERAL INFORMATION

A. OVERVIEW OF BOR'S NEEDS

The Board of Regents of the University System of Georgia ("BOR"), for the benefit and use of Georgia Archives, is seeking proposals in accordance with these solicitation documents from licensed commercial real estate brokerage firms ("respondent or proposer") with experience in providing commercial real estate brokerage and advisory services to users on large-scale commercial leasing and purchase transactions. The successful respondent will be retained to represent BOR in its pursuit of approximately 85,000-100,000 usable square feet of warehouse space (minimum of 400,000 cubic feet storage space) that includes some office space with industry standard amenities and parking to house the Georgia Archives' State Records Center operations.

This project will involve evaluating and assessing the BOR's available market options in a wide range of conventional and non-conventional buildings able to accommodate warehouse space in the greater Atlanta metropolitan area.

The resulting transaction may be structured as a direct lease; a sublease with sufficient available term; a conversion of a non-office building; or an acquisition or develop-to-suit transaction as determined by the BOR in its sole discretion.

The contract term for the commercial real estate brokerage services is anticipated to have an initial term of six (6) months, with a potential renewal option of an additional consecutive six (6) months at the sole discretion of BOR, unless terminated in accordance with the provisions of the contract.

B. SCOPE OF SERVICES AND REQUIREMENTS

Scope of services:

1. The successful respondent will be responsible for providing support to BOR's staff in analyzing, negotiating, and closing on the lease and/or purchase of suitable warehouse space for the Georgia Archives' State Records Center operations.
2. The principal responsibilities of the successful respondent shall be to identify and qualify potential buildings; conduct due diligence on each building; solicit term sheets from selected buildings; and negotiate the selected real estate transaction to minimize BOR's overall occupancy costs.
3. Specific services may include, but are not limited to, the following:

- a. Analyze the space programming study of State Records Center requirements;
- b. Review the State Records Center geographical parameters;
- c. Prepare a comprehensive market study of available space options, along with an interpretation and assessment of relevant market trends;
- d. Conduct due diligence investigation of each potential site's specific suitability for the State Records Center's requirements as well as ownership financial strength/liquidity;
- e. Assist client in determining appropriate shortlist of candidate buildings;
- f. Prepare and negotiate landlord lease and/or building purchase agreements for existing location and alternatives;
- g. Analyze initial term sheets received – both financial and non-financial proposed terms, as well as build-out cost and timeframe implications;
- h. Prepare presentations comparing alternatives to client;
- i. Assist client in selecting a primary and fallback locations;
- j. Solicit draft transaction documents from selected landlords and/or sellers;
- k. Assist client and legal counsel with lease and/or purchase negotiation process;
- l. Coordinate execution of all transaction documents, evidence of insurance, Non-Disturbance Agreements, etc.;
- m. Other related real estate services as requested.

Respondent Requirements:

BOR will accept and evaluate proposals only from respondents that meet at a minimum ALL of the following three (3) requirements:

- 1. **Licensing:** All real estate professionals who will be assigned to the BOR's account must be real estate brokers ("brokers") licensed and in good standing in the State of Georgia at the time of proposal submittal and throughout the term of the contract.
- 2. **Broker Profile:** Respondents must provide real estate brokerage services to the greater Atlanta metropolitan area commercial clients from an office within the State

of Georgia, and must have a staff of at least three (3) brokers licensed in the State of Georgia. Only one submittal will be accepted from each firm, organization or company; competing “branch” offices or competing teams from the same corporate entity may not submit separate proposals. In calendar year 2014, the total value of all leasing deals completed by respondent in the greater Atlanta metropolitan area must have been at least \$2 million, and the total value of all purchase/sale deals completed within same area must have been at least \$5 million.

3. **Broker Experience:** The account executive(s)/lead brokers who will be assigned to BOR’s account must each have a minimum of ten (10) years of experience in providing commercial real estate brokerage services to clients. Within the last two (2) years, these brokers must have represented tenants in a minimum of three (3) completed leasing transactions of at least 20,000 RSF of warehouse space in greater Atlanta metropolitan area. Within the last three (3) years, these brokers must have represented parties in at least three (3) completed purchase or sale transactions in the greater Atlanta metropolitan area, valued at a minimum of \$1 million each.

C. CONTRACT PRICING

Compensation for the entire scope of services as indicated in this RFP, including research, marketing and any additional/specialty support services related to potential purchase or lease transactions, shall be through commercial real estate brokerage commissions based on sale price, purchase price or total rental consideration, as follows:

Purchase Commission. Should BOR complete a transaction for the purchase of any real property, BOR expects that the successful respondent will be entitled to a brokerage commission paid by the seller of the building, pursuant to a commission split agreement between the successful respondent and seller’s broker, in accordance with standard market practice. Respondents will warrant that this is the case, and/or state other commission scenarios for consideration, if any, that it feels may be relevant.

Leasing Commission.

1. Should BOR complete a transaction for the lease of warehouse space, BOR expects that the successful respondent will be entitled to a brokerage commission paid by the owner/landlord of the building, pursuant to a commission split agreement between the successful respondent and landlord’s broker, in accordance with standard market practice. Respondents will warrant that this is the case, and/or state other commission scenarios for consideration, if any, that it feels may be relevant.
2. Respondents will warrant that brokerage commissions paid by parties as stated above are the only compensation (direct or indirect) that will be

received by the individuals/firm from transactions contemplated under this RFP. In the event that no transaction occurs as a result of this engagement, the successful respondent shall not be entitled to compensation or reimbursement.

D. SCHEDULE OF EVENTS

The following Schedule of Events represents BOR's best estimate of the anticipated timeline that applies to this solicitation. All times indicated are Eastern time. BOR reserves the right to adjust the schedule, with prior notice, as it deems necessary:

October 21, 2015	Request for Proposals Issued
October 27, 2015 4:00PM EDT	Respondent Questions Due
October 30, 2015 4:00PM EDT	Answers to Questions Posted on Georgia Procurement Registry Website
November 13, 2015 4:00PM EST	Proposals Due
November 20, 2015	Notification of Finalists
December 7-11, 2015	Interviews of Finalists
TBD	Notice of Apparent Awardee
TBD	Notice of Award

E. GENERAL TERMS

All proposers should be aware that the contract you are submitting a proposal on is a public procurement, and BOR is a public agency. Pursuant to the laws, rules and Executive Orders of the State of Georgia, BOR shall make every effort to avoid even the appearance of a conflict of interest or any impropriety in both the selection process for this contract and the negotiation and performance of any resulting contract. All respondents to this RFP are subject to instructions communicated in this document, and are cautioned to completely review the entire RFP and follow instructions carefully. BOR reserves the right to reject any or all proposals, and to waive technicalities and informalities at the discretion of BOR.

Method of Communication. Procurement documents, including attachments, associated addenda and general communication of relevant information will be publicly posted on the Georgia Procurement Registry website (<http://ssl.doas.state.ga.us/PRSapp/>). At any time, BOR may issue a RFP addendum to further clarify any part of this RFP, amend this RFP

or issue instructions or further information, or adjust any timelines related to the schedule referenced herein or otherwise. Known interested firms and those which are deemed likely to be interested may be directly solicited immediately after public advertisement of the RFP. Notwithstanding any direct solicitation by BOR, all respondents are responsible for checking the Georgia Procurement Registry website on a regular basis for updates, clarifications, addenda, and announcements.

Restriction of Communication. From the issue date of this solicitation until a successful respondent is selected and the selection is announced or the cancellation of this solicitation, interested respondents are not allowed to communicate about this solicitation with any member of BOR staff, its consultants, or members of the Selection Committee (“SC”), except for submission of questions as instructed in the RFP. As indicated in the RFP, Kim Chase, Real Estate Administrative Coordinator, shall be the sole point of contact for participating respondents for the duration of the procurement. Other specific communications will be made as indicated in this RFP. In accordance with this Restriction of Communication, BOR reserves the right to reject the submittal of any respondent violating this provision.

Accuracy of Information. All information supplied in this RFP or by BOR, to a respondent is provided solely as a convenience to facilitate the selection process. BOR does not guarantee the accuracy or completeness of any such information supplied. In addition, respondents shall not rely on any express or implied statements, warranties or representations made by BOR or anyone acting on their behalf. Respondents agree that BOR and their employees, representatives, agents, advisors or consultants cannot be held liable for any such statements, warranties or representations or inaccuracies or incompleteness in any information provided.

Proposal Modifications/Corrections/Withdrawals. Respondents may make no modification, correction or withdrawal of their submissions after the proposal due date. By submitting its proposal, each respondent represents that: (i) it has read and understands this RFP; (ii) its proposal complies with the requirements of this RFP; and (iii) respondent has the necessary corporate authority to make a proposal.

Non-Discrimination. BOR shall require, prior to, or incidental to, the award of a contract, confirmation by the respondent stating that the respondent has not discriminated and will not discriminate on the basis of race, creed, color, sex, religion or national origin in any of its employment practices with respect to the work force of the business, or procurement services in connection with this contract. The successful respondent may be required to execute certificates, affirming these requirements of non-discrimination.

Procurement Protests. For purposes of this RFP, the Board of Regents protest policy (a copy of which is attached as Appendix C) shall govern for processing any protest regarding the solicitation process and/or award of contracts. Each respondent will certify in its response that it has reviewed these protest procedures and by submitting a response agrees to be bound by those procedures.

Statement of Agreement. With submission of a response, the respondent agrees that he/she has carefully examined this solicitation, and agrees that it is the respondent's responsibility to request clarification on any issues in any section of the solicitation with which the respondent requires such clarification. The respondent also understands that failure to mention these items in the proposal will be interpreted to mean that the respondent is in full agreement with the terms, conditions, specifications and requirements of the RFP. With submission of a proposal, the respondent hereby certifies: (a) that this proposal is genuine and is not made in the interest or on behalf of any undisclosed person, firm, or corporation; (b) that respondent has not directly or indirectly included or solicited any other respondent to put in a false or insincere proposal; (c) that respondent has not solicited or induced any person, firm, or corporation to refrain from sending a proposal.

Submittal Costs and Confidentiality. All expenses for preparing and submitting a proposal are the sole cost of the party submitting the proposal. BOR is not obligated to any party to reimburse such expenses. Upon receipt, all submittals become the property of BOR. Labeling information provided in submittals "proprietary" or "confidential", or any other designation of restricted use will not protect the information from public view. Subject to the provisions of the Open Records Act and federal law, the details of the submittal documents will remain confidential until final award.

Award Conditions. This request and any proposal submitted in response, regardless of whether the proposal is determined to be the most advantageous, is not binding upon BOR and does not obligate BOR to procure or enter into a contract for any services. Neither BOR nor any party submitting a response will be bound unless and until a written contract mutually accepted by both parties is negotiated as to its terms and conditions and is executed by BOR and the successful respondent. BOR reserves the right to waive non-compliance with any requirements of this solicitation and to reject any or all responses. Upon receipt and review of responses, BOR will determine, in its sole discretion, the proposal that is the most advantageous (if any is so determined), with respect to the evaluation criteria stated herein. BOR will then conduct negotiations with such respondent to determine if a mutually acceptable agreement may be reached.

News Releases. Respondents may not make news releases pertaining to the award of a contract without the prior written approval of BOR.

SECTION 2

INSTRUCTIONS TO RESPONDENTS

A. SUBMITTAL OF QUESTIONS AND REQUESTS FOR CLARIFICATION

It is the responsibility of each respondent to examine the entire RFP, seek clarification in writing, and review its submittal for accuracy before submitting the proposal. Questions about any aspect of the RFP or the requested services shall be submitted via email to:

Kim Chase
Office of Real Estate & Facilities
E-mail: kim.chase@usg.edu

The deadline for submission of questions relative to the RFP shall be October 27, 2015 at 4:00 PM EDT.

All relevant questions and requests for clarification received by BOR and the corresponding responses will be posted on the Georgia Procurement Registry as an attachment to the original solicitation for services. BOR may elect to not respond to any question in its sole and absolute discretion. Once the submission deadline has passed, all submissions will be final.

BOR will not request clarification from individual respondents relative to their submission, but reserves the right to ask for additional information from all parties who have submitted proposals.

B. PROPOSAL REQUIREMENTS

To be considered responsive, a proposal must contain the following, prefaced by: a one page cover letter with solicitation name and number; a table of contents identifying **each section as labeled herein**, exhibits, appendixes, additional materials and attachments; and then the other required proposal deliverables in the order below:

1. **Certification (Tab 1).** Submit a completed, executed and notarized "Certification Form" (attached to this RFP as Exhibit "A").
2. **Background Information (Tab 2).** A brief overview of respondent's organization, including history, organizational structure, market position, etc.
3. **Qualifications (Tab 3).**
 - a. A description of the qualifications and experience of the firm,

including, but not limited to: a description of the firm's client mix; the range of transactional support services offered by the firm; any relevant research products offered by the firm; any other unique qualifications or capabilities the firm possesses relative to other firms that could assist BOR in its transactional goals.

- b. The names and qualifications of the account executive(s) / lead real estate professionals proposed to be assigned to BOR's account who would be working directly with BOR staff and potential landlords/owners. Please include all relevant experience, including experience with non-profit and/or government clients, if any, and education. Resumes shall include detailed, chronological work experience, including name and phone number of person or persons who may contact from each project or work assignment.

4. **Experience (Tab 4).**

- a. A list of the tenant-side warehouse lease transactions of at least 20,000 RSF within the greater Atlanta metropolitan area, closed by respondent's proposed account executive(s) in the last two (2) years. Include building address, tenant, landlord, square footage, term, date closed.
- b. A list of the purchase/sale transactions each valued at a minimum of \$1 million within the greater Atlanta metropolitan area, closed by respondent's proposed account executive(s)/lead brokers in the last three (3) years. Include building address, buyer, seller, square footage, price, date closed.

5. **Credentials (Tab 5).** Copies of business licenses, professional certifications or other credentials for its account executive(s)/brokers/real estate professionals, together with evidence that respondent, if a corporation, is in good standing and qualified to conduct business in the State of Georgia.

6. **References (Tab 6).** A list of at least three (3) client references for deals completed by the account executive(s)/lead brokers, with an emphasis on government and non-profit clients, if possible. Include all relevant transaction details and the primary client contact's title, email address and phone number.

7. **Financials (Tab 7).** The respondent's most recent year's annual report, or comparable document, including detailed current profit and loss, assets and liabilities, and other relevant financial data.

8. **Legal Background (Tab 8).** A list and description of any regulatory proceedings, licensing actions, lawsuits, arbitrations, formal protests or other legal actions related to real estate services in which respondent and its account

executive(s) / brokers / real estate professionals have been involved in the last two (2) years.

9. **Conflict of Interests (Tab 9).** Submit a completed and executed “Disclosure Statement” (attached to this RFP as Exhibit “B”).
10. **Confirmation of Terms and Conditions (Tab 10).**
 - a. A written confirmation that respondent agrees to the Contract Pricing set forth in RFP. Specific terms may be reserved for future negotiation, but must be clearly identified and reasons given for the reservation.
 - b. A written confirmation of the acceptance of the Contracting Requirements set forth in RFP and the BOR’s consultant contract (attached to this RFP as Exhibit D). Specific terms may be reserved for future negotiation, but must be clearly identified and reasons given for the reservation.

All proposers must complete, execute, and include as part of any proposal all the above identified required information. BOR reserves the right to disqualify a proposer who fails to provide such information as part of their response.

Proposals should not direct the Selection Committee to general brochures, marketing materials or websites to obtain information related to the specific submission requirements; proposals that utilize references to external materials as an answer will be considered non-responsive.

Proposals should be prepared simply and economically, providing a straightforward, concise description of the respondent’s ability to provide the services sought by the solicitation. Excessive information distracts readers from focusing on essentials, and may operate to a respondent’s disadvantage. Emphasis should be on completeness, relevance, and clarity of content. To expedite the review of submittals, it is essential that proposals are categorized and labeled as outlined above.

B. **SUBMITTAL OF PROPOSALS**

Submit one (1) electronic copy of the complete package in **.pdf format** using any one of the following three (3) delivery methods:

- As an attachment in an email to Sandra.Neuse@usg.edu.
- Through a link, sent via email to Sandra.Neuse@usg.edu, where the file can be retrieved. Accurate retrieval instructions, including any necessary passwords, must be provided in the email. If the BOR is unable to use the

link to access the file due to access restrictions or unclear instructions, the respondent's submittal may be considered incomplete and disqualified from further consideration.

- On a CD received on or before the due date and time at the location listed below:

Sandra Neuse
Associate Vice Chancellor for Development and Administration
Office of Real Estate & Facilities
Board of Regents of the University System of Georgia
270 Washington Street, SW, Suite 6114
Atlanta, Georgia 30334

File names must reference the RFP No. BR-97-1601, Real Estate Brokerage Services, the firm's name, and the word "PROPOSAL."

File Name Example: "RFP No. BR-97-1601, Real Estate Services, ABC Firm, Proposal."

The entire submittal should be submitted as ONE (1) file.

Please do not submit individual documents or sections separately.

Use caution in creating electronic files. If the BOR is unable to open an electronic file due to a virus or because the file has become corrupted, the supplier's response may be considered incomplete and disqualified from further consideration.

A respondent's proposal must be electronically received by BOR through one of the three methods noted above **no later than 4:00 PM on November 13, 2015. Printed copies will not be accepted.**

A list of firms submitting responsive proposals will be published on the Georgia Procurement Registry within two (2) business days of the deadline for receipt.

SECTION 3

SELECTION PROCESS AND AWARD

A. EVALUATION CRITERIA

Using the evaluation criteria specified below, a Selection Committee (“SC”) shall evaluate responsive proposals and score each respondent out of a total possible 140 points using the following criteria (points noted parenthetically).

1. **Stability.** Respondent’s financial and business stability, including history, growth, resources, form of firm (Corporate) ownership, litigation history, and regional reputation and local presence. (30 points)
2. **Experience and Qualifications.** Respondent’s background, team composition, methodology, and experience performing similar services with proven success for public entities, as well as Respondent’s technical ability, capacity and flexibility to provide services effectively and to BOR’s standards of efficiency, customer service and professionalism. (50 points)
3. **Responsiveness.** Respondent’s responsiveness to meet or exceed the proposal requirements set forth in the RFP. (10 points)
4. **Contracting Requirements.** Agreement with the BOR’s contract pricing and contracting requirements. (10 points)
5. **Oral Presentation.** In person interview as outlined in B.2 below. (40 points)

B. EVALUATION PROCESS

The SC will evaluate all valid proposals received, which shall include verification of receipt-on-time and apparent responsiveness. The SC shall render a ranking recommendation of all proposals for determination of a group of finalists, and a subsequent ranking and recommendation of the most advantageous proposal among the finalists. The SC’s final recommendation will be subject to the BOR Vice Chancellor for Facilities’ approval. In the event the SC’s rankings result in a tie, the BOR Vice Chancellor for Facilities, upon review of the SC’s recommendation(s), shall, in his or her sole and absolute discretion, determine the most advantageous proposal.

Proposers should understand and accept that by responding to this solicitation they are willingly participating in a process that consists of some degree of subjectivity on the part of the members of the SC in determining the overall most advantageous proposal. All such decisions are ultimately to be made in the sole discretion of the

BOR for any reason or for no reason whatsoever, and BOR is under no obligation to assign any reason for the rejection, non-review or non-acceptance of any submittal. Under no circumstances shall this RFP be construed as a contractual offer.

When conducting the evaluation, the SC will assign points to each proposal using the above weighting criteria resulting in an overall ranking of the proposals. After this ranking, the second step of the selection process is as follows:

1. A list of proposals selected as finalists will be posted on the Georgia Procurement Registry and those finalists will receive written notification (“Notification of Finalists”). The list of finalists may include all of the proposals received or some number of the highest ranked proposals received.
2. Finalist firms will be notified of the place and time of their oral presentation/interview session (interviews for this contract are tentatively scheduled to take place at BOR Offices located in Atlanta, Georgia). Detailed interview instructions and requirements of the finalists will be provided in the Notice to Finalists. All members of the SC will be present during the all of the presentations and interviews. Firms are cautioned not to address questions, prior to the interview, to anyone other than the designated procurement services contact.

During interviews, finalist firms will be requested to make up to a thirty (30) minute presentation, followed by up to a twenty (20) minute question and answer period from the SC. Firms are asked to be prepared to make a presentation to the SC incorporating information that will provide a clearer understanding of the firm’s approach for providing the required commercial real estate services. Firms have the liberty of approaching this presentation in the manner that works best for the individual firm.

3. After completion of all finalist interviews, the applicable proposals will be re-evaluated based on the information gleaned from the presentations/interviews. When conducting the re-evaluation, the SC will assign new points to each proposal using the same weighting criteria as provided above resulting in an overall ranking of the finalists’ proposals. The highest ranked proposal after the re-evaluation will be notified as the apparent awardee. BOR will then enter into final negotiations with the apparent awardee with the goal of finalizing a brokerage services contract.
4. Should a situation arise where the apparent awardee is unable to meet the terms of BOR, the SC may elect to terminate negotiations and begin final negotiations with the 2nd highest ranked proposal, so on and so forth until a contract is finalized. Notwithstanding, BOR, at all times, reserves the right to cancel any negotiations and this RFP.

5. If a brokerage services contract is finalized with the apparent awardee, the SC will recommend to the BOR Vice Chancellor for Facilities the apparent awardee's proposal as the most advantageous to BOR.
6. If approved by BOR Vice Chancellor for Facilities, BOR will execute the final brokerage services contract with the apparent awardee.

SECTION 4

CONTRACTING REQUIREMENTS

Upon selection of the apparent awardee, the terms set forth in this RFP are to be embodied in a final brokerage services contract and containing such additional covenants and other provisions as may be mutually acceptable. Please thoroughly review the contract terms listed below and BOR's consultant contract template in Exhibit D of this RFP. Respondents should plan on these contract terms and conditions being included in any award as a result of this RFP. The contract terms and conditions shall be incorporated by reference into the contract unless the BOR has explicitly accepted the respondent's objection, reservation, or amendment in writing.

Submission of a proposal shall constitute agreement to contract with the general terms listed below and included in the contract template in Exhibit D subject to modification, unless specifically reserved in the proposal for future negotiation:

Warranties and Representations. Broker warrants and represents that it possesses such expertise, experience and resources to perform the scope of services required in a diligent, timely and professional manner consistent with the highest standards of the industry. Broker represents and warrants that none of its work performed under this Agreement will infringe on the rights of third parties. Broker will supply at all times an adequate number of well-qualified personnel to perform the work. Broker will provide a contact person available and authorized to remedy any non-conformity with this warranty. If any of Broker's work is found to be infringing, Broker will correct the work to be non-infringing at no charge to the BOR.

Equipment, Tools, Supplies. Broker will supply all equipment, tools, supplies, offices, personnel, instrumentalities, transportation, support services and insurance required. Broker is not required to purchase, rent or hire any equipment, tools, supplies, offices, transportation, personnel, insurance or instrumentalities from BOR. BOR has no obligation whatsoever to provide any equipment, tools, supplies, offices, personnel, instrumentalities, transportation, support services or insurance required to perform services under this agreement.

Broker Indemnity. Broker indemnifies, and shall hold harmless and defend BOR (including its Board, officers, directors, agents, employees and volunteers, as the same may be constituted from time to time) from all claims, demands, damages, debt, liability, obligations, cost, expense, lien, action or cause of action (including but not limited to actual damages, fines and attorneys' fees, whether or not litigation is actually commenced) arising out of: (i) the material breach by Broker of any warranty, representation, term or condition made or agreed to by Broker; (ii) all products and services prepared by or for Broker hereunder and provided to BOR; (iii) any claim or action for personal injury, death or otherwise involving alleged defects in Broker's business or any of its products or services provided to BOR; (iv) any breach by Broker of any statutory or regulatory obligation; (v) the actual or alleged infringement by Broker of any patent, copyright, trademark or other proprietary right of any person or entity; and/or (vi) any act or omission of Broker, its employees, agents or subcontractors.

The provisions of this indemnification shall survive the termination of this Agreement.

Termination.

1. Default by Broker. This Agreement may be terminated by BOR upon fifteen (15) days written notice to the Broker in the event the Broker is in default under any of its provisions. In the event this Agreement is terminated due to the default by the Broker, the Broker will not be entitled to receive any compensation for services performed or for any reimbursable expenses incurred (if applicable), and BOR will have the right to have the services completed by other parties. Any such act by BOR will not be deemed a waiver of any other right or remedy of BOR, including, without limitation, BOR's right to consequential damages caused directly or indirectly by the Broker's default.
2. Automatic Termination. This agreement will automatically terminate on the occurrence of any of the following events: (a) bankruptcy or insolvency of either party; (b) sale of the Broker's business; (c) Broker's failure to comply with applicable federal, state or local laws, regulations or requirements, or (d) expiration of the Agreement.

Confidentiality and Publicity. The Broker will retain all information provided by the BOR in the strictest confidence and will neither use it nor disclose it to anyone other than employees requiring the information to perform services under this Agreement without the prior written consent of BOR. BOR retains the right to enjoin any unauthorized disclosure in an appropriate court of law. The Broker will not issue any public announcements concerning BOR without the prior written consent of BOR.

License. In those instances where required, the Broker represents and warrants that the Broker holds a license, permit or special license to perform the services pursuant to this Agreement, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license and shall keep and maintain all such licenses, permits or special licenses in good standing and in full force and effect at all times while the Broker is performing the services pursuant to the Agreement.

EXHIBIT A

CERTIFICATION FORM

I, _____, being duly sworn, state that I am _____ (title) of _____ (firm) and hereby duly certify that I have read and understand the information presented in the attached proposal and any enclosure and exhibits thereto.

I further certify that to the best of my knowledge the information given in response to the request for proposals is full, complete and truthful.

I further certify that the proposer and any principal employee of the proposer have not, in the immediately preceding five years, been convicted of any crime of moral turpitude or any felony offense, nor has had their professional license suspended, revoked or been subjected to disciplinary proceedings.

I further certify that the proposer has not, in the immediately preceding five years, been suspended or debarred from contracting with any federal, state or local government agency, and further, that the proposer is not now under consideration for suspension or debarment from any such agency.

I further certify that the proposer has not in the immediately preceding five years been defaulted in any federal, state or local government agency contract and further, that the proposer is not now under any notice of intent to default on any such contract.

I further certify that the proposer is a licensed broker in good standing in the State of Georgia.

I acknowledge, agree and authorize, and certify that the proposer acknowledges, agrees and authorizes, that BOR may, by means it deems appropriate, determine the accuracy and truth of the information provided by the proposer and that BOR may contact any individual or entity named in the proposal for the purpose of verifying the information supplied therein.

I acknowledge and agree that all of the information contained in the proposal is submitted for the express purpose of inducing BOR to award a contract to the above identified firm.

I acknowledge receiving and agree to be bound to the Board of Regents Protest Procedures attached to the RFP.

A material false statement or omission made in conjunction with this proposal is sufficient cause for suspension or debarment from further contracts, or denial of rescission of any contract entered into based upon this proposal thereby precluding the firm from doing business with, or performing work for, the State of Georgia. In addition, such false statement or omission may subject the person and entity making the proposal to criminal prosecution under the laws of the State of Georgia of the United States, including but not limited to O.C.G.A. §16-10-20, 18 U.S.C. §§1001 or 1341.

Sworn and subscribed before me

This ____ day of _____, 20__.

NOTARY PUBLIC

My Commission Expires: _____

Signature

NOTARY SEAL

EXHIBIT B

DISCLOSURE STATEMENT

All proposers should be aware that the contract you are submitting a proposal on is a public procurement, and BOR is a public agency. Pursuant to the laws, rules and Executive Orders of the State of Georgia, BOR shall make every effort to avoid even the appearance of a conflict of interest or any impropriety in both the selection process for this contract and the negotiation and performance of any resulting contract. As part of any submittal you intend to make for this contract, **you must include this Disclosure Statement with your submittal** that answers or addresses the following specific statements:

1. Describe any business transactions occurring within the prior two years between your firm and BOR, or the ultimate end-user of the proposed contract.

Insert Response

2. Describe any gift, hospitality, or benefit of any sort that your firm has provided to BOR, or the end-user of the proposed contract within the prior one-year period.

Insert Response

3. A *conflict of interest* or *potential conflict of interest* is defined as any action, decision, or recommendation by a person acting in a capacity as a public official, the effect of which is or could be to the private monetary or financial benefit or detriment of the person, the person's relative, or any business with which the person or a relative of the person is associated. The potential conflict of interest is viewed from the perspective of a reasonable person who has knowledge of the relevant facts. Based upon this definition, describe any conflict of interest or potential conflict of interest that your firm has with BOR, or the end-user of this contract.

Insert Response

This Disclosure Statement should be dated and signed by an authorized signatory for the proposer and submitted with the proposer's proposal as provided in the RFP.

Name of Firm

Authorized Signature

Date

EXHIBIT C

Board of Regents of the University System of Georgia Proposal Protest Procedures for Real Estate Procurements

1.0 Right to Protest

This procedure (the “Procedure”) describes the mandatory administrative process by which vendor/bidders/offerors may challenge the solicitation and/or contract award of a vendor in a real estate procurement for (a “Solicitation”).

Any actual or prospective vendor, bidder, offeror, or contractor who is aggrieved in connection with the Solicitation shall have the right to file a protest. All protests shall be filed in the manner set out this Procedure.

The Chancellor shall designate a procurement officer (the “Procurement Officer”) who shall be responsible for administering this Procedure.

2.0 Form of Protest and Filing Deadline

The protest must be in writing and signed by a company officer authorized to execute agreements on behalf of the protesting party or provided by an authorized legal representative of the protesting party. The protest must include the following information:

- Name, address, telephone number, and email address of the protestor;
- Identification of the solicitation by project name and project number;
- A concise statement of the reason(s) for the protest;
- Any supporting exhibits, evidence, or documents to substantiate the claim(s); and
- Desired remedy

The protest must be filed with the Procurement Officer of the Board of Regents via one of the following means:

Mail: Board of Regents of the University System of Georgia
Office of Legal Affairs
Attention: Procurement Officer
270 Washington Street SW
Atlanta, Georgia 30334

Hand Delivery: Board of Regents of the University System of Georgia
Office of Legal Affairs, Room 7035
Attention: Procurement Officer
270 Washington Street SW
Atlanta, Georgia 30334

Email: usg-legal@usg.edu

3.0 Filing Deadline

Protests concerning the solicitation process, including claims related to the specifications, requirements, submissions, and evaluation criteria, must be filed no later than 5:00 p.m. Eastern time three (3) business days prior to the due date for the responses to the Solicitation.

Protests concerning the selection of qualified offerors under the request for qualified offerors portion of the Solicitation must be filed no later than 5:00 p.m. Eastern time five (5) business days after the posting of the notice of selection by the Board of Regents. Protests concerning the selection of a concessionaire under the request for proposals portion of the Solicitation must be filed no later than 5:00 p.m. Eastern time five (5) business days after the posting of the notice of award by the Board of Regents.

A protest shall be deemed filed at the time it is actually received by the Board of Regents at either the physical address or email address set forth in Section 2.0. Any protest that is filed after these time periods shall be deemed invalid provided that the Procurement Officer, in his or her sole and absolute discretion, may allow the supplementation of a timely filed protest after the expiration of the time period filing protests.

4.0 Protest Evaluation by the Procurement Officer

The Procurement Officer shall evaluate and make the initial determination of validity of the protest.

The Procurement Officer shall issue a written directive posted on the Board of Regents' webpage with a copy sent to the protestor regarding whether to suspend further action on the Solicitation or implementation of the contract pursuant to the Solicitation within five (5) business days of receipt of the protest. If the Procurement Officer is unable to adequately review the protest within five (5) business days, a time for completion of the review by the Procurement Officer shall be provided in writing to the protestor within five (5) business days of the receipt of the protest.

5.0 Exclusive Remedy

This Procedure provides the exclusive process for asserting a claim arising out of or relating to the Solicitation.

6.0 Hearing Procedures

Any party submitting a protest pursuant to this Procedure may request a hearing. All such requests shall be submitted to the Procurement Officer in writing included in the protest and shall set out the reasons why the party submitting the protest believes that the protest raises issues that would

be best resolved by holding a hearing. The Procurement Officer may, on his or her motion, determine that a hearing should be held to resolve the protest. Should the Procurement Officer determine that the protest raises issues that would be best resolved by holding a hearing, the hearing shall be held within thirty (30) days following receipt of any request for a hearing. A notice that sets the time, date, and location of the hearing shall be mailed to the party or parties requesting the hearing at least seven (7) calendar days prior to the date of the hearing.

All hearings conducted under this Procedure will be conducted by the Procurement Officer or, at the sole discretion of the Procurement Officer, by a hearing officer designated by the Procurement Officer. The hearing officer's actions, decisions, and orders will be deemed to be on behalf of the Procurement Officer and effective as though taken by the Procurement Officer, subject to the appeals procedures as provided below.

In connection with the hearing, the Procurement Officer or the hearing officer, if applicable, may:

1. Conduct the hearing in an informal manner without formal rules or evidence or procedure;
2. Hold pre-hearing conferences to:
 - a. Settle, simplify, or identify the issues involved in the hearing; or
 - b. Consider other matters that may aid in expeditious disposition of the hearing;
3. Require each protesting party to state, orally and/or in writing, its position concerning the various issues involved in the hearing;
4. Require each protesting party to produce for examination those relevant witnesses and documents under its control;
5. Rule on motions and other procedural items pending before him or her, including, without limitation, the methods, scope, and extent of discovery available to the protesting party;
6. Regulate the course of the hearing and conduct of the participants, including the imposition of reasonable time limits;
7. Establish time limits for submission of motions or memoranda;
8. Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice; and
9. Administer oaths or affirmations.

Any protesting party may request that the hearing be conducted before a court reporter. Such request must be in writing and include an agreement by the requesting party that it will procure at its own cost and on its own initiative the court reporting services for the hearing. To be a part of the record, the original transcript of the proceedings must be submitted to the Procurement Officer or the hearing officer as applicable as soon as the transcript is available but not later than ten (10) days after the conclusion of the hearing.

If the Procurement Officer conducts the hearing, he or she must render a decision in writing and send by mail, email, or hand delivery, a copies of the decision to the protesting parties within thirty (30) days after the conclusion of the hearing. If a hearing officer conducts the hearing, he or she must provide a proposed decision to the Procurement Officer within thirty (30) days after the conclusion of the hearing. If a proposed written decision from the hearing officer is received by the Procurement Officer, he or she must render a decision in writing and deliver copies of the decision to the protesting parties within thirty (30) days after receiving the proposed written

decision from the hearing officer. The Procurement Officer may accept the proposed written decision in whole or in part or may reject the proposed written decision and enter his or her own decision.

If the Procurement Officer determines that the protest is valid, the Procurement Officer shall determine the appropriate remedy. Available remedies include but are not limited to the following:

- Modification of the Solicitation document and extension of the Solicitation period
- Cancellation of the Solicitation
- Cancellation of the selection or award or contract

The written decision of the Procurement Officer shall be sent by mail, email, or hand delivery to all protesting parties. Any party is presumed to have received such decision from the Procurement Officer no later than the third business day following the date of such decision was mailed to the last known address of such party.

7.0 Decision by Procurement Officer Without a Hearing

If the Procurement Officer determines that no hearing is required to resolve the protest, the Procurement Officer will render a decision in writing on the protest and send by mail, email, or hand delivery, a copies of the decision to the protesting parties within thirty (30) days of the filing of the protest.

If the Procurement Officer determines that the protest is valid, the Procurement Officer shall determine the appropriate remedy. Available remedies include but are not limited to the following:

- Modification of the Solicitation document and extension of the Solicitation period
- Cancellation of the Solicitation
- Cancellation of the selection or award or contract

The written decision of the Procurement Officer shall be sent by mail, email, or hand delivery to all protesting parties. Any party is presumed to have received such decision from the Procurement Officer no later than the third business day following the date of such decision was mailed to the last known address of such party.

8.0 Costs

In no event shall a protesting party be entitled to recover any costs incurred in connection with the protest of a solicitation or contract award, including but not limited to bid or proposal preparation costs, protest preparation costs, or attorneys' fees.

9.0 Appeal of the Decision of the Procurement Officer

The protestor may appeal a decision of the Procurement Officer. The protesting party shall file a written appeal with the Board of Regents Vice Chancellor for Facilities after the Procurement Officer has issued a written decision and no later than five (5) business days after the receipt of the decision from the Procurement Officer. An appeal shall be deemed filed when it is actually received by the Board of Regents at one of the addresses set forth below. Any appeal filed after the time period shall be deemed invalid.

Any appeal filed with the Board of Regents Vice Chancellor for Facilities shall be sent via any of the following means:

Mail: Board of Regents of the University System of Georgia
Office of Legal Affairs
Attention: Procurement Officer
270 Washington Street SW
Atlanta, Georgia 30334

Hand Delivery: Board of Regents of the University System of Georgia
Office of Legal Affairs, Room 7035
Attention: Procurement Officer
270 Washington Street SW
Atlanta, Georgia 30334

Email: usg-legal@usg.edu

The Vice Chancellor for Facilities shall review the appeal. The Vice Chancellor for Facilities or his or her designee may further investigate the claim and request additional information from the protestor or any source deemed helpful.

The Vice Chancellor for Facilities shall issue a written determination either confirming or overturning the decision of the Procurement Officer within twenty (20) days after receipt of the appeal. The decision of the Vice Chancellor for Facilities shall be the final decision of the Board of Regents.

10.0 Judicial Review

The final decision of the Board of Regents shall be subject to judicial review by and person or entity who was a party to the protest and the petition for certiorari seeking review must be filed with the Superior Court of Fulton County in accordance with Chapter 5 of Title 5 of the Official Code of Georgia and served on the Board of Regents within the time prescribed by Georgia law. The complete exhaustion of this Procedure is a prerequisite to the commencement of an action seeking review. In the absence of such complete exhaustion, any petition seeking review of the final decision shall be barred.

EXHIBIT D

CONTRACT

THIS CONTRACT made the _____ day of _____, by and between the **BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA**, whose address is 270 Washington Street, SW, 6th Floor, Atlanta, Georgia 30334, a department in the Executive Branch of state government of the State of Georgia, ("Regents"), and **LEGAL FIRM NAME**, whose address is Physical Address, NO P.O. BOX!; Telephone: POC Phone; Facsimile: POC Fax, ("Consultant") for certain general consulting services.

Consultant's SSN or FEIN. _____

Consultant's Employment Verification Certification:

The Consultant 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 Article 8.2.7 and Exhibit B.

WHEREAS, Regents requires certain general consulting services;

WHEREAS, Consultant possesses the skills and experience to provide such services;

WHEREAS, Consultant was selected as a result of RFP Number BR-97-1601; and

NOW, THEREFORE, in consideration of the mutual benefits and promises flowing each to the other, Regents and Consultant each agree as follows:

ARTICLE 1

Services and Standards

1.1 ***The Consultant's Services.***- The Consultant shall provide the General Consulting Services ("Services") as set forth in Exhibit A, Scope of Services. Subconsultants may perform portions of the Services, provided that Regents has approved, in writing, each such subconsultant and, further, providing that the Consultant remains fully responsible for all work performed by its subconsultants.

1.2 ***Standards.*** - The Consultant agrees that in performing this Contract, sound principles of the industry governing the Services shall be utilized and not disregarded. The Consultant shall provide Services conforming to the following standards:

1.2.1 General Consulting Services. – The standards for the term "*general consulting services*" require that the Consultant, by the execution of this agreement, contracts that it is possessed of that degree of care, learning, skill, and ability which is ordinarily possessed by other persons doing similar consultation work 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 such persons under similar conditions and like circumstances and shall perform such duties without neglect. This standard is also applicable to non-professional services provided by licensed professionals, such as materials testing, quality control, estimating and information analysis services.

1.2.2 Consulting Review and Reporting/Recommendation Services. – The standards for the term "*consulting review and reporting/recommendation services*" require that the Consultant, by the execution of this Contract, contracts that it is possessed of that degree of care, learning, skill, and ability which 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 such professionals under similar conditions and like circumstances and shall perform such duties without professional neglect. In meeting this standard of care, the Consultant may, *in all respects*, rely upon the calculations and work provided by the professional creating the documents being reviewed. This standard is also applicable to forensic or litigation consulting review services.

1.3 ***Use of the Consultant's Work Product, Confidentiality.*** – The Consultant understands, acknowledges and agrees that the work product from this Contract may be utilized and incorporated into the design and construction of a public works project, but if so incorporated, under the seal of the project's design professional. No reports, information or other material given to or prepared by the Consultant under this Contract shall be made available to any person not on the project team by the Consultant without the prior written approval of Regents unless otherwise required by law.

1.4 ***Ownership and Copyright.*** - All work product, information data, or documents produced hereunder by the Consultant and his subconsultants shall be delivered to Regents, and title thereto shall vest in Regents regardless of the stage to which the development of the study may have progressed. In addition, the Consultant hereby expressly assigns, transfers and otherwise quitclaims to the Regents, 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 Consultant, his employees, and his subconsultants. The Consultant further warrants that this transfer of copyrights and other rights is valid against the world. Finally, reproducible copies of all work products and other technical data shall be furnished to the Regents without cost whether the work for which they are made be executed or not. The Consultant may make and retain for its use such additional copies as it may desire. Notwithstanding the rights, ownership, grants, assignments, transfers, and quitclaims set forth herein, the Regents expressly grants, assigns, and transfers a permanent and exclusive license to the Design Professional, its successors, and assigns, for the Design Professional's Instruments of Service, and to each consultant (including the consultant's successors and assigns) of the Design Professional for such consultant's Instruments of Service, to use, reproduce, sell, transfer, and accomplish derivative works therefrom, for any and all purposes.

1.5 **Regents Approvals.** - The Consultant acknowledges and agrees that Regents does not undertake to approve, or pass upon, or undertake to inquire into the adequacy, fitness, suitability, or correctness of any work product or Services. The Consultant acknowledges and agrees that the approval or acceptance of the study by Regents is limited to the function of determining whether there has been compliance with instructions issued to the Consultant regarding the Services. The Consultant agrees that no approval of the Services or work product by any person, body, or agency shall relieve it of the responsibility for the adequacy, fitness, suitability, and correctness of the Services in accordance with sound and accepted principles applicable to the Services.

ARTICLE 2

Term and Compensation

2.1 **Term.** – The Term of this Contract shall commence on the date set forth above and shall terminate upon completion of the Services.

2.2 **Time for Completion.** – The time for completion shall be not later than _____.

2.3 **Fees.** – Compensation for the entire scope of services as indicated in this RFP, including research, marketing and any additional/specialty support services related to potential purchase or lease transactions, shall be through commercial real estate brokerage commissions based on sale price, purchase price or total rental consideration.

ARTICLE 3

Regents Representative, Assignment

3.1 **Representative.** – Regents shall designate a representative authorized to act on behalf of Regents on this Contract. Such representative shall review all Services provided under the Contract and shall render prompt decisions pertaining to the Contract to avoid unreasonable delay in the provision of the Services.

3.2 **Assignment.** -The Consultant hereby agrees that Regents may, if it wishes to do so, assign this contract to another governmental entity. The Consultant 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 prior written consent of Regents.

ARTICLE 4

Insurance and Indemnity

4.1 **Liability Insurance.** - Within ten days after execution of this Contract and during the entire period of the contract, the Consultant shall maintain professional liability insurance (errors and omissions insurance) applicable to the Services being performed. If there is no professional liability insurance product applicable to the services, the Consultant shall maintain a commercial general liability policy covering his Services. The Consultant shall file with the Regents a certificate of insurance from an insurance company licensed to do business in the State of Georgia showing evidence of such professional or commercial general liability insurance in limits of not less than \$2,000,000 per occurrence. Consultant shall provide a certificate of insurance from an insurance company or agent licensed to do business in the State of Georgia and copies of the additional insured endorsement naming Regents and the appropriate unit of the University System as an additional insured. Any deductibles and self-insurance retention may not be greater than \$25,000.

4.2 **Workers Compensation Insurance.**-- Within ten days after execution of this Contract and during the entire period of the contract, the Consultant shall maintain Workers Compensation insurance in the statutory amounts required. The Consultant shall file with the Regents a certificate of insurance from an insurance company or agent licensed to do business in the State of Georgia showing evidence of workers compensation insurance meeting statutory requirements.

4.3 **Consultant Services Indemnity.** The Consultant shall indemnify, release and hold Regents, its officers, members, employees and the State of Georgia, harmless from and against all liability, damages, costs, expenses (including reasonable attorney's fees and expenses incurred by Regents and any of its

officers, members, or employees), claims, suits and judgments to the extent arising or resulting from the delivery of Services under this Contract.

ARTICLE 5

Personal Services

In contemplation that the Services are personal, the Consultant hereby agrees that no material change under which the Consultant shall provide the Services may be made without written consent of Regents in advance, and such consent may be conditioned upon retention of the key staff persons of the Consultant for performance of the Services. In the event of a change in business form only, the Consultant shall notify Regents in writing and include in the notice the appropriate tax identification number and information. Regents shall make all future payments in accordance with such notice.

ARTICLE 6

Access to Records

6.1 **Access and Audit.** Regents shall have access to any pertinent books, documents, papers, and records of the Consultant for the purpose of making audit examinations, excerpts, and transcripts relative to this Contract. Records of reimbursable expenses and expenses pertaining to services performed shall be kept on the basis of generally accepted accounting principles and shall be available to Regents at mutually convenient times, but in no event more than 72 hours after a written request from Regents.

6.2 **Open Records Act.** Consultant acknowledges and agrees that all documents collected or produced for use by a private person, firm, or corporation pursuant to a contract or other agreement or understanding with any governmental entity are public records and are subject to disclosure under the Open Records Act (see O.C.G.A. §50-18-70). The Open Records Act makes it mandatory that any contract with a private person, firm, or corporation provide for the inspection or copying of public records within three business days of the receipt of an open records request. Details and procedures, including permissible exemptions and the means of claiming such exemptions, are contained in the Act. Consultant acknowledges that non-compliance with the Act may constitute a criminal act. Consultant must promptly advise Regents in writing within 24 hours of a request for records falling under the Act. Failure to comply with the Act is a material breach of this Contract which may result in termination for cause.

ARTICLE 7

Contract Adjustments and Termination

7.1 General.

7.1.1 **Change in Duties.** – The duties, responsibilities and limitations of authority of the Consultant under this Contract shall not be restricted, modified or extended without written agreement between Regents and Consultant.

7.1.2 **Other Consultants.** – The Regents may contract with other consultants to perform services directly to the Regents without voiding this Contract.

7.2 **Supplemental Agreements.** Supplemental agreements resulting from an increase in the scope of services defined in this Contract are not valid or effective until executed by all parties to this Contract. Until all approvals are received, there shall be no liability upon Regents for payment, nor obligation on the part of the Consultant to commence services on the additional work

7.3 **Termination for Convenience of the Government (Without Cause).** - Regents may at any time, and for any reason or without any reason or cause, terminate this contract by written notice to the Consultant specifying the termination date, provided that in the event of termination under this provision Regents shall pay to the Consultant 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 Consultant 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.

7.4 **Termination For Cause.** - In the event the Consultant 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 Consultant impairs or prejudices the interests of Regents or violates any of the terms, covenants, or provisions of this contract, Regents shall have the right to terminate this contract by giving notice in writing of the fact and date of such termination to the Consultant, and all work product and other documents relating to the Services shall be surrendered forthwith by the Consultant to Regents.

ARTICLE 8

Miscellaneous Provisions

8.1 *Matters of Interpretation.*

8.1.1 Masculine Gender. – Throughout this document, both Regents and the Consultant are referred to in the masculine gender for the convenience of both parties. The use of the masculine gender is not intended to and does not exclude Regents or Consultants of the feminine gender.

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

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

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

8.2 *Matters of Law.*

8.2.1 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. Also, the State encourages all companies to sub-contract portions of any State contract to minority business enterprises. Consultants who utilize qualified minority subcontractors may qualify for a Georgia state income tax deduction for qualified payments made to minority subcontractors. See O. C. G. A. §48-7-38. For more information, please contact the Board of Regents' Office of Business Development by e-mail at BusinessDevelopment@usg.edu.

8.2.2 Compliance with Executive Orders Concerning Ethics. The Consultant 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), and Executive Order dated October 1, 2003 (governing vendors to state agencies and disclosure and registration of lobbyists). In this regard, the Consultant certifies that any lobbyist employed or retained by the Consultant or his firm has both registered and made the required disclosures required by the Executive Orders, as amended.

8.2.3 Drug Free Work Place. – The Consultant acknowledges that he is fully aware of the contents and requirements of Chapter 24 of Title 50 of the Official Code of Georgia. The Consultant by execution of the present Contract does hereby certify that, to the best of his knowledge, information and belief, he and his consultants are in compliance with the aforesaid code section.

8.2.4 Prohibition Against Contingent Fees. – As required pursuant to O.C.G.A. §50-22-6(d), the Consultant 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 fee, commission, percentage, gift, or other consideration

contingent upon or resulting from the award or the making of this Contract.

8.2.5 Conflicts of Interest. – The Consultant acknowledges and certifies that the provisions of O.C.G.A. 45-10-1 *et seq.* concerning conflicts of interest and prohibitions of certain state officials and employees dealing with state agencies have not been and will not be violated.

8.2.6 Miscellaneous Applicable Law. – The Consultant shall comply with all laws, rules, regulations, ordinances and orders of any government agency having jurisdiction in the performance of the work. Without limitation of the foregoing, the following laws are specifically referenced:

- (a) *Preference for Georgia supplies, materials, equipment, and agricultural products, O.C.G.A. §§50-5-60 through 61.*
- (b) *Preference for Georgia forest products, O.C.G.A. § 50-5-63.)*
- (c) *Preference to local sellers of Georgia products, O.C.G.A. § 50-5-62.)*
- (d) *Providing safe workplace, O.C.G.A. §§ 34-2-10 and 34-7-20.*
- (e) *Small and Minority Business Enterprises, O.C.G.A. §§ 50-5-120 et seq. and 50-5-130 et seq.*
- (f) *Title VII of the Civil Rights Act, 42 U.S.C. §§2000a through 2000h-6.*
- (g) *Age Discrimination Act, 29 U.S.C. §621 et seq.; 42 U.S.C. §6101 et seq.*
- (h) *Americans with Disabilities Act, 42 U.S.C. §12101 et seq.*
- (i) *Federal Occupational Safety and Health Act, 29 U.S.C. § § 651 et seq*
- (j) *Federal Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001*

8.2.7 Compliance with Federal and State Work Authorization and Immigration Laws. The Consultant and all subcontracted consultants must comply with all federal and state work authorization and immigration laws, and must certify compliance using the form set forth in Exhibit B attached hereto. Upon contracting with a subcontractor or consultant, the Consultant shall provide the Owner notice of the identity of any and all subcontractors or consultants. Consultant 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 Consultant and all subcontracted 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.

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

8.2.9 Full Performance. – The Regents and the Consultant hereby agree to the full performance of the terms, duties, obligations, responsibilities, conditions and stipulations contained herein.

[Signatures begin on next Page.]

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.

CONSULTANT: _____

By: _____

(PRINT NAME/TITLE)

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

By: _____

(PRINT NAME/TITLE)

CONTRACT EXHIBIT A

Scope of Services

Project No. BR-97-1601

Project Description/Address: Project Description and Address as listed on Page 1 of the Contract.

The Regents Representative for this Contract is: Name, Title, Physical Address, Telephone, Facsimile, and Email for the Project Point of Contact.

General consulting services –

The Consultant shall (insert scope of services or insert "See Attached." statement and attach the scope of services.

Consulting review and reporting/recommendation services –

The Consultant shall (insert description of services or insert "See Attached" statement and attach description of services.

CONTRACT EXHIBIT B

“Contractor” in the following Affidavits shall mean “General Consultant”/“Consultant” 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”
- “Name of Project” shall mean “Project No. BR-97-1601”

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 Macon State College (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

Name of Project

Board of Regents of the University System of Georgia
for the use and benefit of

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 Macon State College (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

Name of Project

Board of Regents of the University System of Georgia
for the use and benefit of _____

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 Macon State College (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

Name of Project

Board of Regents of the University System of Georgia

for the use and benefit of

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:
