**­GSFIC-AD-150**

Version 7/1/2022

**DESIGN-BID-BUILD BIDDING DOCUMENTS**

**FOR**

**GEORGIA STATE FINANCING AND INVESTMENT COMMISSION**

**(OWNER)**

**FOR THE USE AND BENEFIT OF**

**(INSERT NAME OF USING AGENCY)**

**(Using Agency)**

**FOR**

**PROJECT** **(INSERT PROJECT NUMBER)**

**(INSERT PROJECT NAME)**

****

**BIDDING DOCUMENTS**

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**BID REQUIREMENTS:**

**INSTRUCTIONS TO BIDDERS**

1. **Bidding Documents.** The Bidding Documents include the Bid Requirements, Contract, Specifications, Drawings, and all Addenda.
2. **Bids Shall Comply with Georgia Law**. All bids submitted in response to this Invitation to Bid shall be made in general accordance with the applicable provisions of Georgia Law.
3. **Bid Submission**. All bids must be submitted electronically through e-Builder by the time stated in the Invitation to Bid. The Bid Verification and Statement of Qualifications, Bid Bond, E-Verify Affidavit and any other forms required to be submitted at the time of bid shall be uploaded through e-Builder. All blanks on the Bid Verification and Statement of Qualification Form must be completed. Failure to complete entries in all blanks in the Bid Verification and Statement of Qualification Form, or any other required form may be considered sufficient cause for rejection of a bid. The inclusion of any condition, alternate, qualification, limitation, or provision not called for may render the bid non-responsive and may be sufficient cause for rejection of a bid.
4. **Alternates**. Bids must include prices for all specified alternates, if any. If a price is not provided for all alternates, the bid may be determined non-responsive and not considered for award. Unless otherwise stipulated, all alternates are deductive. Any alternate or alternates, if taken, will be taken in numerical sequence, starting with Alternate #1, to the extent necessary.
5. **Bid Bond Required**. Each bid must be accompanied with a BID BOND in an amount equal to 5% of the base bid, payable to Owner, in order to guarantee that the successful bidder will enter into the Contract, substantially in accordance with the Contract shown in the Bidding Documents, to construct the project strictly in compliance with the Bidding Documents and Contract. Bid Bonds should be furnished on forms accepted as standard by the insurance industry.
6. **Withdrawal of Bids.** Bids may be withdrawn by bidders prior to the time set for official opening. After bids have been opened, no bid may be withdrawn for a period of sixty (60) days after the time and date of opening, except as provided in O.C.G.A. § 13-10-22 (appreciable error in calculation of bid). Negligence or error on the part of any bidder in preparing its bid confers no right of withdrawal or modification of the bid after bid opening, except as otherwise provided by Georgia law.
7. **Owner’s Right to Reject Bids.**  Owner reserves the right to reject any or all bids and to waive technicalities and irregularities. Owner further reserves the right, in its sole and complete discretion, to reject any bid that is over budget and to reject any bid from a bidder that is not responsible. In judging whether the bidder is responsible, Owner will consider, but is not limited to consideration of, the following:
   * 1. Whether the bidder or its principals are currently ineligible, debarred, suspended, or otherwise excluded from bidding or contracting by any local, state, or federal agency, department, or authority;
     2. Whether the bidder or its principals have been terminated for cause or are currently in default on any contract;
     3. Whether the bidder can demonstrate a commitment to safety with regard to Workers' Compensation by having an Experience Modification Rate (EMR) over the past three years not exceeded an average of 1.2; and
     4. Whether the bidder’s past work provides evidence of an ability to successfully complete public works projects within the established time, quality, or cost, and to comply with the bidder’s contract obligations.
8. **Owner’s Right to Negotiate with the Lowest Bidder.** In the event all responsive and responsible bids are in excess of the budget, Owner, in its sole and absolute discretion and in addition to the rights set forth above, reserves the right to negotiate with the lowest responsive and responsible bidder (after taking all deductive alternates) only for the purpose of making changes to the Project that will result in a cost to Owner that is within the budget, as it may be amended.
9. **Bid Preparation Expenses**. All expenses for preparing and submitting bids are the sole cost of the party submitting the bid. Owner is not obligated to any party to reimburse such expenses. All bids, upon receipt, become the property of Owner.
10. **Open Records Act.** As required by the Open Records Act, the details of the bids will remain confidential until final award. Labeling information provided in submittals as “proprietary” or “confidential,” or any other designation of restricted use will not protect the information from public view unless it is otherwise not subject to disclosure under the Open Records Act. Bidders shall be solely responsible for taking all steps necessary to ensure such documents are exempted from disclosure by law.
11. **Award**. The Contract will be awarded, if at all, on a lump sum basis to the lowest responsible, responsive bidder. The lowest bid will be the bid, whose price, after incorporating all accepted alternates, is the lowest responsive bid which was received from a responsible bidder.
12. **Contract Forms and Bonds**. The Contract, if awarded, will be substantially in accordance with the Contract shown in the Bidding Documents. If the Contract is awarded, the successful bidder shall be required to execute the Contract and return it to Owner within ten (10) business days. The successful bidder shall also be required to furnish payment and performance bonds, both in amounts equal to 100% of the Contract Sum along with the executed Contract.
13. **Failure to Execute Contract**. If the successful bidder fails to execute the Contract within ten (10) business days after notice of such acceptance or if the bidder fails to furnish performance and payment bonds, the obligation of the bid bond, if applicable, will remain in full force and effect and the money payable thereon shall be paid into the funds of Owner.
14. **Surety and Insurance Companies**. The Contract provides that the surety and insurance companies must be acceptable to Owner. Only those sureties listed in the Department of Treasury’s Listing of Approved Sureties (Department Circular 570) are acceptable to Owner. At the time of issuance, all insurance policies and bonds must be issued by a company licensed by the Georgia Insurance Commissioner to transact the business of insurance in the State of Georgia for the applicable line of insurance. Such company shall be an insurer with an A.M. Best Financial Strength Rating of “A-“ or better and with an A.M. Best Financial Size Category of Class V or larger.
15. **Interpretations**. No oral interpretations will be made to bidders as to the requirements of the Bidding Documents. Requests for interpretation of the Bidding Documents shall be made in writing not later than **six (6)** business days prior to the date set for receipt of bids. All interpretations made to the bidders will be issued in the form of addenda to the Bidding Documents and will be posted to the e-Builder web site. Such addenda are to be acknowledged at the appropriate location on the electronic Bid Form. No addenda will be issued within three (3) business days of the date set for receipt of bids without an extension of the bid date.
16. **Trade Names.** 
    1. *No Restriction of Competition.* When reference is made in the Bidding Documents to trade names, brand names, or to the names of manufacturers, such references are made solely to indicate that products of that description may be furnished and are not intended to restrict competitive bidding. If it is desired to use products of trade or brand names or of manufacturers’ names which are different from those mentioned in the Bidding Documents, application for the approval of the use of such products must be received by the Design Professional and the Contracting Officer at least ten (10) business days prior to the date set for the opening of bids.
    2. *Request for Approval of Substitute Product*. All requests for approval of substitution of a product must be made to the Design Professional in writing. The request shall include a copy of the published recommendations of the manufacturer for the installation of the product, together with a complete schedule of changes in the drawings and specifications, if any, that must be made in other work in order to permit the use and installation of the proposed product in accordance with the recommendations of the manufacturer of the product. The application must be accompanied by a schedule setting forth in which respects the materials or equipment submitted for consideration differ from the materials or equipment designated in the Bidding Documents. To be approved, a proposed product must also meet or exceed all express requirements of the Bidding Documents.
    3. *Issuance of Addenda*. If the submittal is approved by the Design Professional, an addendum will be issued to all prospective bidders. The successful bidder may furnish no products of any trade names, brand names, or manufacturers’ names except those designated in the Bidding Documents or any addenda.
    4. *Conference with Owner*. Any party who alleges that rejection of a submittal is the result of bias, prejudice, caprice, or error on the part of the Design Professional may request a conference with a representative of Owner; PROVIDED that the request for said conference, submitted in writing, is received by Owner at least five business days prior to the date set for the opening of bids, time being of the essence.
17. **Sales Tax.** Unless otherwise provided in the Bidding Documents, the successful bidder shall pay all sales, consumer, use and other similar taxes, which are legally enacted at the time bids are received.
18. **Examination of Site.** In submitting a bid for the Project, the bidder acknowledges that it has visited the Project Site and has taken into consideration all observed conditions that might affect its work.
19. **Employment of Georgia Citizens and Use of Georgia Products.** It is the desire of Owner that materials and equipment manufactured or produced in Georgia shall be used in the work and that Georgia citizens shall be employed in the work at wages consistent with those being paid in the general area in which the work is to be performed. This desire on the part of Owner is not intended to restrict or limit competitive bidding or to increase the cost of the work; nor shall the fulfillment of this desire be asserted by the successful bidder as an excuse for any noncompliance or omission to fulfill any obligation under the Contract.
20. **Trading with the State, Ethics.** By submitting a bid, the bidder certifies that the provisions of law contained in O.C.G.A. §§ 45-10-20 to 45-10-71, which prohibit officials and employees of the State from engaging in certain transactions with the State and State agencies, and the Governor’s Executive Orders governing ethics, have not and will not be violated in any respect in regard to this Contract.
21. **Reciprocal Preference Law.** In accordance with O.C.G.A. § 13-10-3, vendors resident in the State of Georgia will be granted the same preference over vendors resident in another State in the same manner, on the same basis, and to the same extent that preference is granted in awarding bids for the same goods or services by such other State to vendors resident therein over vendors resident in the State of Georgia. A Georgia resident business shall include any business that regularly maintains a place from which business is physically conducted in Georgia for at least one year prior to submitting this bid or a new business that is domiciled in Georgia which regularly maintains a place from which business is physically conducted in Georgia; provided, however, that a place of business shall not include a post office box, site trailer, or temporary structure.
22. **Experience Requirement Limitations.** No bidder will be disqualified from a bid based upon its lack of previous experience if prohibited by O.C.G.A. § 13-10-4.
23. **Georgia Security and Immigration Compliance Act.** All bids shall include a Contractor Affidavit required under O.C.G.A § 13-10-91(b)(1), a form of which is attached hereto (“E-Verify Affidavit”). Failure to submit this form with submission of a bid will result in the rejection of the bid.

**BID REQUIREMENTS:**

**BID VERIFICATION AND STATEMENT OF QUALIFICATIONS**

(To be subscribed and sworn to before a notary public)

Under oath, the undersigned submits the following bid verification and statement of qualifications for consideration by Owner:

Firm Name:

LEGAL NAME OF BUSINESS (As registered with Secretary of State)

Address:

LEGAL BUSINESS ADDRESS (P.O. BOX IS INSUFFICIENT)

CITY STATE ZIP

MAILING ADDRESS IF DIFFERENT FROM ABOVE

Telephone Number: Facsimile Number:

Contact Person Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Contact’s Email Address:

Year Organized: Where Incorporated:

Is Firm a Georgia Resident: YES NO

Form of Organization:  Proprietorship  Corporation  Partnership  LLC

Federal I.D. No.: or Social Security No.:

The firm’s principals are as follows:

(1)

Check One:  President  Partner  Owner

(2)

Check One:  Vice President  Secretary  Partner

(If incorporated, the names of both the President and Corporate Secretary must be indicated. If a partnership, all partners must be indicated.)

Number of years engaged in the contracting business under the firm’s current name:

Georgia General Contractor: YES NO License Number(s):

Other State General Contractor Licenses, Trade or Specialty Licenses:

* Type:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ License Number:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Issuing State or Issuing Authority:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* Type:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ License Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Issuing State or Issuing Authority: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Has the bidder refused to execute a contract upon award? YES NO

Has the bidder been declared in default on a contract? YES NO

Has the bidder ever been terminated for cause on a contract? ☐YES ☐NO

Has the bidder, its principals, or officers been convicted of building code violations, bribery, bid rigging, or any other felony involving moral turpitude? ☐YES ☐NO

Is the bidder or its principals or officers currently debarred, suspended, or declared ineligible or otherwise excluded from contracting with the Federal government or any state or local governmental entity? ☐YES ☐NO

Is the bidder’s current Experience Modification Rate (EMR) greater than 1.2? ☐YES ☐NO

If answer is “Yes” to any statement above, please explain (attach additional sheets if necessary):

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

**1. Bid Certification.** Having carefully examined the Bidding Documents titled (Insert Project Name), dated (Insert Bidding Documents Date), and any Addenda, as well as the premises and conditions affecting the Work, the undersigned certifies its bid, submitted via e-Builder, to furnish all services, labor, and materials called for by said Bidding Documents.

**2.** **Bid Bond.** Enclosed herewith is a bid bond in the amount of

DOLLARS

($\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) (being not less than 5% of the base bid) payable to (Insert Name of Owner). The undersigned hereby agrees that this bid may not be revoked or withdrawn after the time set for the opening of bids, but shall remain open for acceptance for a period of 60 days following such time.

**3. Certification of Proper Licenses.** Bidder certifies that it has been granted and possess all necessary, valid, and current licenses to do business in the State of Georgia as issued by the respective State Boards and Government Agencies responsible for regulating and licensing the services to be provided and performed pursuant to this Agreement.

**4.** **Certification of No Fraud or Collusion.** I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of State and Federal law and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of this bid and certify that provisions of O.C.G.A. § 45-10-20 *et seq*. have not and will not be violated in any respect.

Under oath I certify that I am a principal or other representative of the bidder and that I am authorized by it to execute this Bid Verification on its behalf. I am personally knowledgeable of the foregoing statements of fact, which are true and correct.

BY:

Authorized Signature (BLUE INK PLEASE)

Typed/Printed Name Title

SUBSCRIBED AND SWORN

BEFORE ME ON THIS THE

\_\_\_\_\_ DAY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [NOTARY SEAL]

Notary Public

My Commission Expires:

**NOTICE TO BIDDERS**

**1) MAKE SURE YOU HAVE SIGNED THIS BID VERIFICATION AND STATEMENT OF QUALIFICATIONS IN THE SPACE PROVIDED ABOVE.**

**2) MAKE SURE YOU AND YOUR SURETY HAVE PROPERLY EXECUTED THE BID BOND.**

1. **YOU MUST UPLOAD THE FOLLOWING FORMS INTO e-BUILDER WHEN YOUR BID IS SUBMITTED:**

* **BID VERIFICATION AND STATEMENT OF QUALIFICATIONS**
* **BID BOND**
* **Contractor AFFIDAVIT UNDER O.C.G.A § 13-10-91 (E-Verify Affidavit)**

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

The undersigned contractor ("Contractor") executes this Affidavit to comply with O.C.G.A § 13-10-91 related to any contract to which Contractor is a party that is subject to O.C.G.A. § 13-10-91 and hereby verifies its compliance with O.C.G.A. § 13-10-91, attesting as follows:

* + - * 1. The Contractor has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program;
        2. The Contractor will continue to use the federal work authorization program throughout the contract period, including any renewal or extension thereof;
        3. The Contractor will notify the public employer in the event the Contractor ceases to utilize the federal work authorization program during the contract period, including renewals or extensions thereof;
        4. The Contractor understands that ceasing to utilize the federal work authorization program constitutes a material breach of Contract;
        5. The Contractor will contract for the 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(a), (b), and (c);
        6. The Contractor acknowledges and agrees that this Affidavit shall be incorporated into any contract(s) subject to the provisions of O.C.G.A. § 13-10- 91 for the project listed below to which Contractor is a party after the date hereof without further action or consent by Contractor; and

g) Contractor acknowledges its responsibility to submit copies of any affidavits, drivers'

licenses, and identification cards required pursuant to O.C.G.A. § 13-10-91 to the public employer within five business days of receipt.

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

Federal Work Authorization User Identification Number Date of Authorization

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

Name of Contractor Name of Project

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

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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**FORM OF CONTRACT**

THIS CONSTRUCTION CONTRACT (hereinafter the “Contract”) is made this       day of      ,       by and between (Insert Name of Contractor), hereafter “Construction Professional,” and the Georgia State Financing and Investment Commission, hereafter called “Owner,” for the construction of Project (Insert Project No. & Description) (hereinafter the “Project”) for the use and benefit of (Insert Using Agency), hereafter called “Using Agency.”

Construction Professional and Owner agree as follows:

1. **Scope of the Work and Bidding Documents.** Construction Professional has reviewed and taken into consideration the Bidding Documents titled Insert Title of Bidding Documents, List all Addenda) in preparing its bid. Construction Professional shall furnish all the materials and perform all the Work described in the Bidding Documents and shall do everything required by or reasonably inferable from the Bidding Documents.
2. **The Contract**. The Contract includes this Form of Contract, the Contract General Requirements, GSFIC Forms Packet, and Contract Supplementary General Requirements, each of which are incorporated herein.
3. **The Contract Sum**. Owner shall pay Construction Professional for the full performance of the Work the Contract Sum as follows:

      Dollars ($     )

1. **Notice**. Notice in accordance with Section 1.1.7 of the General Requirements shall be given to the following addresses:

|  |  |
| --- | --- |
| **Construction Professional:** | Attention:  Phone Number: |
| **OWNER:** | Georgia State Financing and Investment Commission  270 Washington Street, S.E.  Atlanta, Georgia 30334  Owner’s Representative:  Phone Number: (404) 463-5600 |
| **USING AGENCY:** | Attention:  Phone Number: |
| **DESIGN PROFESSIONAL:** | Attention:  Phone Number: |
| **PROGRAM MANAGER:** (if Applicable) | Attention:  Phone Number: |

1. **Material Completion.** The Material Completion Date is.
2. **Liquidated Damages.** The agreed amount for Liquidated Damages is **Dollars ($     )** per day.
3. **Anticipated Weather Delay Days.** As referenced in Section 1.4.2, the following number of Weather Delay Days are anticipated and will not be the basis for extensions of Contract Time or adjustment to the Contract Sum:

(Insert Chart)

1. **Energy Efficiency and Sustainable Construction Act of 2008.** This project  subject to the Energy Efficiency and Sustainable Construction Act of 2008 (“Energy Act”). Projects subject to the Energy Act require commissioning, water-use reduction, and use of not less than 10% of Georgia products.
2. **No Assignment.** This Contract and the proceeds of this Contract shall not be assigned, nor may the performance hereunder be assigned, without the prior written consent of Owner. Any attempted assignment without such prior written consent shall be void.
3. **Full Performance; No Waiver.** Owner and Construction Professional hereby agree to the full performance of the Contract. The failure of Owner at any time to require performance by Construction Professional of any provision will not affect the right of Owner thereafter to enforce such provision or any other provision of the Contract. The failure of Owner to enforce or exercise remedies as a result of any breach of any provision shall not be considered a waiver of such provision, such remedies, any subsequent breach of such provision, or any other provision, or a modification or rescission of the Contract. No provision of this Contract, or right or remedy of Owner, will be deemed waived unless such waiver is in writing and executed by Owner.
4. **Severability.** If any provision of this Contract, or the application thereof to any person or circumstance, is declared invalid or unenforceable to any extent, then the remainder of this Contract, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Contract shall be valid and enforced to the fullest extent permitted by law.
5. **Full Agreement.** The Contract supersedes all prior negotiations, discussions, statements, and agreements between Owner and Construction Professional and constitutes the full, complete, and entire agreement between Owner and Construction Professional. There can be no changes to this Contract by oral means, by course of conduct of the parties, or by custom of the trade. No change to this Contract will be binding on either party unless such change is properly authorized, in writing, and in accordance with the terms of this Contract.

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

**Construction Professional**

By: (L.S.)

Title:

ATTEST (affix seal over secretary’s signature)

By:

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

**GEORGIA STATE FINANCING AND INVESTMENT COMMISSION**

**OWNER**

By:

By:

**CONTRACT GENERAL REQUIREMENTS**

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# General Provisions

## General Contract Requirements

### Project Team. The Project Team consists of Design Professional, Construction Professional, Owner, the Using Agency, and any other person or entity selected by Owner, which may include, without limitation, Owner’s Contract Compliance Specialist, the Program Manager, and the Commissioning Agent. The roles and responsibilities of Project Team members are set forth in general terms below but are more fully set forth in each Project Team member’s respective contract. Owner and Construction Professional shall endeavor to promote harmony and cooperation among all members of the Project Team. Each team member shall communicate with all other team members to assure overall coordination, cooperation, and efficiency in order to achieve Project completion in an expeditious and economical manner.

#### Design Professional. Design Professional is responsible for the design and preparation of Construction Documents and for construction contract administration.

#### Construction Professional. Construction Professional is responsible for the Basic Services as required by this Contract and is responsible for providing all manpower and materials to construct the Project according to the terms of the Contract Documents and shall do everything required by or reasonably inferable from the Contract Documents.

##### Independent Contractor; Authority of Construction Professional. Construction Professional is an independent contractor, and neither it nor any of its agents or employees may act in the name of Owner unless specifically authorized in writing. Nothing contained in this Contract shall be construed to create a partnership, joint venture, or agency relationship between Owner and Construction Professional.

#### Owner’s Representative. Owner shall designate a representative that shall be readily accessible (either on Site or by computer, phone, fax, or otherwise). Owner’s Representative will have the role and responsibility set forth herein.

#### Owner’s Contract Compliance Specialist (CCS). Owner may designate an individual or entity to serve as Owner's CCS that may, from time to time, generally review and observe the Work or record daily events at the Site on behalf of Owner. The CCS is not an inspector and has no authority or power to act as agent for Owner or to approve or disapprove any Work or action of Construction Professional.

#### Using Agency, Using Agency’s Representative. The Using Agency is the entity that will occupy or use the Project upon Material Completion and is an express third-party beneficiary of this Contract. The Using Agency may designate one or more representatives to advise Owner. Neither the Using Agency nor any representative of Using Agency shall have any authority to act on behalf of Owner. Construction Professional may not act or rely upon any directive, interpretation, decision, act, or omission of Using Agency or the Using Agency’s Representative.

#### Program Manager. Owner may designate a Program Manager to administer the Project and the Contract. Owner may designate Owner’s Representative or Design Professional to perform the role of Program Manager.

#### Commissioning Agent. A Commissioning Agent shall perform building commissioning activities and monitor testing activities. Construction Professional and Commissioning Agent shall coordinate and supervise the training activities related to each system.

#### No Diminution of Construction Professional’s Obligations. The presence of Owner, Owner’s Representative, CCS, Using Agency, Using Agency’s Representative, Program Manager, or Commissioning Agent does not relieve Construction Professional of any of its responsibilities for quality control, independent testing, or any other obligation set forth in the Contract Documents. Construction Professional shall not assert any act or omission of such parties as a basis for diminishing or eliminating its duties and obligations under the Contract Documents.

### Role of Design Professional**.**

#### No Duty for Safety. Design Professional has no responsibility to review any Work with respect to safety.

#### Design Professional’s Decisions. Design Professional shall objectively interpret the terms of the Contract Documents when required by the Contract Documents and shall make decisions on or determinations of any issue, Claim, dispute, or demand arising out of the Contract Documents (hereinafter, the “Design Professional’s Decision”). In such case, Design Professional shall make its decision promptly, but not later than the time provided herein. Design Professional’s Decision must be in writing and signed by Design Professional of Record. All Design Professional’s Decisions shall be final and binding on Construction Professional in the absence of a timely Notice of Protest in accordance with Section 5.2.2.5.

#### Decisions on Aesthetics. All decisions of Design Professional on matters of aesthetics are final, conclusive, and binding on all parties if consistent with the requirements of the Contract Documents.

#### Design Professional Not An Agent of Owner. Design Professional is not the agent of Owner, except to the extent so specified in writing. Design Professional has no authority to unilaterally amend the Contract Documents, orally or in writing, either expressly or by implication.

#### Design Professional Does Not Diminish Obligations of Construction Professional. The performance of services by Design Professional shall in no way relieve, alter, or diminish any of Construction Professional’s services, authority, obligations, or responsibilities under this Contract.

#### Succession. In case of the termination of the employment of Design Professional, Owner shall appoint a successor Design Professional whose status under the Contract Documents shall be that of the former Design Professional.

#### Copies of Contract Documents to Construction Professional. Design Professional shall furnish to Construction Professional, in hardcopy, one set of reproducible and electronic background floor and reflected ceiling plan drawings and, if requested, one copy in read-only electronic format without charge to Construction Professional. Construction Professional may obtain such additional sets of Contract Documents as Construction Professional deems necessary and shall pay the cost of reproduction of such additional sets to Design Professional.

### Role of the Commissioning Agent. For its sole benefit, Owner may procure building commissioning services through a Commissioning Agent. In such case, the Commissioning Agent shall perform all services set forth in its contract with Owner, which may include, without limitation, inspecting, reviewing, and monitoring all building-commissioning-related construction activities for timeliness, completeness, and conformance with the Contract Documents, and reporting its findings to Owner, Construction Professional and Design Professional.

#### Construction Professional’s Role in Commissioning. Construction Professional shall cooperate with the Commissioning Agent and allow the Commissioning Agent reasonable access to the systems to be commissioned. Construction Professional shall assist in the development of the Building Commissioning Plan. Construction Professional shall, in coordination with the Commissioning Agent and Design Professional, clearly define all activities required of the Trade Contractors relating to building commissioning and the necessary order of these activities.

#### Building Commissioning Plan. The Building Commissioning Plan shall include a summary of understanding of the design intent for each of the relevant building systems and shall establish critical performance criteria that indicate whether a system is properly functioning. The Building Commissioning Plan shall include a commissioning schedule listing the duration of each commissioning activity which shall be used as a basis for accomplishing the commissioning portion of the Overall Project Schedule. Satisfactory completion of commissioning shall not relieve, alter, or diminish Construction Professional’s obligations under the Contract Documents.

### Constitutional Principles Applicable to State Public Works Projects.

#### Title to Site. Title to the Site and the Project is vested in the State of Georgia as public property of the State of Georgia, and is not subject to levy or lien.

#### Limited Waiver of Sovereign Immunity *Ex Contractu.* Construction Professional acknowledges and agrees that Owner is an agency or instrumentality of the State of Georgia and, as such, is entitled to the protection of sovereign immunity. As set forth in Article I, Section II, Paragraph IX of the 1983 Georgia Constitution, sovereign immunity is waived “as to any action *ex contractu* for the breach of any written contract.” Construction Professional specifically acknowledges the constitutional and contractual requirements that changes, modifications, and waivers to this Contract must be in writing and specifically executed by Owner as set forth in the Contract Documents. Accordingly, Construction Professional expressly acknowledges the constitutional prohibition of claims (including Claims) against Owner based solely upon oral statement, course of conduct, customs of the trade, quasi-contract, unjust enrichment, *quantum meruit*, or O.C.G.A. § 13-4-4 (mutual departure from contract terms).

#### U.C.C. Not Generally Applicable. Construction Professional further acknowledges and agrees that Owner has granted only a limited waiver of sovereign immunity, such that the provisions of the Uniform Commercial Code (O.C.G.A §§ 11-1-101 through 11-2-725) governing sales of goods do not apply to this Contract. Construction Professional specifically waives and covenants not to make against Owner any claims (including Claims) based upon the Uniform Commercial Code.

### Legal Compliance.

#### General. This Contract shall be interpreted and governed by the laws of Georgia without regard to principles of conflicts of laws. Construction Professional shall comply with all laws, rules, regulations, ordinances, and orders of any governmental authority having jurisdiction over the Project or the performance of the Work and shall ensure such compliance of its Subcontractors.

#### Open Records Act. Owner and Construction Professional acknowledge and agree that certain records of the Project and the Work, including records of Subcontractors, are subject to the Georgia Open Records Act, O.C.G.A. § 50-18-70 *et seq.*, with particular attention being called to O.C.G.A. § 50-18-70(a) regarding the records of private persons, firms, corporations, or other private entities engaged in performance of services or functions on behalf of a state agency, public agency, or public office.

#### Energy Efficiency and Sustainable Construction Act of 2008.All projects subject to the Georgia Energy Efficiency and Sustainable Construction Act of 2008 (“Energy Act”) must be designed so that not less than 10 percent of all building materials used in the project are materials that are harvested, extracted, or manufactured in the State of Georgia where such products are commercially available. Construction Professional shall track the value of all Georgia-based materials installed in the project. Construction Professional shall provide documentation to ensure compliance with, and shall complete the Georgia-Based Materials and Products Checklist to certify compliance with, the requirements of the Energy Act. A copy of Georgia-Based Materials and Products Checklist is included in the GSFIC Forms Packet.

#### Use of Georgia Materials and Equipment and Georgia Forest Products. Construction Professional shall use materials and equipment manufactured or produced in Georgia when the use of Georgia products does not sacrifice quality, increase the cost of the Work, or restrict or limit competitive bidding. If the Work includes forest products, Construction Professional and its Subcontractors shall use exclusively Georgia forest products if Georgia forest products are available. These provisions shall not apply when in conflict with Federal law, rules, and regulations concerning interstate commerce or construction.

#### Transactions With State Officials. Owner and Construction Professional certify that the Conflict of Interest provisions of the Georgia Code, codified at O.C.G.A. §§ 45-10-20 through 45-10-41, which prohibit full-time appointive officials and employees of the State from engaging in certain transactions affecting the State, have not and will not be violated in any respect in regard to this Contract.

#### Illegal Immigration Reform and Enforcement Act of 2011. Construction Professional 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. Construction Professional warrants that it has registered with and uses the federal work authorization program commonly known as “E-Verify.” Construction Professional 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. Construction Professional 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.

#### Drug-Free Workplace. Construction Professional certifies that it will provide a drug-free work place in accordance with the Drug-Free Workplace Act, O.C.G.A. §§ 50-24-1 *et seq*.. Construction Professional certifies that it will secure from all Subcontractors the following written certification: “As part of the subcontracting agreement with (contractor’s name), (subcontractor’s name) certifies to the contractor that a drug-free workplace will be provided for the subcontractor’s employees during the performance of this contract pursuant to paragraph (7) of subsection (b) of Code Section 50-24-3.”

#### Applicable Sales and Use Taxes. Construction Professional shall pay all applicable sales and use taxes, including such taxes on Owner supplied tangible personal property that is to be incorporated into the Project as required by O.C.G.A. 50-24-1(h)(1). Prior to supplying such property, Owner shall provide notice of the amount of tax owed for such tangible personal property.

#### No Boycott of Israel. Construction Professional certifies that it is not currently engaged in, and agrees for the duration of this Contract not to engage in, a boycott of Israel, as defined in O.C.G.A. §§ 50-5-85.

#### Sexual Harassment Prevention. The State of Georgia is committed to providing a workplace environment free from sexual harassment for its employees and for all persons who interact with state government. The State of Georgia requires that its contractors and their employees and subcontractors who interact with State employees to act in a professional manner to contribute to a work environment that is free from sexual harassment. The State of Georgia has adopted a Statewide Sexual Harassment Prevention Policy, a copy of which is available on-line at http://doas.ga.gov/human-resources-administration/board-rules-policy-and-compliance/jointly-issued-statewide-policies/sexual-harassment-prevention-policy Pursuant to the State of Georgia’s Statewide Sexual Harassment Prevention Policy, all contractors who are regularly on State premises or who regularly interact with State employees must complete sexual harassment prevention training on an annual basis. If Construction Professional has employees and Subcontractors that are regularly on State premises or who will regularly interact with State personnel, Construction Professional certifies that:

#### - Construction Professional will ensure that such employees and Subcontractors have received, reviewed, and agreed to comply with the State of Georgia’s Statewide Sexual Harassment Prevention Policy;

#### - Construction Professional has provided sexual harassment prevention training in the last year to such employees and subcontractors and will continue to do so on an annual basis; or Construction Professional will ensure that such employees and Subcontractors complete the Georgia Department of Administrative Services’ sexual harassment prevention training located at this direct link https://www.youtube.com/embed/NjVt0DDnc2s?rel=0 prior to accessing State premises and prior to interacting with State employees; and on an annual basis thereafter; and

#### - Upon request of the State, Construction Professional will provide documentation substantiating such employees and subcontractors’ acknowledgment of the State of Georgia’s Statewide Sexual Harassment Prevention Policy and annual completion of sexual harassment prevention training.

### Applicable Codes. The latest edition of the regulations, rules, and codes listed below, with all amendments as of the date of permitting for construction, shall govern all Work. The following codes, rules, and regulations are adopted and incorporated into the Contract Documents, and it shall be the responsibility of Construction Professional to familiarize itself with the requirements of these codes, rules, and regulations as applied to the performance of the Work.

#### Building Codes. The following Building Codes, as approved by the Georgia Department of Community Affairs, shall be used. (*See* O.C.G.A. § 8-2-20 *et seq.)* Design Professional will designate any additional codes or special modifications in the Construction Documents.

* International Building Code, with Georgia Amendments
* International Fire Code, with Georgia Amendments
* International Plumbing Code, with Georgia Amendments
* International Mechanical Code, with Georgia Amendments
* International Fuel Gas Code, with Georgia Amendments
* National Electrical Code, with Georgia Amendments
* International Energy Conservation Code, with Georgia Supplements and Amendments

#### Fire, Life Safety, and Accessibility Codes. The following codes, in the versions approved by the Georgia State Fire Marshal/Fire Safety Commissioner and Department of Human Resources, shall be used. Design Professional will designate any additional codes or special modifications in the Supplementary General Requirements.

* + - Georgia State Life Safety Code (NFPA 101)
    - State Accessibility Codes (*See* O.C.G.A. § 30-3-3)
    - Rules and Regulations of the Georgia Safety Fire Commissioner

#### Adherence to Contract Documents When in Excess of Code. The Contract Documents shall govern when they call for quality of materials, quality of workmanship, or quality of construction which is equal to or in excess of the quality required by the codes stated in Section 1.1.6.

#### Notice of Variance. If Construction Professional observes that the Contract Documents are at variance with any laws, ordinances, rules, or regulations stated in Section 1.1.6, it shall promptly give Notice to Owner. If Construction Professional performs any Work contrary to such laws, ordinances, rules or regulations without providing such prior Notice to Owner, it shall bear all costs arising therefrom.

#### Variance from Contract Documents Only for Code Compliance. No variances from the Contract Documents are allowed except to the extent that the said variances are necessary to comply with the above-stated codes. If any express requirements of the Contract Documents are at variance with the above-stated codes, a Change Order shall be executed to bring the Contract Documents into compliance with the above-stated codes.

### Notice. Any Notice or other material communication required or permitted under this Contract shall be in writing, dated, and signed by an officer or duly authorized representative of the party making same. Unless otherwise required by the provisions of this Contract, Notice may be sent via electronic mail, fax, U.S. Mail, or hand delivered to the addresses shown in Section 4 of the Form of Contract. All members of the Project Team shall be copied on any Notice. The persons and addresses to which notices should be given may be changed by Notice given in accordance with this Section. Such Notice shall be effective as of the date on which it is received or would have been received but for the refusal of the addressee to accept delivery.

### General Provisions Regarding Contract Documents.

#### Interpretation of Contract Documents. The Contract Documents are to be taken as a whole, are intended to be complementary with one another, and are intended to include all items necessary for the proper execution and completion of the Work and the Project. The Contract Documents shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner. References to a Section shall include paragraphs, subsections, and subparts of such Section.

#### Forms and Specimen Documents. The forms and specimen documents attached hereto are incorporated by reference herein and shall be executed in substantial conformance as required by the Contract.

#### Order of Precedence of Contract Documents and Changes. In the event of conflict among the Contract Documents, a Change Order shall control over any previous Change Order; and a Change Order shall control over the Supplementary General Requirements, which shall control over the Form of Contract, which shall control over the General Requirements, which shall control over the Specifications.

#### Order of Precedence in Construction Documents. The following general principles shall govern the settlement of disputes that may arise over conflicts in the Construction Documents: (a) as between the drawings and specifications, the specifications shall govern; (b) as between figures given on drawings and the scaled measurements, the figures shall govern; and (c) as between large-scale drawings and small-scale drawings, the larger scale shall govern. Conflicts discovered shall be immediately reported to Design Professional.

#### Intellectual Property Rights in Construction Documents, Drawings, and Models. The Construction Documents and other documents prepared by Design Professional (or prepared by Construction Professional or its Trade Contractors under a performance specification) pursuant to this Contract are the property of Owner. Neither Construction Professional nor any Subcontractor shall own or claim a copyright in such drawings, specifications, and other similar or related documents; Owner shall retain all common law, statutory, and other intellectual property rights with respect thereto. All models are the property of Owner.

### Licenses, Easements and Surveys. Permanent easements for structures shall be obtained and paid for by Owner unless otherwise specified. Any licenses necessary for the permanent operation of the completed Project shall be obtained by the Owner unless otherwise specified. Owner shall furnish all surveys unless otherwise specified.

### Owner’s Independent Consultants. Owner may perform or retain independent consultants to provide peer review, expert opinion, or other analysis of the design or construction. Construction Professional agrees that any such review, opinion, or analysis shall not constitute an admission concerning the adequacy, fitness, or completeness of the design, or the adequacy or compliance of the construction to the Construction Documents. Such review, opinion, or analysis is rendered solely to Owner and shall not be used in connection with any Claim or legal action arising out of or related to the Project without the express written consent of Owner, unless required by the provisions of the Civil Practice Act governing the designation and use of expert witnesses.

### Owner’s Right to Perform Other Work at the Project Site. Owner reserves the right at any time, upon Notice to Construction Professional, to perform other work at the Site.

#### Construction Professional’s Duty to Work with Owner’s Separate Contractors. Construction Professional shall afford Owner and Separate Contractors reasonable access to the Site, subject to the Separate Contractors’ compliance with Construction Professional’s safety rules and Site specific policies, reasonable areas for storage of materials and equipment, and reasonable opportunity to execute work at the Site. Construction Professional shall, if required by the Contract Documents, coordinate its work with Owner’s Separate Contractors but shall have no responsibility to certify the suitability or correctness of any work performed by Separate Contractors.

#### Delays or Damages Caused by Separate Contractors. Unless otherwise provided by the Contract Documents, if any work by Owner or its Separate Contractors increases Construction Professional's costs or extends the time of performance, subject to the requirements, limitations, and conditions of Section 5.2.2, Construction Professional may submit a Claim in accordance with Section 5.2.2.

#### Duty of Construction Professional to Report Defects in Work of Separate Contractor. If any part of Construction Professional’s Work depends upon the work of any Separate Contractor, Construction Professional shall inspect and promptly report to Owner and Design Professional any defects in the Separate Contractor’s work discovered by Construction Professional that render it unsuitable for such proper execution of Construction Professional’s Work.

## Bonds, Insurance and Indemnification

### Bonds. Construction Professional shall furnish both a performance bond and a payment bond in the exact form set forth in GSFIC Required Forms. Construction Professional shall file a Notice of Commencement, as described in O.C.G.A. § 13-10-62, and provide a copy to Owner.

#### Penal Sum of Bonds, Timing of Submission. Upon execution of the Form of Contract, Construction Professional shall provide performance and payment bonds with a penal sum in at least the amount of the Contract Sum. When any subsequent Change Order, or combination of Change Orders, increases the Contract Sum by five percent (5%) or more, Construction Professional shall obtain a rider to the payment and performance bonds increasing the penal sum to match the increased Contract Sum.

#### Required Qualifications for Surety. Surety companies must be acceptable to Owner. Only those sureties listed in the Department of Treasury’s Listing of Approved Sureties (Department Circular 570, as amended) are acceptable to Owner. All bonds at the time of issuance must be issued by a company authorized by the Insurance Commissioner to transact the business of suretyship in the State of Georgia, and shall have an A.M. Best Policyholders Rating of "A-" or better and with a financial size rating of Class V or larger.

### Liability and Indemnification.

#### Indemnification Obligation. Construction Professional shall indemnify, defend, and hold harmless Owner, the State of Georgia and its departments, agencies and instrumentalities, and all of their respective officers, members, employees, and directors (hereinafter collectively referred to as the "Indemnitees") from and against any and all claims, suits, judgments, liability, demands, losses, costs, or expenses, including reasonable attorneys' fees and other costs of litigation including expert witnesses, arising out of bodily injury (including death), personal injury, and property damage arising out of or resulting from the performance of this Contract or any act or omission on the part of Construction Professional, its Subcontractors, its agents, employees, or others working at the direction of Construction Professional or on its behalf, or due to any breach of this Contract by Construction Professional, or due to the application or violation of any applicable Federal, State or local law, rule, or regulation. The indemnification obligation set forth in this Section extends to the successors and assigns of Construction Professional, and will survive the termination of the Contract or Construction Professional’s performance hereunder and the dissolution or, to the extent allowed by law, the bankruptcy of Construction Professional. If and to the extent such damage or loss (including costs and expenses) covered by such indemnification obligations is paid by the State Tort Claims Trust Fund, the State Authority Liability Trust Fund, the State Employee Broad Form Liability Fund, the State Insurance and Hazard Reserve Fund, or other self-insured funds (all such funds hereinafter collectively referred to as the "Funds") established or maintained by the State of Georgia Department of Administrative Services Risk Management Division (hereinafter "DOAS"), Construction Professional agrees to reimburse the Funds for such monies paid out by the Funds. Whenever Construction Professional is obligated to defend the Owner or any other Indemnitee pursuant to this Agreement, Construction Professional shall use counsel selected or approved by Owner.

##### This indemnification obligation does not extend beyond the scope of the Project, this Contract, and the Work or obligations undertaken thereunder. Nor does this indemnification extend to claims for losses or injuries or damages incurred due to the sole negligence of the Indemnitees.

##### This indemnification does not extend to claims for loses or injuries or damages incurred by the Indemnitees due solely to the negligent acts, errors, or omissions of Design Professional in the performance of professional services in connection with the Project that fail to meet the applicable professional standard of care, skill, and ability as employed by others in their profession.

#### DOAS Role. DOAS serves as Owner’s insurer. Owner will notify affected insurers of claims made against the State that fall within this indemnity obligation within a reasonable time after such notice is received by Owner. If and to the extent such claim is covered by this indemnification obligation, Owner will keep Construction Professional and its general liability insurer named on the insurance certificate informed regarding the claims and settlement.

#### Suits or Claims for Infringement. Construction Professional shall indemnify, defend, and hold harmless Owner from any suits or claims of infringement of any patent rights, copyrights, or intellectual property rights arising out of any patented or copyrighted materials, methods, or systems used by Construction Professional. The obligations of Construction Professional and rights of Owner pursuant to Section 1.2.2.1 shall also apply to the indemnification obligation set forth in this Section.

### Insurance Requirements.

#### Construction Professional’s Required Insurance Coverage. Construction Professional shall procure the insurance coverages identified below in accordance with the policy requirements listed below. Construction Professional shall provide Owner with a Certificate of Insurance showing the required coverage prior to execution of this Contract. If Owner requests, Construction Professional shall provide a certified copy of insurance policies required hereunder. Owner owes no duties or contractual obligations to any third party and will not be liable to any third party for Construction Professional’s failure to obtain, or failure to require its Subcontractors to obtain, the insurance required hereunder or required by law.

|  |  |
| --- | --- |
| **Worker’s Compensation Insurance** | **Minimum Coverage Limit** |
|  | Coverage to meet Georgia statutory requirements |
| **Employer’s Liability Insurance** | **Minimum Coverage Limit** |
| Bodily Injury by Accident | $1,000,000 per Accident |
| Bodily Injury by Disease | $1,000,000 per Employee  $1,000,000 Aggregate |
| **Commercial General Liability Coverage** | **Minimum Coverage Limit** |
| Premises and Operations | $ 1,000,000.00 per Occurrence and $2,000,000 General Aggregate |
| Products and Completed Operations | $1,000,000.00 per Occurrence and $2,000,000 General Aggregate |
| Personal and Advertising Injury | $ 1,000,000.00 per Occurrence |
| **Commercial Automobile Liability Coverage** | **Minimum Coverage Limit** |
|  | $ 1,000,000.00 combined single limits covering all owned, non-owned, leased or borrowed vehicles used by Construction Professional in connection with the Work |
| **Commercial Umbrella Liability** | **Minimum Coverage Limit** |
| Projects with Contract Sum Less than  $5,000,000 | $ 5,000,000 Per Occurrence and General Aggregate |
| Projects with Contract Sum Less than $15,000,000 | $ 10,000,000 Per Occurrence and General Aggregate |
| Projects with Contract Sum Equal to or Greater than $15,000,000 | $20,000,000 Per Occurrence and General Aggregate |
| **Builder’s Risk** | **Minimum Coverage Limit** |
|  | Coverage in an amount equal to Contract Sum |

#### Workers' Compensation Policy Requirements. A group insurer must submit a certificate of authority from the Insurance Commissioner approving the group insurance plan.

#### Commercial General Liability Policy Requirements. Commercial General Liability Insurance shall be provided by the 2004 ISO Occurrence Form, or its equivalent, that shall include, without limitation, coverage for bodily injury and property damage arising from premises and operations liability, independent contractors, products and completed operations, blasting and explosion, collapse of structures, underground damage, personal and advertising injury, and contractual liability. The Commercial General Liability policy shall contain no exclusion for Subcontractor work and may not contain ISO endorsement CG 22 94 10 01 or similar. The policy must include separate aggregate limits per project.

#### Commercial Business Automobile Liability Requirements. The Commercial Business Automobile Liability Insurance shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned, or hired automobile and shall be issued on an “occurrence” basis.

#### Commercial Umbrella Liability Requirements. Commercial Umbrella Liability Insurance shall provide excess coverage above the Commercial General Liability, Commercial Business Automobile Liability and the Workers' Compensation and Employers' Liability and shall be issued on an “occurrence” basis.

#### Additional Insured Requirements. Construction Professional shall cause its insurer to issue an additional insured Endorsement naming Owner, Using Agency, and all Indemnitees as additional insureds on all required liability policies (except for Workers Compensation and, if required, Professional Liability).

#### Builders Risk Policy Requirements. Builder’s Risk Policy shall be made payable to Owner and Construction Professional, as their interests may appear, and shall include in the interests of Construction Professional’s Subcontractors. The policy shall be written on a Builder’s Risk “All Risk,” or its equivalent, and include coverage for collapse, pollution, water or flood damage, earthquake, subsidence, testing, and boiler and machinery perils (unless covered by separate insurance). The form of policy for Builder’s Risk shall be “Completed Value.” The Builder’s Risk Policy shall have a deductible of not more than $25,000 (or such other amount as approved by Owner in writing), and payment of the deductible shall be the responsibility of Construction Professional, except to the extent the loss is caused by Owner, in which case Owner shall pay a share of the deductible proportionate to its fault. The Builder’s Risk Policy shall cover portions of the Work stored off site or in transit. The policy shall be endorsed as follows:

*The following may occur without diminishing, changing, altering or otherwise affecting the coverage and protection afforded the insured under this policy:*

*(i) Furniture and equipment may be delivered to the insured premises and installed in place ready for use;*

*(ii) Partial or complete occupancy by Owner; and*

*(iii) Performance of work in connection with construction operations insured by Owner, by agents or lessees or other Contractors of Owner or Using Agency*

In the event that the Contract is for renovation, addition, or modification of an existing structure and Builders Risk Insurance is not available, Owner will accept an Installation Floater Insurance Policy with the above endorsements in lieu of the Builders' Risk Insurance Policy. Such floater must insure loss to materials and equipment prior to acceptance by Owner and must be on an ALL RISK BASIS with the policy written on a specific job site.

#### Waiver of Subrogation. Construction Professional hereby waives all rights of subrogation against Owner and all Indemnitees and additional insureds required under this Contract to the extent a loss is covered by any insurance maintained by any party hereto, and Construction Professional shall require similar waivers from its Subcontractors. All insurance policies required to be maintained by Construction Professional shall contain a waiver of subrogation by the insurer in favor of the Owner and all Indemnitees and additional insureds required under this Contract.

#### Insurer Qualifications. All insurance providers shall be authorized by the Insurance Commissioner to transact the business of insurance in the State of Georgia for the applicable line of insurance, and shall have an A.M Best Policyholders Rating of "A" or better and with a financial size rating of Class V or larger.

#### Termination of Obligation to Insure. Unless otherwise expressly provided to the contrary, the obligation to insure as provided herein shall not terminate until Design Professional issues the Certificate of Final Completion. Construction Professional’s obligation to provide Builder’s Risk insurance shall terminate upon the issuance of the Certificate of Material Completion. In addition, any “claims-made” policies required hereunder shall be kept in full force and effect for a period of four (4) years after the issuance of the Certificate of Material Completion.

#### Deductibles. All deductibles shall be paid for by Construction Professional, except as provided in Section 1.2.3.7. The maximum deductible, except for Builder’s Risk and Workers’ Compensation qualified self-insurers or group self-insurers, in any policy shall not exceed one hundred thousand dollars ($100,000.00). Owner will consider larger deductible amounts on a case-by-case basis.

#### Certificate of Insurance Requirements. Construction Professional shall provide Owner with certificates of insurance, completed by a duly authorized representative, evidencing that at least the minimum coverages required herein are in effect and specifying that the liability coverages (except professional liability, if required) are written on an occurrence form. The certificates of insurance shall contain a provision that the coverage afforded under the policy or policies will not be canceled or non-renewed without thirty (30) days' prior written notice to Owner. The failure of Owner to demand such a certificate or other evidence of full compliance with these requirements or the failure of Owner to identify a deficiency from evidence provided shall not be construed as a waiver of Construction Professional’s obligation to maintain such insurance. The acceptance of delivery by Owner or its designated representative of any certificate of insurance evidencing the required coverages and limits does not constitute approval or agreement by Owner that the insurance requirements have been met or that the insurance policies shown in the certificates of insurance are in compliance with the requirements. Owner shall have the right, but not the obligation, of prohibiting Construction Professional and its Subcontractors from entering the Project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Owner. If Construction Professional fails to maintain the insurance as set forth herein, Owner shall have the right, but not the obligation, to purchase said insurance at Construction Professional's expense. Alternatively, Construction Professional's failure to maintain the required insurance shall constitute a material breach hereof and may result in termination of this contract at Owner's option. Provision of proper certificates of insurance as set forth herein by Construction Professional on behalf of itself and all Subcontractors actively operating on site is a condition precedent to payment hereunder. If any of the coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverages shall be submitted with Construction Professional's final invoice and annually thereafter. Upon demand by the Owner, Construction Professional shall provide certified copies of any policy set forth herein.

#### Subcontractor Insurance Requirements. Construction Professional shall require each Subcontractor performing Work or performing any activity on the Project Site to obtain an insurance certificate showing proof of Commercial General Liability, Workers' Compensation Coverage and Employers Liability Insurance, Commercial Automobile Liability, Umbrella Liability, and Professional Liability (where required) with limits commercially appropriate for the work of such Subcontractor and in no event less than $1,000,000 per occurrence, claim, accident, or employee, as applicable to each line of coverage, and Construction Professional shall provide Owner with an insurance certificate for each Subcontractor evidencing compliance with this provision annually and before such Subcontractor begins work on the Project.

## Defined Terms and Basic Definitions

### Defined Terms. Wherever used in the Contract Documents, the terms defined in this Contract will have the meanings indicated that are applicable to both the singular and plural, and to the masculine and feminine thereof.

#### Meaning of Words and Phrases. Unless the context or the Contract Documents taken as a whole indicate to the contrary, or unless otherwise defined, words used in the Contract Documents that have usual and common meanings shall be given their usual and common meanings; words having technical or trade meanings shall be given their customary meaning in the subject business, trade, or profession. Materials or Work described in words that, so applied, have a well-known technical or trade meaning shall refer to such recognized meaning.

#### Install, Deliver, Furnish, Supply, Provide and Other Such Words. Install, deliver, furnish, supply, provide, and other such words mean that the Work in question shall be put in place by Construction Professional ready for use unless expressly provided to the contrary.

#### Sections Not Plenary. This Section and Section 1.3.2 are not entire, plenary, or exhaustive of all terms used in this Contract. Terms defined in Design Professional Contract and any Program Management Contract shall have the meanings set forth in those documents.

### Basic Definitions.

#### *Addenda*. Documents issued by the Design Professional prior to the opening of bids that clarify, correct, or change any of the component parts of the Bidding Documents.

#### *Bidding Documents*. The Bid Requirements, Contract, Specifications, Drawings, and all Addenda, which form the basis for the bid submitted by the bidder.

#### *Certificate of Material Completion.* The Notice from Design Professional certifying achievement of Material Completion.

#### *Change Order.* A document which, in conformity with the Contract Documents, authorizes a change or changes to the Contract Sum, the Contract Time, or the Contract Documents.

#### *Change Order Sum.* The amount of compensation payable under a Change Order or, when applicable, a portion thereof.

#### *Change Order Work*. Work that is authorized or changed by a Change Order.

#### *Claim.* A demand or assertion by Construction Professional seeking an adjustment of the Contract Sum, Contract Time, or both, or regarding other disputes or requests by Construction Professional for relief arising out of or relating to the terms of the Contract or Contract Documents.

#### *Construction Documents.* The Specifications and Drawings that set forth the design for the Project.

#### *Construction Phase.* The phase of the Project, commencing with the first Proceed Order, when physical work is performed on the Site.

#### *Construction Progress Schedule*. A schedule, as more fully defined in Section 2.1.1, prepared by Construction Professional indicating proposed Milestone dates, activity sequences, and durations.

#### *Contract* *Documents.* The Contract Documents include the Bidding Documents, Contract, Change Orders, and any Construction Documents that have been incorporated into the Contract by Change Order.

#### *Contract Sum*. The sum of all compensation authorized by the Contract and any Change Orders.

#### *Contract Time.* The period of time established for completion of the Work and the Project by the Contract Documents.

#### *Cure Period*. The time stated in a Notice of Non-Compliance for correction of Non-Compliant Work.

#### *Days, Months, Years.* All references to the terms "day," "days," "month," or "months" mean calendar day, calendar days, calendar month, or calendar months, respectively*.*

#### *Drawings*. The graphic portion of the Construction Documents showing the design, location and dimensions of the Work.

#### *Final Certificate, Design Professional’s Certificate of Final Completion*. The certificate issued by Design Professional stating that all Work has been completed in accordance with the terms of the Contract Documents.

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

#### *Final Documents*. Defined in Section 6.1.1.

#### *Final Punchlist*. The Punchlist complied by the Design Professional at the Inspection for Material Completion which lists all Minor Items and Permitted Incomplete Work.

#### *General Conditions Costs.* Defined in Section 3.1.7.5.

#### *General Requirements Costs*. Defined in Section 3.1.7.4

#### *Initial Punchlist*. Punchlist prepared by Construction Professional prior to the inspection for Material Completion that lists all Minor Items and Permitted Incomplete Work.

#### *Interim Punchlist Completion*. Completion of all Minor Items listed on the Final Punchlist.

#### *Material Completion*. Material Completion occurs when the Work of the Project is complete in accordance with the Contract Documents, except for any Minor Items or Permitted Incomplete Work, so that Owner and Using Agency can occupy and utilize the Work for its intended use.

#### *Material Completion Date*. The date by which Construction Professional shall achieve Material Completion with respect to the Work of the Project.

#### *Milestone*. A date specified in the Overall Project Schedule for commencement or completion of a certain project-specific event, such as construction start, site work, etc.

#### *Minor Item.* A Minor Item is a portion of Work designed by Design Professional that is incomplete at Material Completion but does not interfere with the complete use and enjoyment of the Project by the Using Agency and which can be completed within thirty (30) days while the Using Agency occupies the Project without interfering with the Using Agency’s use and occupation of the Project.

#### *Notice*. The written document from any Project Team Member that invokes a right or requests a remedy under this Contract or provides any notice required by the terms of this Contract.

#### *Non-Compliant Work.* Work that, for any reason, is not in compliance with the Contract Documents in any respect, including but not limited to quality of Work or timeliness of Work. Such term shall also include the failure of Construction Professional to perform any obligation of the Contract Documents in a proper or timely manner, to meet the Overall Project Schedule, or to supply an adequate and skilled work force.

#### *Notice of Non-Compliant Work*. The official Notice from Design Professional regarding Non-Compliant Work.

#### *Notice of Readiness*. The Notice provided by Construction Professional stating that the Work is ready for inspection by Design Professional.

#### *Other Noncompensable Delay Event*. Defined in Section 1.4.2.2

#### *Owner's Representative*. Defined in Section 1.1.1.3.

#### *Overall Project Schedule or OPS*. The final Construction Progress Schedule that is recommended by Design Professional and approved by Owner, as amended from time to time as provided in this Contract.

#### *Payment Application*. The form, and any required supporting documentation, that must be submitted by Construction Professional to request payment from Owner.

#### *Permitted Incomplete Work*. Work that is required by the Contract to be completed after Material Completion, such as HVAC Seasonal Test and Balance or seasonal landscaping or Work that is incomplete through no fault of Construction Professional, such as recently added Change Order Work that is permitted by the Change Order to be performed after Material Completion.

#### *Proceed Order*. Notice from Owner to Construction Professional that authorizes Construction Professional to commence Work at the Project Site.

#### *Proceed Order Date*. The date on which the first Proceed Order is issued or, if stated therein, the effective date of such Proceed Order.

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

#### *Request for Information (RFI)*. A request issued by Construction Professional to Design Professional requesting information or clarification of the Construction Documents.

#### *Separate Contractor*. Any person or entity other than Construction Professional that contracts directly with Owner to perform work on the Site.

#### *Site*. The real property furnished by Owner for the Work and use of Construction Professional.

#### *Sole Source.* A Subcontractor specified by name in Contract Documents as the exclusive source from which conforming goods or services may be obtained. Designation of goods or services by reference to a named source accompanied by the qualification “*or equal”* or similar language is not a designation of a Sole Source as that term is defined herein.

#### *Specifications.* The portion of the Construction Documents consisting of written requirements for materials, equipment, and standards of workmanship.

#### *Stipulated Maximum Sum*. The amount stated in a Force Account Change Order as the maximum amount payable for Work thereunder.

#### *Subcontractor*. Generic term for any party contracting to perform the Work or supply materials for the Work, including but not limited to Trade Contractors and all subordinate contractors or suppliers of any Trade Contractor.

#### *Submittals*. Shop drawings, samples, schedules, data, catalogue cuts, manufacturers' published recommendations, charts, bulletins, brochures, illustrations, circulars, roughing drawings or formulae, or other documents that are submitted by Construction Professional to illustrate some portion of the Work or for use in installing the Work. Submittals are not Contract Documents.

#### *Trade Contractor*. A Subcontractor that is in a direct contractual relationship with Construction Professional to perform portions of the Work including the furnishing of materials.

#### *Using Agency*. The State entity for which the Project is being constructed.

#### *Using Agency’s Representative*. The person designated by the Using Agency to represent the interests of the Using Agency and serve as a liaison between the Using Agency and the Project Team.

#### *Warranty Complaint*. Notice that is given by the Owner to Construction Professional of apparent non-compliant or defective Work that arises or is discovered after Material Completion.

#### *Work*. All construction, materials, and services required by the Contract Documents or reasonably inferable therefrom. The Work may refer to the whole Project or only a part of the Project.

## Time

### Duty to Commence and Complete Work. Construction Professional shall commence construction at the Project Site within ten (10) days of the Proceed Order Date but shall not commence any physical Work on the Site until a Proceed Order is issued. Construction Professional shall achieve Material Completion of the Project not later than the Material Completion Date.

#### Time is of the Essence. Time is of the essence of this Contract and all obligations hereunder. Time being of the essence, it is mutually agreed that Owner and Using Agency will suffer damages if Construction Professional does not achieve Material Completion by the Material Completion Date and Construction Professional shall therefore compensate Owner (for itself and on behalf of Using Agency) for the delay as provided herein.

#### Time is Fair and Reasonable. Construction Professional has carefully examined and analyzed the Site, the Contract Documents, and all known factors related to its ability to achieve Material Completion by the Material Completion Date. Construction Professional agrees that the stipulated Contract Time is fair and reasonable. Owner’s approval of any schedule, including but not limited to the Overall Project Schedule, is not and shall not be construed as a representation concerning the appropriateness of such schedule and will not be asserted by Construction Professional as a basis for an extension of Contract Time or increase in Contract Sum.

#### Liquidated Damages for Delay. If Construction Professional fails to achieve Material Completion by the Material Completion Date, Liquidated Damages shall be assessed at the daily rate specified in Section 6 of the Form of Contract to compensate the Owner and Using Agency for the delay. The specified liquidated damages are not a penalty but are agreed to in advance because of the difficulty of determining and proving the amount of delay damages incurred by the Using Agency and Owner as a result of the delay. Liquidated Damages shall be charged beginning upon the day following the contractually required Material Completion Date and ending on the date that the Certificate of Material Completion is issued.

##### Payment of Liquidated Damages. Liquidated Damages shall be deducted from Payment Applications as they accrue and such deduction shall be in addition to the retainage provided for in the Contract. If the amount to be deducted for Liquidated Damages is greater than the payment due to Construction Professional, Construction Professional shall promptly pay to Owner the resulting deficit balance.

### General Rule – No Damages for Delay, Extension of Time Sole Remedy. As provided in this Section, a noncompensable extension of Contract Time is Construction Professional’s sole remedy for any delays not the fault of Construction Professional or its Subcontractors, except those delays specifically listed in Section 1.4.2.3. Extensions of Contract Time will be granted for Abnormal Weather Delay Days and Other Noncompensable Delay Events that delay the critical path of Work based on the Overall Project Schedule, subject to the provisions below. Except as expressly provided in this Section, Construction Professional shall not be entitled to an extension of Contract Time or increase in Contract Sum, and Construction Professional waives any right to assert a Claim therefor.

#### Extensions of Time for Abnormal Weather Delay Days. Construction Professional shall be entitled to an extension of Contract Time for each Abnormal Weather Delay Day verified by the CCS that Design Professional determines has delayed the critical path of Work based on the Overall Project Schedule on the condition that Construction Professional complies with this Section 1.4.2, including but not limited to the requirements of documentation set forth in Section 1.4.2.1.4, and that Construction Professional takes all reasonable efforts to mitigate the effects of Abnormal Weather Delay Days.

##### Abnormal Weather Delay Days. Abnormal Weather Delay Days are Weather Delay Days in excess of the Anticipated Weather Delay Days.

##### Weather Delay Days. Weather Delay Days are those days when the critical path of the Work is delayed by Weather or the lingering effects of weather.

##### Anticipated Weather Delay Days. Anticipated Weather Delay Days are the Weather Delay Days specified in Section 7 of the Contract that Construction Professional shall expect to occur and shall provide for in the Overall Project Schedule. If no Anticipated Weather Delay Days are listed in the Contract, the Anticipated Weather Delay Days are those days when the region has historically received more than ½” of precipitation in a month according to the 30 year NOAA Mean.

##### Documenting Weather Delay Days. Upon receipt of the Proceed Order and continuing throughout the Contract, Construction Professional shall record actual Weather Delay Days incurred at the Site and describe the weather’s impact to the critical path of Work based on the Overall Project Schedule. Weather Delay Days shall be documented by Construction Professional and contemporaneously submitted to Owner’s Contract Compliance Specialist for verification. Not later than ten days after the end of each calendar month, Construction Professional shall submit a report to Design Professional documenting the number of Weather Delay Days, verified by the CCS, incurred in the previous month. As a Design Professional’s Decision, Design Professional shall determine if each documented Weather Delay Day impacts the critical path.

##### Claims for Extension of Time for Abnormal Weather Delay Days. Claims for extensions of Contract Time for Abnormal Weather Delay Days shall be made when Construction Professional submits its monthly report of Weather Delay Days as required by Section 1.4.2.1.4. Claims for extensions of Contract Time for Abnormal Weather Delay Days are waived if submitted after such monthly report is required to be submitted.

##### Protest. Construction Professional may protest the Design Professional’s Decision as to whether each Abnormal Weather Delay Day impacts the critical path only as set forth in Section 5.2.2.5.

#### Other Noncompensable Delay Events. If, between the Proceed Order Date and the Material Completion Date, the critical path of Work based on the Overall Project Schedule is delayed without any fault of Construction Professional or its Subcontractors by an event that is beyond the reasonable control of Construction Professional or its Subcontractors (“Other Noncompensable Delay Event”), then such delay shall be excused and the Contract Time shall be extended for such period of delay. An Other Noncompensable Delay Event will not include a Weather Delay Day. As a condition precedent to such extension, Construction Professional shall comply with Section 1.4.2.1, Section 1.4.2.1.4, Section 1.4.2.1.5, and Section 1.4.2.1.6, as if such Sections applied to delays caused by Other Noncompensable Delay Events instead of Abnormal Weather Delay Days, and shall submit a Claim as described in Section 5.2.2.

#### Exception to General Rule – Compensable Delay. Construction Professional shall be entitled to an extension of Contract Time and adjustment to the Contract Sum for the delays caused by an act or neglect of Owner, Design Professional, or Separate Contractor, and for unanticipated Hazardous Materials subject to the provisions of Section 2.2.7, and for Differing Site Conditions subject to the provisions of Section 2.2.8, on the condition that it submits a Notice of Claim in conformance with, and by the time set forth in, Section 5.2.2. As an additional condition precedent to such extension of Contract Time and adjustment to the Contract Sum, Construction Professional must prove that (i) such delays extended the critical path of Work based on the Overall Project Schedule; (ii) Construction Professional has taken all reasonable actions to mitigate the effects of the delay events; (iii) the fault or negligence of Construction Professional or Construction Professional’s Subcontractors did not contribute to such delay events; and (iv) Construction Professional shall have provided Notice to Owner of the cause or causes of such delay within seven (7) days from the date on which Construction Professional first becomes aware, or should have become aware, of such delay, for all delays except for Differing Site Conditions, in which case Notice shall be provided in accordance with Section 2.2.8. Additionally, any Claim for failure of Design Professional to timely respond to submittals shall be made while the failure to respond continues, or within seven (7) days after such failure to respond has been cured. Design Professional shall have the time set forth in Section 2.2.6 to review and respond to submittals.

##### Amount of Increase in Contract Sum. The amount of increase in Contract Sum for delays set forth in Section 1.4.2.3 shall be subject to the limitations and requirements of Section 5.2.2.3.

##### Amount of Extension of Contract Time. The extension of Contract Time for delays set forth in Section 1.4.2.3 shall be determined by the Design Professional as a Design Professional’s Decision. Construction Professional shall submit documentation to support a Claim for extension in Contract Time to the Design Professional and any other documentation requested by Design Professional. Owner and Construction Professional may protest the Design Professional’s Decision only as provided in applicable provisions of Section 5.2.2.5.

#### Time Extension Administration. If Construction Professional is entitled to an extension in the Contract Time under the terms and conditions of Section 1.4, then the following provisions apply: (i) time extensions will be measured by days; (ii) if a day is awarded, then the day awarded will be the next calendar day following the current Material Completion Date and Construction Professional shall be required to submit a new Overall Project Schedule reflecting the adjusted Milestone Dates for Owner’s approval; and (iii) in measuring the impact of delay events, Construction Professional shall only be entitled to an extension of Contract Time if Construction Professional demonstrates that it intended to work on an impacted day and, but for the delay event, would have worked on the days impacted by the delay event.

# Construction Professional’S SERVICES

## Pre-Construction Phase Services

### Pre-Construction Phase Services. The Pre-Construction Phase commences with the execution of the Contract and ends with the issuance of the Proceed Order. No physical Work may be done at the Project Site until the Proceed Order is issued. During the Pre-Construction Phase, Construction Professional shall perform the following Work as a condition to issuance of the Proceed Order.

### Scheduling Services. Construction Professional shall prepare a Construction Progress Schedule using a CPM (Critical Path Method) process, utilizing a full-featured software package in a form satisfactory to Design Professional and Owner. The Construction Progress Schedule shall have the minimum number of activities required to adequately represent the complete scope of Work and define the Project’s critical path and associated activities. The format of the Construction Progress Schedule shall have dependencies indicated on a monthly grid identifying Milestone dates. Milestone dates and activities shall be clearly indicated and sequentially organized to identify the critical path of the Project. Construction Professional shall provide copies of all documents, including electronic documents, related to the Overall Project Schedule.

#### Milestone Dates. The Construction Progress Schedule shall include but not be limited to the following Milestone dates:

* Construction Start
* Demolition
* Abatement
* NPDES Stabilization
* Foundations Completion
* Under-Slab Utilities
* Slab Completion
* Structural Top Out
* Dry-In
* Metal Stud Wall Completion
* Rough-In Completion
* Drywall Completion
* Equipment Installation
* Permanent Power
* Systems Operations
* Finishes
* 80% Completion Inspection
* Commissioning
* 100% Completion Inspection
* Equipment Training
* Material Completion Date
* Final Completion Date

#### Submittal Schedule. The Construction Progress Schedule shall be accompanied by a Submittal Schedule for approval by Design Professional. The Submittal Schedule shall correlate with the Construction Progress Schedule and shall take into account large submittal documents that will require longer review times. Design Professional’s approval shall be based on conformance of the Submittal Schedule with the Overall Project Schedule.

#### Approval of Construction Progress Schedule. Upon recommendation by Design Professional and approval by Owner, the Construction Progress Schedule shall become the Overall Project Schedule, which shall be utilized by Design Professional, Owner, and Construction Professional.

### Construction Management Plan. Construction Professional shall prepare a thorough and complete plan for the management of the Project which shall include, without limitation, the following information:

#### Construction Professional’s Staffing Plan. The Construction Management Plan shall include Construction Professional’s staffing plan, an estimate of the manpower requirements for each trade and the anticipated availability of such manpower. Construction Professional shall include in its plan the names and resumés of the Project Superintendent, Project Manager, and the person in charge of safety.

#### Security Program. The Construction Management Plan shall include an effective security program for the Site, which shall require Construction Professional and the Subcontractors to take measures for the protection of their tools, materials, equipment, and structures.

#### Safety Program. The Construction Management Plan shall include a specific safety program for the Site. Construction Professional shall establish and require all Trade Contractors to establish reasonable safety programs. No imposition of responsibility on Construction Professional for safety under this Contract shall relieve any Trade Contractor of its responsibility for safety of persons or property on or near the Site.

#### Certificate of Competency – Fire Protection Trade Contractor. If a fire protection sprinkler system is required, Construction Professional shall submit to Owner and Design Professional the certificate of competency of the fire protection sprinkler system Trade Contractor and, if applicable, Subcontractor as required by State of Georgia Fire Protection and Safety Code. The certificate of competency shall be provided prior to any work being performed on the fire protection sprinkler system.

#### Quality Control Program. Construction Professional shall prepare a written Quality Control Program to ensure that the Work matches the level of quality specified in the Contract Documents. The Quality Control Program shall describe in detail the steps Construction Professional will take to ensure quality and will include, without limitation, those personnel, in addition to the Project Manager and Superintendent, who will provide review and verification of the proper installation of the Work. Each Subcontractor having responsibility for more than one hundred thousand dollars ($100,000.00) of the Work shall be addressed in the plan.

### Permits, Licenses, & Utilities. Construction Professional shall obtain and pay for all permits and licenses necessary for the prosecution of the Work. Owner shall cooperate with Construction Professional as it secures building and other permits, licenses, and inspections that are required to be obtained by Construction Professional. Construction Professional shall obtain temporary water, gas, and electric power, and provide sewage disposal at its expense until the extension and connection of permanent water, gas, sewer, and electric power. In the absence of provisions to the contrary, Construction Professional shall pay for all utility services until Material Completion has been achieved.

### Construction Professional Site Plan and Land Disturbance Permit. Construction Professional is required to obtain the land disturbance permits applicable to Owner that implement the National Pollution Discharge Elimination System (NPDES) requirements for stormwater management for construction activities from the appropriate issuing authority.

#### Development of Site Plan. Design Professional is responsible for providing the initial sealed Site Plan as a part of the Bidding Documents. Design Professional will depict upon the Site Plan its initial recommendations for design of BMPs for the Project. During the Pre-Construction Phase, Construction Professional shall review the initial Site Plan and make recommendations for any changes to the initial Site Plan including Construction Professional’s desired Site entrance, trailer locations, laydown areas and other matters affecting the design and implementation of the BMPs. The Design Professional will incorporate all reasonable changes and produce a final sealed Site Plan, including fully designed BMPs, for submission to the permitting official. Design Professional and Construction Professional shall resolve with the local permitting official any deficiencies by the end of the Pre-Construction Phase.

### Submission of Rental Rates and Unit Prices. Prior to the issuance of the Proceed Order, Construction Professional shall submit, for consideration and approval by Owner, a proposal for rental rates, wage rates, and unit prices for the items listed below that shall apply in the event of any Change Order Work, unless such Unit Prices have already been set in the Bidding Documents. Unit Prices shall include all costs associated with the Work, including Trade Contractor overhead and profit and Construction Professional’s General Conditions and Mark-Up.

#### Rental Rates for Heavy Construction Equipment and Wage Rates. Construction Professional shall submit rental rates for heavy construction equipment and wage rates for operation of heavy equipment and other types of Project labor. Construction Professional shall include rates for hourly, daily, weekly, and monthly rental. Rates for any equipment provided by the Construction Professional (not provided by a third party) shall not exceed 80% of the rate set forth in the latest edition of the “Compilation of Nationally Averaged Rental Rates for Construction Equipment” of the Associate Equipment Distributors unless the rates proposed in excess of eighty percent are supported by proof satisfactory to the Owner that the excess rates are reasonable. If the equipment is owned by the Construction Professional the costs shall be charged at a maximum of eighty percent of market monthly rental rates for the amount of time used. If applicable, transportation costs may be included. Rental rates shall be payable only for the actual time the equipment is required to be on site.

#### Unit Prices for Stormwater Management BMPs. Construction Professional shall submit unit prices to cover installation of additional stormwater management BMPs. The unit prices shall be calculated by type and linear foot and shall include a price for new sediment barrier silt fencing and a price for re-installation of existing sediment barrier silt fence.

#### Unit Prices for Unsuitable Soil and Rock and Importing Additional Fill. Construction Professional shall submit unit prices for excavating unsuitable soil and rock and importing suitable soil and rock in excess of the amount specified in the Contract Documents. If the Contract Documents specify an estimated amount of excavation of rock or unsuitable fill material, or importation of additional fill, and if Design Professional determines that Construction Professional excavates or imports more or less than such stated quantities, then any adjustment in Contract Sum shall account for such stated quantities, and Owner shall receive a credit if actual amounts are less than the stated quantities. Design Professional shall be responsible for calculating the amount of all rock and unsuitable fill material removed based upon estimated volume of in-place compacted fill material prior to removal.

##### Calculation of Unit Prices. The unit price for unsuitable soil shall include the excavation, haul off, and disposal of all unsuitable fill material. Unit prices for removal of rock shall include excavation and removal of all rubble; addition and removal of overburden for blasting; replacement of suitable soils in areas of overblasting or over removal; and all costs of labor, equipment, supplies, blasting materials, safety requirements, drayage, haulage, and disposal, including offsite disposal costs. Unit price for suitable soil shall include the cost of the soil and haulage.

##### Unit Price for Rock and Unsuitable Fill. Construction Professional shall submit unit prices for removal of the types of Unsuitable Fill and Rock and importing Suitable Soil as listed below.

###### Rippable Rock. Rippable Rock is defined as any material that can be ripped with a single-tooth hydraulic ripper drawn by a crawler tractor having a minimum draw bar pull rated at not less than fifty-six thousand (56,000) pounds (Caterpillar D-8K or equivalent) and occupies an original volume of at least one cubic yard.

###### Mass Rock. Mass Rock is defined as any material that cannot be ripped with a single-tooth hydraulic ripper drawn by a crawler tractor having a minimum draw bar pull rated at not less than fifty-six thousand (56,000) pounds (Caterpillar D-8K or equivalent) and occupies an original volume of at least one cubic yard.

###### Trench Rock. Trench Rock is defined as any material that must be removed from a trench that cannot be excavated with a hydraulic excavator having a bucket curling force rated at not less than eighteen thousand, three hundred (18,300) pounds (Caterpillar Model 215 or equivalent) and occupies an original volume of at least one-half cubic yard.

###### Caisson Rock. Caisson Rock is defined as material that must be removed from a shaft which cannot be penetrated faster than two (2) feet per hour (fifteen minute minimum) using a rock auger with bullet-shaped hardened steel teeth (Kennametal bits or equivalent), and the drilling equipment should have the capacity to produce a continuous torque of at least one million (1,000,000) inch pounds and a downward force of at least fifty thousand (50,000) pounds (a Hughes LLDH in good working condition) for piers up to seventy-two (72) inches in diameter. Use of equipment with greater torque or downward force modifies the definition of refusal to be the point at which the equipment cannot penetrate faster than two (2) feet per hour (fifteen (15) minute minimum). In rare cases, refusal may occur on a rock seam or boulder above the general massive rock surface. If Construction Professional is entitled to receive compensation for Caisson Rock under the Contract Documents, such compensation should include only material that cannot be penetrated by the rock auger at the specified rate.

###### Substances Not Considered Rock. Shale, rottenstone, or stratified rock that can be loosened with a pick or removed by a hydraulic excavator equivalent to a Caterpillar Model 215, a single engine pan (Caterpillar 621 or equivalent) that is pushed by a crawler tractor (Caterpillar D-8K or equivalent), or similar equipment shall not be classified as Rock.

###### Unsuitable Soil. Unsuitable Soil is soil that cannot be compacted to meet the required Contract Specifications. Unsuitable Soil shall not include soil that when dried would meet the required Contract Specifications.

###### Suitable Soil. Soil that meets the required Contract Specifications.

### Off-Site Stored Materials. If Construction Professional wishes to be paid for materials stored off-site, it shall notify the Owner prior to the issuance of the Proceed Order and propose the materials to be stored and the conditions of storage. Owner will allow for payment of materials stored off the Project Site only if there is a long lead time for such materials and only if there is insufficient space on the Project Site for storing such materials or the off-site facility is a more secure and suitable location for storing such materials. If the Owner agrees to allow payment for off-site stored materials, payment is conditioned upon the execution of an off-site stored materials agreement.

### Submission of Documents for Issuance of Proceed Order. Construction Professional shall submit the documents listed below within thirty (30) days of the execution of the Contract as a prerequisite to Owner’s issuance of the Proceed Order. Owner’s failure to issue a Proceed Order shall not be a Delay Event under Section 1.4.2.3.1 if such delay is caused by Construction Professional’s failure to submit Documents necessary for Issuance of Proceed Order.

#### Payment and Performance Bonds as required by Section 1.2.1;

#### Proof of insurance for all insurance required by Section 1.2.3;

#### Documentation necessary for receiving all land disturbance permits;

#### List of Trade Contractors anticipated to perform the Work;

#### Workers’ Compensation and Employer’s Liability Insurance Certificates for all Subcontractors as required by Section 1.2.3.13;

#### Subcontractors’ Affidavit for Georgia Security and Immigration Compliance as required under Section 1.1.5.6;

#### Construction Management Plan, which includes Construction Professional’s Staffing Plan, Security Program and Safety Program as required by Section 2.1.3;

#### Quality Control Program as required by Section 2.1.3.5;

#### Construction Progress Schedule, including Submittal Schedule as required by Section 2.1.1;

#### Off-Site Stored Materials Agreement (required if the Work includes any materials that will be stored off-site); and

#### Proposed Rental Rates and Unit Prices.

## Construction Phase Requirements

### Review of Contract Documents. Prior to commencing the Work, Construction Professional shall review all Contract Documents for any inconsistency, ambiguity, error, or omission. When potential design issues are identified, Construction Professional shall annotate the Construction Documents and shall issue an RFI prior to proceeding with the affected Work.

#### Requests for Information (RFI). In the event the Construction Documents are not complete, definite, and clear to Construction Professional, or appear to have conflicting information, Construction Professional shall issue in writing an RFI to Design Professional and a copy to Owner. Design Professional shall furnish complete, definite, and clear instructions in response to the RFI in writing, or by issuing drawings, or both. In the event instructions are given orally for expediency, they shall be confirmed in writing or by drawings within five (5) days following the oral instructions. Any such additional instructions shall be consistent with the Contract Documents and reasonably inferable therefrom. Construction Professional shall maintain a log of RFIs and the responses received from Design Professional.

#### Design Coordination Meetings for Material Design Issues. Construction Professional shall call for a Design Coordination Meeting and work in conjunction with the Design Professional to solve potential design issue that may materially affect the sequencing or accomplishment of the Work, or may cause delays to the Project.

#### Contract Documents at Site and Recording Changes. Construction Professional shall keep at the Site at least one copy of the Contract Documents in good order and available to Design Professional and to its representatives. Construction Professional shall record all changes and shall annotate a copy of the Construction Documents to reflect the as-built condition in order to produce the Marked-up Construction Documents.

#### Limitation of Scope. Notwithstanding the foregoing, it remains Design Professional’s responsibility to produce fully coordinated Construction Documents and to provide the design or interpretation necessary to resolve all conflicts. Nothing herein shall be deemed to impose upon Construction Professional any responsibilities to provide any services constituting the practice of architecture, engineering, or any licensed design profession except to the extent required to complete performance specifications requiring the seal of a specialty consultant. Construction Professional shall exercise skill and judgment in the performance of its Design Review and Consulting Services, but does not warrant or guarantee the advice or recommendations furnished with respect to design and does not control, warrant or guarantee any design services performed or furnished by Design Professional

### Construction Phase Scheduling Services. During the Construction Phase, Construction Professional shall monitor the progress of the Work for conformance with the Overall Project Schedule and keep Owner informed of such progress and shall maintain records documenting the progress of the Work.

#### Construction Progress Meetings. Construction Professional shall schedule and conduct Construction Progress Meetings with Owner, Design Professional, Separate Contractors, and appropriate Subcontractors for the purpose of discussing the status and progress of the Work. Such meetings shall be held not less than biweekly (i.e., every other week). Construction Professional shall provide and distribute minutes of such meetings, including a list of the action items, responsible parties, and action dates to maintain schedules.

#### Recording Daily Construction Progress. Construction Professional shall maintain a daily log of construction activities, approved as to form and type of entries by Design Professional. The daily construction log shall be accessible to Owner and Design Professional at all times during normal business hours.

#### Monthly Progress Reports and Updated Overall Project Schedules. Construction Professional shall submit monthly progress reports along with each Payment Application which shall document the progression of the Work and shall include information on the percentage of completion. Construction Professional shall also provide monthly updates of the Overall Project Schedule indicating completed activities and any changes in sequencing or activity durations, including approved Change Orders. However, no changes in Milestone dates are to be made without written consent of Owner and Design Professional.

#### Construction Professional’s Failure to Meet Schedule Requirements. In the event Construction Professional is delinquent in achieving a Milestone date in the Overall Project Schedule, Owner may demand Construction Professional to take action to promptly bring the Work into compliance with the Overall Project Schedule. Within seven (7) days after receipt of such demand, Construction Professional shall cause its employees and Subcontractors to bring the progress of Work into conformance with the Overall Progress, including but not limited to performing Work on hours and days in addition to the normal working hours and days or adding additional labor. Fulfillment of this requirement shall not relieve Construction Professional from liability for breach of the covenant as to time or failure to achieve Material Completion by the Material Completion Date. Construction Professional shall not be entitled to an increase in Contract Sum or a Claim for the costs resulting from the actions required by this Section.

#### Duty to Notify Owner of Delays Caused by Owner, Design Professional, or other Parties. If Owner or Design Professional, or any other person with whom Owner or Design Professional has a direct contractual relationship or for whom they are responsible, shall act or fail to act in such a manner as to delay the progress of the Work or increase the cost of the Work, Construction Professional shall give prompt Notice so as to permit Owner to take corrective action. Such Notice is in addition to any other Notice required hereunder, including but not limited to any Notice required under Section 1.4 and Section 5.2.2.

### Construction Phase Construction Supervision & Planning Services. Construction Professional shall supervise and direct the Work using diligent skill and attention in order to ensure satisfactory progress of the Work and that the quality of the Work complies with the Contract Documents. Construction Professional shall be responsible for and shall coordinate all construction means, methods, techniques, sequences, and procedures.

#### Responsibility for Qualified Employees & Subcontractors. Construction Professional shall at all times enforce strict discipline and good order among its employees and Subcontractors. Construction Professional shall not employ on the Project any unfit person or anyone not skilled in the work assigned. Construction Professional shall require all Subcontractors to employ only skilled and experienced workers to perform the task assigned to them. Construction Professional shall require all Subcontractors to assign sufficient workers to perform their assigned Work so as not to delay the progress of the Work.

##### Replacement of Unqualified Subcontractors. Construction Professional shall determine the adequacy of the Subcontractors’ personnel and equipment, as well as the availability of materials and supplies to meet the Overall Project Schedule. Construction Professional shall immediately replace or cause to be replaced any Subcontractor or Subcontractor’s employee whose Work, as determined by Construction Professional, does not meet such requirements.

##### Failure of Subcontractor Does Not Excuse Construction Professional. Non-performance, improper performance, or other default by any Subcontractor or employee of Construction Professional shall not excuse Construction Professional from its obligation to assure timely performance of the Work in compliance with the Contract Documents. Construction Professional shall not be entitled to an extension of Contract Time or adjustment to the Contract Sum for the acts or omissions of a Subcontractor except as otherwise specifically provided in the Contract.

#### Responsibility for Qualified Project Manager and Project Superintendent. Construction Professional shall ensure that a competent Project Manager and Project Superintendent remain on the Project, on a full-time basis, until Material Completion. A Project Manager or Superintendent shall be present to supervise completion of all Punchlist Items and Permitted Incomplete Work. All directions given to the Project Manager or Superintendent shall be as binding as if given to Construction Professional.

##### Replacement of Project Manager or Project Superintendent. The Project Manager or Project Superintendent shall not be changed except with the consent of Owner and Design Professional unless the Project Manager or Project Superintendent ceases to be in Construction Professional’s employ. Construction Professional must obtain Owner's prior written approval before engaging a replacement Project Manager or Project Superintendent and must ensure that the replacement has similar qualifications and experience to the original Project Manager or Project Superintendent.

#### Responsibility for Acts and Omissions & Duty to Remedy Damages. Construction Professional is fully responsible to Owner for the acts and omissions of its officers, employees, agents, all Subcontractors and their respective officers, employees and agents, and all other persons on the Site at the direction of Construction Professional or to perform Work. Construction Professional shall promptly remedy damages or loss to property at the Site caused thereby.

#### Responsibility to Coordinate Work of Separate Construction Professionals. Construction Professional is responsible for coordination of the Project Work with any Separate Contractors performing other work within the Project, or in the proximity of the Project. Construction Professional expressly agrees to schedule and, with the assistance of Owner, coordinate the Work with such Separate Contractors in order to assist them and permit each phase of the Project to be completed in accordance with the Overall Project Schedule.

### Construction Phase Land Disturbance Permit Compliance. During the Construction Phase, Construction Professional shall implement and maintain the BMPs and comply with the conditions of the Land Disturbance Permit. In the event Abnormal Weather Conditions or other events cause damage to BMPs, Construction Professional shall re-install BMPs at established unit prices under Section 2.1.6.2.

### Responsibility for Protection of Site and Project Safety. Construction Professional has a revocable license until Material Completion to enter and perform Work upon the Site and shall be responsible for the protection of the Project Site and the safety of all persons on the Project Site until Material Completion. Construction Professional shall confine the staging and storage of materials, the operations of its forces, and the Work to limits indicated by law, ordinances, permits, or the Contract Documents, and shall not unreasonably encumber the Site with its materials.

#### Applicable Safety Rules. Construction Professional shall comply with the rules and regulations of OSHA and the Department of Labor (O.C.G.A. § 34-2-6), and where not inconsistent with the foregoing, the "Manual of Accident Prevention in Construction" issued by the Associated General Contractors of America, Inc.

#### Designated Safety Officer. Construction Professional shall designate a responsible member of its organization, normally the Project Superintendent, whose duty shall be the prevention of accidents.

#### Duty to Protect and Warn. Construction Professional shall erect and properly maintain at all times, as required by the conditions and progress of the Work, proper safeguards for the protection of workers and the public and shall post danger warnings against any hazards created by the construction operations.

#### Accident Record Keeping and Reporting. Construction Professional shall maintain an accurate record of, and shall promptly report to Owner, all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from Work. Construction Professional shall maintain standard monthly safety reports to submit to Owner and Design Professional.

#### Protection from Rain Water, Surface Water, and Back-up. Construction Professional shall protect all Work, including but not limited to, excavations and trenches, from rainwater, surface water, and back up of drains and sewers. Construction Professional shall furnish all labor, pumps, shoring, enclosures, and equipment necessary to protect and to keep the Work free of water.

#### Dust Control and Cleaning. Construction Professional shall provide dust-proof enclosures or partitions for protection of the Work wherever dusty or dirty Work is performed to avoid the need for dusting upon completion of the Work. At all times, Construction Professional shall keep the premises free from accumulations of waste material or rubbish caused by its employees, Subcontractors, or the Work. Prior to completion of any Trade Contract, Construction Professional shall require the Trade Contractor to remove from the Site all temporary systems, tools, equipment, machinery, and surplus materials not required for the continued performance of any Work. In case of dispute, after forty-eight (48) hours’ Notice, Owner may remove the rubbish and charge the cost to Construction Professional.

#### Geological and Archeological Specimens. If Construction Professional, any Subcontractor, employee, or agent of either should uncover any valuable material or materials, including but not limited to treasure trove, geological specimens, archival material, archeological specimens, or ore, then Construction Professional acknowledges that title to the foregoing is vested in Owner. Construction Professional shall notify Owner upon the discovery of any of the foregoing, shall take reasonable steps to safeguard it, and seek further instruction from Design Professional. Any additional cost incurred by Construction Professional shall be addressed under the provision for changed conditions.

### Submittals. Construction Professional shall provide all Submittals as required by the Contract Documents in accordance with the Submittal Schedule. Construction Professional shall perform no portion of the Work for which the Contract Documents require Submittals until Design Professional has approved the respective Submittal. Construction Professional shall maintain at the Site one copy of all approved Submittals.

#### Design Professional’s Review of Submittals. Design Professional shall review and shall respond to Submittals within the time set forth in the Submittal Schedule or, if no time is provided therein, within fourteen (14) days from receipt, provided that in all instances the Submittals are submitted by Construction Professional in accordance with the required Submittal Schedule, other provisions hereof, and are appropriately organized and labeled. Notwithstanding the foregoing provision, Design Professional may respond to large submittal documents, such as those with over fifty (50) sheets of drawings, within a reasonable time greater than fourteen (14) days, based on the volume and complexity of the Submittal.

#### Corrected Submittals. Construction Professional shall make all corrections required by Design Professional and furnish such corrected copies. If Construction Professional believes that any corrections required by Design Professional constitute a change to the Contract Documents, Construction Professional shall immediately notify Design Professional and Owner and request instructions. If any corrections constitute changes to the Contract Documents, Owner will issue a Change Order; provided, as a condition to an increase in Contract Sum or Contract Time arising therefrom, Construction Professional shall provide Notice in the form and within the time set forth in Section 5.2.2.

#### Cost of Additional Review. Design Professional shall be responsible for an initial and one subsequent review of the Submittal. Where the subsequent Submittal is not accepted due to noncompliance with the Contract Documents, Construction Professional shall be responsible for payment of the additional fees arising from additional time required by Design Professional to complete any subsequent Submittal reviews.

### Hazardous Materials. Construction Professional shall immediately notify Owner and Design Professional of its discovery of and location of any Hazardous Materials (as defined below) at the Site that were not anticipated or contemplated under the scope of work (i.e. “unanticipated Hazardous Materials”). If Construction Professional encounters unanticipated Hazardous Materials on the Site, then Construction Professional shall (i) immediately stop performance of Work or that portion of the Work affected by or affecting such unanticipated Hazardous Materials; (ii) secure the contaminated area against intrusion; (iii) not disturb or remove the unanticipated Hazardous Materials; (iv) not proceed, or allow any Subcontractor to proceed, with any Work or other activities in the area affected by such unanticipated Hazardous Materials until such materials have been properly remediated and until directed in writing to do so by Owner; and (v) take any other steps necessary to protect life and health and the surrounding environment. Construction Professional shall be entitled to adjustment of the Contract Time and/or the Contract Sum pursuant to, and subject to the requirements, conditions, and limitations of, Section 1.4.2.3 for any required demolition, re-work, shutdown, delay, protection of work, disruption, and start-up resulting from such unanticipated Hazardous Materials on the Site for which Construction Professional is not responsible.

#### Definition of Hazardous Materials. The term "Hazardous Materials” shall mean any material or substance within the meaning and definition for “Hazardous Substance” and/or “Hazardous Waste” as those terms are employed and set forth in the Georgia Hazardous Site Response Act and the Comprehensive Environmental Response Compensation and Liability Act as amended, 42 USC § 6901 *et seq.*, and regulations promulgated thereunder (collectively "CERCLA") and any corresponding state or local law or regulation, and shall also include: (a) any Pollutant or Contaminant as those terms are defined in CERCLA; (b) any Solid Waste or Hazardous Constituent as those terms are defined by, or are otherwise identified by, the Resource Conservation and Recovery Act as amended, 42 USC § 6901 *et seq.*, and regulations promulgated thereunder (collectively "RCRA") and any corresponding state or local law or regulation; (c) crude oil, petroleum and fractions of distillates thereof and petroleum releases; (d) any other material, substance or chemical defined, characterized or regulated as toxic or hazardous under any applicable law, regulation, ordinance, directive or ruling, including, but not limited to, asbestos or polychlorinated biphenyl (PCB), and (e) any infectious or medical waste or environmental contamination as defined by any applicable federal or state laws or regulations. The term “Hazardous Materials” does not include those materials that are expressly and specifically required to be installed under the Contract Documents. The term “Hazardous Materials” does not include products or materials that are commonly used in construction or industrial practice, and brought by Construction Professional to the Site, so long as they are used in accordance with the manufacturer’s instructions or Material Safety Data Sheets issued for the product or materials. (*See* Section 2.2.7.4 below.)

#### Prohibition Against Selecting and Installing Products Containing Hazardous Materials. Construction Professional shall not select, install, or otherwise incorporate any products or materials containing Hazardous Materials within the boundaries of the Site unless the products and materials are specifically required in the Contract Documents.

#### Responsibility of Subcontractors as to Hazardous Materials. Construction Professional shall require that each of its Subcontractors warrant to Owner and Design Professional that all materials, products, and assemblies, other than those which specifically and expressly required by the Contract Documents, incorporated, or submitted for incorporation into this Project, are free of Hazardous Materials.

#### Hazardous Materials and Substances Used On the Job Site. Products containing Hazardous Materials may be employed in the performance of Work, but only provided that: (i) such products are used In accordance with the manufacturer’s instructions and Material Safety Data Sheets; (ii) such products are rendered harmless upon completion of the affected Work; (iii) reasonable precautions can be and are taken to prevent foreseeable bodily injury or death to persons involved in the Work or in its proximity; (iv) Construction Professional shall make available to Owner and Design Professional copies of Material Safety Data Sheets (MSDS) for any such products used on the Site, and (v) Construction Professional shall immediately notify Owner, Design Professional, and appropriate regulatory agencies if there is a spill or release or misuse of any such product used on the Site that exceeds State or Federal reportable limits.

#### Hazardous Conditions. Should a hazardous condition not involving Hazardous Materials be encountered on the Site, and should reasonable safety precautions be deemed by Construction Professional to be inadequate to prevent foreseeable personal injury to persons encountering the hazardous condition, Construction Professional shall stop Work in the affected area and immediately report the hazardous condition to Design Professional and Owner. Owner shall undertake, or shall contract (by Change Order) with Construction Professional or contract with a Separate Contractor, to resolve the condition.

### Differing Site Conditions. Construction Professional acknowledges, warrants, and represents that it has visited the premises and has taken into consideration all conditions that might affect the Work. In addition, Construction Professional acknowledges, warrants, and represents that it has reviewed all Bidding Documents before execution by Construction Professional and has correlated personal observations and field measurements with the requirements and conditions of the Bidding Documents. Differing Site Conditions are physical conditions existing at the Project Site which differ materially from (i) conditions explicitly identified in the Bidding Documents (“Type I”) or (ii) conditions reasonably anticipated or expected by a reasonably observant and prudent construction contractor, construction manager, or trade contractor (“Type II”). No Claim arising out of Type II Differing Site Conditions shall be asserted or allowed unless the existing physical conditions (i) were not discovered and could not have been discovered by a reasonably observant and prudent construction contractor, construction manager, or trade contractor, and (ii) could not be reasonably anticipated or expected by a reasonably prudent construction contractor, construction manager, or trade contractor.

#### Notice of Differing Site Conditions. If Construction Professional believes it has encountered Differing Site Conditions, then Construction Professional shall give Notice to Design Professional promptly before conditions are further disturbed, but in no event no later than four (4) days after the first observance of the Differing Site Condition. The Notice identified in this Section shall be in addition to the Notice set forth in Section 5.2.2.

#### Investigation of Differing Conditions; Adjustments to Contract Sum and Contract Time. Upon receipt of the Notice set forth above, Design Professional shall promptly investigate such conditions. If Design Professional determines that the conditions encountered by Contactor are Differing Site Conditions and will result in an increase or decrease in the cost or time required for the performance of Work, then Owner will issue a Change Order and the provisions of Section 3.1 will apply. In such case, if Unit Prices have previously agreed upon and are applicable to the Differing Site Conditions, then the Change Order Sum and any adjustment in the Contract Sum will be determined by such Unit Prices. If Design Professional determines that the conditions are not Differing Site Conditions, or no change in the Contract Sum or Contract Time is justified, or if Construction Professional has not complied with Section 5.2.2, then Design Professional shall so notify Owner and Construction Professional in writing, providing the basis therefor. Protest by either party of Design Professional’s Decision shall be in accordance with 5.2.2.5.

### Office for Contract Compliance Specialist (CCS). Construction Professional shall provide at its expense a temporary office, services, utilities, equipment, and supplies at the Site for the use of the CCS. The office shall be a minimum of one hundred, forty (140) square feet in size; weather-tight; and shall be provided with heat, ventilation, cooling, electric lights, adequate windows, and securable access. The following services and equipment shall be provided: at least four dual-plug 110 v. electrical outlets, and internet service, a desk with drawers, two chairs, a four-drawer metal file cabinet, a plan table and rack. The following items, which may be used in common with Construction Professional’s facilities, shall be provided: wet (flush) toilet, potable water and soap for hand washing, potable water suitable for drinking, access to fax machine and copier, and use of a room with table and chairs to accommodate meetings of a minimum of eight (8) people. The use of a temporary portable wet toilet with a holding tank is acceptable only when a sanitary sewer is not available on the Site. Toilet tissue and paper hand towels shall be provided at all times.

### Contract Provisions Required in All Trade Contracts. Construction Professional agrees to bind every Trade Contractor to the terms of the Contract Documents insofar as they are applicable to its Work, and shall specifically include the following provisions into all Trade Contracts.

#### Construction Professional shall require its Trade Contractors to:

#### Be bound to Construction Professional by the terms of the Contract Documents and to assume toward Construction Professional all the obligations and responsibilities that Construction Professional assumes toward Owner.

#### Pay their Subcontractors upon receipt of payments, the amount allowed on account of such lower-tier Subcontractor’s work to the extent of such lower-tier Subcontractor’s interest therein within seven (7) days of its receipt of payment; provided, however, that retainage shall be released as provided by law and in accordance with the provisions of Section 4.2.2.

#### Require their Subcontractors to pay each of their lower-tier Subcontractors upon such Subcontractor’s receipt of payment such that at all times each of their lower-tier Subcontractors’ aggregate payments shall be in proportion to the Work performed by each lower-tier Subcontractors.

#### Construction Professional shall be required to incorporate the following requirements into all Trade Contracts:

#### Construction Professional shall pay Trade Contractors the amount paid to Construction Professional on account of the Trade Contractor’s Work within seven (7) days of receipt of payment from Owner unless Construction Professional has obtained approval from Owner to pay Trade Contractor within a different period of time or unless the contract between Construction Professional and Trade Contractor provides that no such payment to the Trade Contractor is due (e.g. without limitation, as a result of non-performance under the Trade Contract); provided, however, that retainage shall be released to the Trade Contractor as provided by law and in accordance with Section 4.2.2.

#### Construction Professional shall pay the Trade Contractor a just share of any property insurance proceeds received by Construction Professional and due to Trade Contractor for Work performed by Trade Contractor and paid for by insurance.

#### Trade Contracts shall be assigned to the Owner upon receipt of Notice from the Owner to the Trade Contractor that the Owner has elected to assume the rights and obligations of Construction Professional under said Trade Contract.

#### Construction Professional shall expressly name Owner as an intended third-party beneficiary of the Trade Contract.

#### Conditional Assignment of Trade Contracts. Construction Professional hereby conditionally assigns to Owner all of its interest in all Trade Contracts. Such conditional assignment shall become effective only upon the termination of this Contract, whereupon Owner may elect in writing to assume the rights and obligations of Construction Professional under such Trade Contracts.

## Warranties, Inspections and Correcting the Work

### Construction Warranty. All Work shall be free from defects and conform to the requirements of the Contract Documents. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of good quality. Construction Professional shall, if required, furnish satisfactory evidence as to the kind and quality of materials and Work. Such warranties are referred to herein as the Construction Warranty.

#### Additional Specified Warranties. In addition to the Construction Warranty, Construction Professional shall provide all additional warranties called for in the Construction Documents. These warranties shall be in such form as to permit direct enforcement by Owner against any Subcontractor or third party whose guaranty or warranty is called for.

#### Five Year Bond of Roofs and Walls. Construction Professional shall provide a Five Year Bond on Roofs and Walls as required by Section 6.1.1.11.

#### Warranties no Limitation. The calling for or the furnishing of written warranties or bonds shall in no way limit the Construction Warranty and the contractual obligations of Construction Professional hereunder, including but not limited to the obligation correct the Work as set forth in Section 2.3.4. The remedies stated in this Section are in addition to the remedies otherwise available to Owner, do not exclude such other remedies, and are without prejudice to any other remedies.

### Inspection of the Work. Both Construction Professional and Design Professional have separate duties to inspect the Work. Inspection of the Work by Owner, Design Professional or any third party shall not diminish, relieve, or alter the responsibility of Construction Professional to ensure that all Work complies with the Contract Documents. The failure of Owner, Design Professional, or other third-parties to discover or notify Construction Professional of the existence of Non-Compliant Work shall not relieve Construction Professional of its responsibility to ensure that all Work complies with the Contract Documents, and neither Design Professional's Certificate of Material Completion or Certificate of Final Completion nor payment shall relieve Construction Professional of responsibility to ensure that all Work complies with the Contract Documents.

#### Construction Professional’s Inspection of the Work. Construction Professional has an indivisible, non-delegable, and nontransferable contractual obligation to Owner to make inspections of the Work at all stages to confirm at all times that all Work has been executed strictly in accordance with the Contract Documents. Construction Professional shall not rely on an inspection by Owner, Design Professional, or any other third party to identify Non-Compliant Work.

#### Fire Marshal’s Inspection of the Work. The State Fire Marshal may make inspections at any time. Construction Professional shall request a Fire Marshal Inspection at eighty percent (80%) completion and at one hundred percent (100%) completion and will give Notice when all items on the one hundred percent (100%) inspection report have been completed. Requests shall be in writing with a copy to Owner and Design Professional.

##### Eighty Percent (80%) Inspection. The Eighty Percent (80%) Inspection shall take place when the structural components, including the fire walls, vertical shafts, stairways, smoke stops, hazardous area separations, roof and ceiling assemblies, corridor and door width, and HVAC systems, are in place and open for review of the fire safety components.

##### One Hundred Percent (100%) Inspection. The One Hundred Percent (100%) Inspection shall take place when Construction Professional has completed all of the items noted on the Eighty Percent (80%) Inspection report and the building is ready for issuance of the Certificate of Occupancy.

#### Design Professional’s Inspection of the Work. Design Professional shall inspect all Work for compliance with the Contract Documents. At all times, Construction Professional shall permit Design Professional and its representatives to access the Work for inspection.

##### Notice to Design Professional Prior to Covering Work. If the Contract Documents, laws, ordinances, or any public authority require any Work to be specially tested or inspected, Construction Professional shall give Design Professional timely Notice of its readiness for inspection and, if the inspection is by any authority other than Design Professional, will inform Design Professional of the date fixed for such inspection. Owner shall provide and pay for initial and, unless otherwise provided herein, subsequent independent construction testing required by the Contract Documents. Laboratories for testing services shall be responsible to Design Professional. Inspections by Design Professional shall be made promptly and, where practicable, at the source of supply.

##### False Starts. In the event Construction Professional shall have issued Notice of Readiness prematurely, its action shall be deemed to be a "false start.” Construction Professional shall be liable for the costs and damages resulting from false starts, including but not limited to the salary, professional fees, and travel and living expenses of the persons or parties affected by false starts.

##### Inspection of Work Covered Without Consent of Design Professional. If any Work is covered without written approval or consent of Design Professional or contrary to any provision of the Contract Documents, then Construction Professional shall uncover such Work for inspection by Design Professional. Construction Professional shall be liable for the costs of uncovering such Work, as well as the cost of recovering Work and the fees of Design Professional arising from the review of such uncovered Work.

##### Re-Inspection of Work Covered Pursuant to Consent of Design Professional. Re-Inspection of Work previously covered with the written consent of Design Professional may be ordered by Owner or Design Professional. If so ordered, the Work must be uncovered by Construction Professional. If such Work is found to be in compliance with the Contract Documents, then (i) Owner shall pay the cost of inspection, retesting, and replacement of the Work and (ii) if Construction Professional satisfies all requirements and conditions thereunder, Construction Professional may submit a Claim for compensable delay under Section 1.4.2.3. If the Work is found to be Non-Compliant Work, then Construction Professional shall pay the costs of inspection, retesting, and the cost of uncovering, correcting, replacing, and recovering the Non-Compliant Work and Construction Professional shall not be entitled to assert a Claim for increase in Contract Time or Contract Sum.

### Notice of Non-Compliant Work. If Design Professional identifies an instance of Non-Compliant Work, Design Professional shall issue a Notice of Non-Compliant Work. The Notice of Non-Compliant Work shall be in writing, dated, signed by Design Professional, and addressed to Construction Professional with a copy to Owner. The Notice of Non-Compliant Work shall include a description of the Non-Compliant Work, a citation to the provision of the Contract Documents (or incorporated document or standard) that has been violated, and a reasonable period to correct the Non-Compliant Work (“Cure Period”). If Construction Professional is unsure or unaware of any information necessary to correct the Non-Compliant Work, it shall immediately request such information in writing. In the event that Owner incurs increased costs due to re-inspection of Work that was found to be Non-Compliant, Construction Professional shall be liable for the costs of the re-inspection, including but not limited to the salary, professional fees, and travel expenses of the Design Professional or inspection firm.

### Duty to Promptly Correct Work. Construction Professional shall promptly correct any Non-Compliant Work. The duty to correct the Work shall apply whether the Non-Compliant Work is discovered before or after Material Completion and whether or not designed, fabricated, installed, or completed. Construction Professional shall bear the costs of correcting such Non-Compliant Work, including, without limitation, additional testing and inspections and shall bear the expense of restoring all Work of Separate Contractors affected or destroyed by such removal or replacement. Construction Professional shall give prompt Notice upon completion of the correction of the Non-Compliant Work. In the absence of such Notice, it shall be and is presumed under this Contract that there has been no correction of the Non-Compliant Work.

### Correction of Non-Compliant Work Prior to Material Completion. Construction Professional shall promptly remedy any Non-Compliant Work in accordance with the Contract and within the Cure Time stated in the Notice of Non-Compliance.

#### Notice of Non-Compliance for Failure to Maintain Schedule. If Design Professional issues a Notice of Non-Compliance for failure to maintain the Overall Project Schedule, Construction Professional shall deliver to Design Professional and Owner a written plan explaining how Construction Professional intends to bring the Project back in compliance with the Overall Project Schedule within seven (7) days of the issuance of the Notice of Non-Compliance. Construction Professional's plan must provide sufficient detail to allow Design Professional and Owner to determine the proposal's feasibility. The obligations of this Section are without limitation to Owner’s right to require acceleration pursuant to Section 2.2.2.4

#### Owner’s Option to Accept Non-Compliant Work. If Design Professional and Owner deem it inexpedient to correct Non-Compliant Work, Owner may agree, in writing, to accept the Non-Compliant Work and make an equitable deduction from the Contract Sum which shall be deducted from Construction Professional’s next payment. The Design Professional shall determine the equitable deduction, which shall be a Design Professional’s Decision, which Construction Professional may Protest under Section 5.2.2.5. Unless Owner issues the written acceptance identified in this Section, Non-Compliant Work shall not be deemed accepted under this Section.

#### Owner’s Remedies for Breach of Notice of Non-Compliant Work or Failure to Prosecute the Work. If Construction Professional does not correct the Non-Compliant Work within the Cure Time stated in the Notice of Non-Compliance, Construction Professional shall be deemed to have breached the Notice of Non-Compliant Work. If Construction Professional breaches a Notice of Non-Compliant Work or fails to prosecute the Work in accordance with the Contract Documents, Owner may, after giving five (5) days’ Notice to Construction Professional, (i) correct the Non-Compliant Work, prosecute the Work, or supplement the labor of Construction Professional or its Subcontractors and (ii) deduct the costs thereof from any payment then or thereafter due to Construction Professional and recover any resulting deficit from Construction Professional. The remedies stated in this Section are in addition to the remedies otherwise available to Owner and are without prejudice to any other remedies.

### Correction of Non-Compliant Work After Material Completion. Construction Professional shall promptly remedy any Non-Compliant Work upon receipt of a Warranty Complaint received within one (1) year from the date of Material Completion.

#### Construction Professional’s Initial Response to Warranty Complaint. Within seven (7) days of receipt of a Warranty Complaint from the Owner, Construction Professional shall issue a written response to the Owner stating Construction Professional’s plan to correct the Work and the time needed to correct the Work. If Construction Professional believes the Warranty Complaint is the result of a design defect or Using Agency abuse, Construction Professional shall so state in its initial response. A Design Professional’s Decision will be issued as to whether the Warranty Complaint is a result of a design defect or user abuse.

#### Time for Correction of Warranty Complaint. Construction Professional shall promptly commence correction of the Work unless the Design Professional agrees that the Warranty Complaint is the result of a design defect or Using Agency abuse. Construction Professional and its Subcontractors shall make no visits to the Site without first giving Notice to the Using Agency and Owner. Warranty Complaints should be corrected within fourteen (14) days of receipt unless the Work cannot be corrected within fourteen (14) days, in which case Construction Professional shall notify the Owner in its initial response.

#### Warranty Complaints - Emergency Situations. If the Warranty Complaint is an emergency, this will be noted and Owner may (i) require Construction Professional to correct the Work immediately or (ii) if the emergency involves risk of property damage or personal injury or death, Owner may proceed at once to remedy the Warranty Complaint. If, pursuant to the aforementioned clause (i), Construction Professional is requested to correct the Work, it shall respond to the Warranty Complaint in emergency situations within twenty-four (24) hours. If Construction Professional fails to respond within such time limit, Owner may remedy the Warranty Complaint and charge the cost thereof to Construction Professional, including but not limited to any resulting damage to the Work or other property. If Construction Professional corrects the work and it is determined that the Warranty Complaint is not the responsibility of Construction Professional, then Construction Professional shall be promptly paid for the cost of the corrective work. If, pursuant to the aforementioned clause (ii), Owner proceeds to remedy the Warranty Complaint in an emergency situation, then Owner will charge the cost thereof to Construction Professional, including but not limited to any resulting damage to the Work or other property.

#### Owner’s Remedy Upon Construction Professional’s Failure to Remedy Warranty Complaints. If Construction Professional does not provide the initial response within seven (7) days or remedy the Warranty Complaint within the time specified in its initial response, upon five (5) days' Notice, Owner may remedy the Warranty Complaint, including but not limited to any resulting damage to the Work or other property, at the expense of Construction Professional.

#### Warranty Walk-Through. Construction Professional shall participate in a walk-through of the Project with the Owner and Design Professional to review Warranty Complaints. The walk-through shall be scheduled by the Owner within one year from Material Completion.

### No Limitation. Nothing contained in this Section 2.3 shall be construed to establish a period of limitation with respect to Construction Professional's liability for defective or Non-Compliant Work under this Contract, at law, or in equity. The remedies stated in this Section 2.3 are in addition to the remedies otherwise available to Owner and are without prejudice to any other remedies.

# Change Orders

## Changes to the Work

### Change Orders. A Change Order is a written instrument, executed by Owner, which changes the Contract Documents, including but not limited to changes in the Work or adjustments in Contract Time or Contract Sum. Owner may order changes in the Work pursuant to a Change Order without invalidating the Contract and without notice to sureties. Without a Change Order executed by Owner, Construction Professional shall not make any changes in the Work or perform any work that is not a part of the Contract Documents, nor shall Construction Professional receive any compensation or make any Claim therefor.

#### Construction Professional Requests for Change Orders. If Construction Professional believes that any act or omission of Owner or Design Professional results in a change in the Work as required by the Contract Documents, then it shall submit a Notice of Claim in the form and within the time set forth in Section 5.2.2. If Design Professional determines that the Work has been so changed and that Construction Professional has complied with Section 5.2.2, it shall provide Notice to Owner and Owner will issue a Change Order under this Section 3.1. Construction Professional or Owner may protest Design Professional’s Decision as provided in Section 5.2.2.5.

### Initiation of Change Orders. Unless otherwise expressly provided herein, Change Orders are initiated by Owner’s issuance of an Incumbrance Record. Upon issuance of an Incumbrance Record, Design Professional shall complete a description of the scope of Work or change in Work to be incorporated into a proposed Change Order, which shall be forwarded to Construction Professional and Owner.

#### Construction Professional’s Response to Proposed Change Order. Construction Professional shall respond to the proposed Change Order within fourteen (14) calendar days, or within such other reasonable time as Owner may direct. Construction Professional’s response shall state the estimated impact, if any, of the Change Order on the Contract Time and Contract Sum and shall include a justification for any proposed increase in Contract Time and Contract Sum, including an itemized breakdown as provided in Section 3.1.2.1.2. Construction Professional’s failure to include a proposed change in Contract Time or in Contract Sum shall waive any Claim for any increase in Contract Time and Contract Sum related to or arising out of the Change Order.

##### Construction Professional’s Justification for Increase in Contract Time. As a condition to Owner’s approval of an increase in Contract Time for Change Order Work, Construction Professional must demonstrate on the critical path of the Overall Project Schedule that the Change Order Work will result in an increase in the time required to complete the Work beyond the Material Completion Date. No extension to the Contract Time shall be allowed unless the Change Order Work will increase the duration of the critical path beyond the Material Completion Date. In addition, Construction Professional shall identify any reduction in Contract Time that may result from any proposed Change Order.

##### Itemized Breakdown of Change Order Costs. As a condition to Owner’s approval of an increase in the Contract Sum, Construction Professional shall include an itemized breakdown of the change in Contract Sum which lists the estimated Allowable Change Order Costs in the form prescribed by Owner. In addition, Construction Professional shall identify the amount of any cost savings that result from a proposed Change Order. The breakdown is submitted to allow Design Professional and Owner to make a judgment on the dollar amount of the adjustment in the Contract Sum but shall not be incorporated into the Change Order. Such costs should not exceed the costs of like services or materials in the locality of the Project and, in the case of a Force Account, the costs represented do not exceed the actual costs to CM/GC; and that the quantities shown do not exceed actual requirements.For a Change Order payable by lump sum (“Lump Sum Change Order”), upon acceptance by Owner, the agreed Change Order Sum shall be the lump sum, and Construction Professional shall be paid the Change Order Sum upon completion of the Change Order Work. Construction Professional shall also furnish detailed documentation of the breakdown, which shall include a separate breakdown for each Trade Contractor’s estimated charges that has been prepared by each Trade Contractor and submitted on the letterhead of the Trade Contractor or via electronic mail from the Trade Contractor.

#### Sole Source Change Orders. If a proposed Change Order designates a Sole Source from which Construction Professional is required to procure goods or services necessary to perform the Work, which Sole Source has not been designated previously, and if the designated Sole Source refuses to provide to Construction Professional the warranties, bonds, terms or schedule required under the Contract Documents, then Construction Professional shall immediately give Notice thereof to Owner and, if possible, shall accompany said Notice with a proposal to eliminate the Sole Source designation while providing goods or services equal in quality or function. Owner may then require Design Professional to revise the proposed Change Order so as to eliminate the designation of the Sole Source by incorporation of Construction Professional's proposal or otherwise. Upon revision of the Construction Documents by Design Professional and approval thereof by Owner, Owner may issue a Change Order incorporating such revision. If Owner decides to retain the Sole Source in the Change Order and Construction Professional cannot acquire the full contractually required warranties from the Sole Source, Construction Professional shall be held only to the warranty terms and schedule obtainable from the Sole Source. Owner may, in its discretion, hire a Separate Contractor to provide such Sole Source goods or services.

#### Deductive Change Orders. If Owner issues a deductive Change Order regarding the reduction in Contract Sum or Contract Time, then Construction Professional shall provide all information required under Section 3.1.2.1 that would apply to increases in Contract Sum or Contract Time. Construction Professional’s failure to provide information or documentation related to reductions in Contract Sum or Contract Time shall not preclude Owner from equitably adjusting the Contract Sum or Contract Time.

#### Review of Proposed Change Order Terms. Design Professional and Owner shall review Construction Professional’s response and shall agree or disagree with any proposed changes in Contract Time, Contract Sum, and any other adjustments proposed by Construction Professional within fifteen (15) days of receipt. If Owner does not provide Notice of its approval within the time set forth in this Section, then the changes proposed by Construction Professional shall be deemed rejected by Owner.

##### Disagreement as to Change in Contract Sum. If Design Professional or Owner disagree with Construction Professional as to the amount of the proposed adjustment to the Contract Sum and such disagreement is not resolved within twenty-one (21) days after Owner’s receipt of Construction Professional’s response under 3.1.2.1, then Owner, if it desires the Change Order Work to proceed, may direct the Change Order Work to commence under a Force Account Change Order in accordance with Section 3.1.5. In no event shall any increase in the Contract Sum for such Change Order Work exceed the increase identified in Construction Professional’s response under Section 3.1.2.1.

##### Disagreement as to Change in Contract Time or Other Disagreements. If Design Professional or Owner disagree with Construction Professional as to matters other than adjustments to Contract Sum, including but not limited to proposed adjustments to Contract Time, and such disagreement is not resolved within twenty-one (21) days after Owner’s receipt of Construction Professional’s response under 3.1.2.1, then Owner, if it desires the Change Order Work to proceed, may direct the Change Order Work to commence, and the dispute shall be resolved as set forth in Section 5.2. In no event shall any increase in the Contract Time exceed the increase identified in Construction Professional’s response under Section 3.1.2.1.

### Acceptance of Proposed Change Order. If Owner agrees with Construction Professional’s proposed changes submitted pursuant to Section 3.1.2.1, then Owner shall execute the Change Order and provide Notice of acceptance thereof by issuing a Proceed Order. Upon Owner’s acceptance and execution, the proposed Change Order shall be binding and of full force and effect as a Change Order. All Change Orders shall be performed under the conditions of the original Contract Documents except as specifically modified by the Change Order. All Change Orders must state that the Material Completion Date either is not changed or is increased or decreased by a specific number of days. If no adjustment in Contract Time is stated in a Change Order, then Construction Professional shall be entitled to no adjustment to the Material Completion Date. Construction Professional shall proceed with the Change Order Work either (a) if no time is stated in the Change Order, upon receipt of Owner’s Proceed Order or (b) if a time is stated in the Change Order or Proceed Order, at such time.

### Effect of Acceptance. The acceptance or execution of a proposed Change Order by Construction Professional shall constitute conclusive evidence of Construction Professional’s agreement to the changes in the Work, to the Change Order Sum (if applicable), and the adjustments, if any, to the Contract Sum and the Contract Time. Construction Professional, by accepting or executing a proposed Change Order, waives and releases any Claim against Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the Change Order, except as explicitly stated in the Change Order.

#### Change Order Terms. The change in Contract Time and Contract Sum (if any) provided by the Change Order constitutes compensation in full to Construction Professional for the Change Order Work and accounts for all delays and impacts related thereto.

### Force Account Change Orders. A Force Account may be used in the event (i) Construction Professional and Owner cannot agree on the Change Order Sum for a Lump Sum Change Order, (ii) costs associated with a Change Order cannot be reasonably determined prior to beginning the Change Order Work, (iii) Owner and Construction Professional have agreed to Unit Prices for the Work but cannot determine the number of Units involved in the Change Order (“Unit Price Change Order”), or (iv) Owner otherwise determines. The Force Account authorizes the CM/GC to proceed with the Change Order Work without agreeing to the Change Order Sum in advance. Upon completion of the Force Account Change Order Work, a Change Order is executed that sets the Change Order Sum on the basis of the actual Allowable Change Order costs incurred, or in the case of Unit Prices, on the basis of the actual number of units.

#### Initiation of Force Account Change Order. A Force Account is initiated by the issuance of a an Incumberance Record and authorized by Account Authorization. The Force Account Authorization shall include the Design Professional’s description of the scope of Work, the Stipulated Maximum Sum, and the Authorization to commence Work either on a particular date or, if no date is provided, upon issuance of the Force Account Authorization. The Stipulated Maximum Sum shall be based on the estimated Allowable Change Order Costs as set forth in Section 3.1.6 and shall set forth the maximum amount that Construction Professional shall be paid for the Change Order Work. It shall be the sole responsibility of Construction Professional to apply in writing to Owner, not to Design Professional, for an increase in the Stipulated Maximum Sum if the total value of the Work is approaching and might exceed the Stipulated Maximum Sum.

#### Accounting for Allowable Change Order Costs. As the Change Order Work progresses, Construction Professional must provide a daily accounting of Allowable Change Order Costs incurred in accomplishing the Work under a Force Account Change Order. With respect to Unit Price Change Orders, Construction Professional must provide a daily accounting of units completed. Owner shall be permitted, on a daily basis, to verify such records and information, and may require such additional records as are necessary to determine the Allowable Change Order Costs of such Change Order Work. Allowable Change Order Costs, except as otherwise agreed to in writing by Owner, shall not exceed those prevailing for the trades or crafts, materials, and equipment in the locality of the Project.

#### Determining Final Cost of Force Account. Within fourteen (14) days after the conclusion the Change Order Work ordered by a Force Account Change Order, Construction Professional and Owner shall determine the total Change Order Sum. Such Change Order Sum shall be incorporated into and finalized in the Force Account Change Order.

#### Interim Payment for Force Account Work. If the Work performed under a Force Account Change Order extends beyond one monthly Payment Application, Construction Professional may request payment for the portion of the Change Order Work performed in that month. In such case, Owner will issue a Force Account Change Order which shall include the Force Account Change Order Work performed in that month. The Force Account Change Order must be executed before Construction Professional may include the Force Account Work on a Payment Application.

### Change Order Sum.

#### Lump Sum and Unit Price Change Orders. The compensation due Construction Professional under any Lump Sum Change Order shall be determined in advance based upon the total of the estimated Allowable Change Order Costs identified below. The lump sum amount set forth in a Lump Sum Change Order shall be the Change Order Sum. Under a Unit Price Change Order, the unit price multiplied by the number of units shall be the Change Order Sum, and no markup provided in Section 3.1.7.6 shall be allowed on such amounts. The Change Order Sum for each Lump Sum and Unit Price Change Order shall be the exclusive compensation for each such Change Order.

#### Force Account Change Orders. For Force Account Change Orders, the Change Order Sum shall solely include the Allowable Change Order Costs listed in Section 3.1.7 that Construction Professional incurs in performing the Force Account Work, but such Change Order Sum shall not exceed Stipulated Maximum Sum established pursuant to Section 3.1.5.1.

### Allowable Change Order Costs. Allowable Change Order Costs include the items in this Section 3.1.7, but only those costs that are incurred in the performance of the Change Order Work.

#### Allowable Trade Contractor Costs. Allowable Trade Contractor Costs for Change Order Work shall exclusively include the costs identified in this Section 3.1.7.1.

##### Trade Contractor Labor and Materials. Allowable Trade Contractor Costs for Change Order Work shall include the costs of all materials and equipment used in completing the Change Order Work and the costs of all labor to physically perform the Change Order Work but shall not include any charges for small tools or other expendables.

##### Trade Contractor Travel Costs. Allowable Trade Contractor Costs for Change Order Work include a stipend for travel if the Trade Contractor’s office is more than one hundred (100) miles from the Project Site. The stipend shall be allowed only if the Trade Contractor’s employees receive a per diem under current company policy and only if the full value of the stipend is actually paid to the Trade Contractor’s employees. The stipend shall not exceed fifty dollars ($50.00) per day for each Trade Contractor employee performing the Change Order Work for the number of days determined by Design Professional to be attributable to the Change Order Work.

##### Costs of Trade Contractor Bonds or Subcontractor Default Insurance. Allowable Trade Contractor Costs for Change Order Work include the costs of payment and performance bonds covering the Trade Contractor’s Work or the Cost of Subcontractor default insurance.

#### Trade Contractor Markup. Allowable Trade Contractor Costs for Change Order Work include a markup of up to twenty percent (20%) on the Trade Contractor’s costs under Section 3.1.7.1 to compensate the Trade Contractor for its overhead and profit. If the Trade Contractor uses a Subcontractor to perform a portion of the Change Order Work, the Subcontractor may receive a markup for its overhead and profit but the total markup for both the Trade Contractor and the Subcontractor shall not exceed twenty percent (20%) of the costs under Section 3.1.7.1.

#### Construction Professional’s Payment and Performance Bond and Insurance Costs. Allowable Change Order Costs include the increases in premiums for Construction Professional’s Payment Bond and Performance Bond and Insurance, but solely to the extent that such increased costs are a result of the Change Order. In no event shall Construction Professional’s compensation for such costs exceed two percent (2%) of the Allowable Change Order Costs (excluding this Section).

#### General Requirements Cost. Allowable Change Order Costs include General Requirements Costs, which are the costs of the Work listed in Division 1 of the Contract Specifications.

#### Allowable General Conditions Costs. If the Change Order authorizes a compensable increase in Contract Time, Allowable Change Order Costs include General Conditions Costs listed in Section 3.1.7.5 to the extent incurred exclusively for such Change Order Work .

##### Field Office Costs. General Conditions Costs include all costs associated with establishing, equipping, operating, maintaining, and demobilizing the field office.

##### Utility Costs. General Conditions Costs include the costs of utilities such as water, power, gas, sewer, and fuel required for Construction Professional’s operations at the Project Site, except to the extent such costs are included in the rental rates for such equipment in accordance with the Contract Documents.

##### Permits, Fees, etc. General Conditions Costs include the cost of permits, fees, licenses, tests, royalties, sales, use, or any other such taxes, tariffs, or duties related to the Work for which Contract is responsible, but not including any fines or interest due to Construction Professional’s failure to meet legal requirements associated with such items

##### Travel Expenses. General Conditions may include travel costs. If Construction Professional bills for mileage or per diems, such mileage or per diems shall comply with the IRS Standard Rates for Business unless a different rate is negotiated.

##### Labor Costs. General Conditions Costs include the wages or salaries of Construction Professional’s personnel stationed at the Site or when off-site and performing administrative functions essential to the Project. Such costs may also include costs incurred by Construction Professional for taxes, insurance contributions, pensions, and other benefits for such personnel

#### Markup for General Conditions Costs and Fee. If Construction Professional is not awarded its General Conditions Costs pursuant to Section 3.1.7.5, Construction Professional shall be allowed a mark-up on the Allowable Change Order Costs set forth above as compensation for Construction Professional’s General Conditions Costs and profit(“Mark-Up”). The Mark-Up percentage shall not exceed seven and one-half percent (7 ½%) and shall be set when the parties determine the Stipulated Maximum Sum. If Construction Professional is awarded General Conditions Costs under Section 3.1.7.5, Construction Professional’s Mark-Up shall be equal to 4% of the Allowable Change Order Costs without any additional Mark-Up.

# Compensation

## Payment

### Payment Applications. Construction Professional shall request payment by submitting a Payment Application in accordance with the terms below. No payment shall become due to Construction Professional until a proper Payment Application is submitted.

#### Timing of Payment Applications. Construction Professional shall submit a Payment Application by the fifth (5th) day of each month, but no earlier than the first (1st) day of each month, for the Work performed during the previous month. Construction Professional shall submit no more than one (1) Payment Application during each month.

#### Form of Application. The Payment Application shall allocate and itemize the total sum billed by CSI Division in the same format as the Schedule of Values.

##### Materials Stored. If the Payment Application includes stored materials, payment shall be conditioned upon submission of bills of sale or other documents to establish Owner's title to such materials, adherence to Owner’s procedures to adequately protect Owner's interest, and execution of an agreement for storing materials off-site if the Payment Application includes request for payment for off-site stored materials. Construction Professional is responsible for the existence, protection, and, if necessary, replacement of materials at least until execution of the Final Certificate of Design Professional.

##### Payment Affidavit. Construction Professional shall submit the Payment Affidavit on the form included in the GSFIC Forms Packet whenever requesting payment for Material Completion, Final Completion or the release of any retainage.

##### Consent of Surety. Construction Professional shall obtain the Surety’s consent, on the form included in the Forms Packet, for payment for Material Completion, Final Completion or any retainage release. Owner may require Construction Professional to obtain the Surety’s consent for payment whenever Construction Professional submits a Payment Application and there are outstanding claims for payment against Construction Professional for Work on this Project.

#### Representations of Construction Professional. The Payment Application constitutes a representation by Construction Professional to Owner that (i) the quality of the Work covered by the application is in accordance with the Contract Documents; (ii) Construction Professional is entitled to payment in the amount requested; (iii) all Work covered by any previously approved Payment Application, for which Construction Professional has been paid, is free and clear of liens, claims, security interests or encumbrances, and (iv) title to all Work covered by the Payment Application will pass to Owner no later than the time of payment.

#### Schedule of Values. Within ten (10) days after execution of the Contract, Construction Professional shall submit a Schedule of Values of the Work to assist Design Professional in reviewing Payment Applications. The Schedule of Values shall allocate and itemize the Contract Sum by CSI Division, or such greater detail as Owner or Design Professional require, based on the relative cost of each category of work. If requested, Construction Professional shall provide evidence of the accuracy of the Schedule of Values.

#### Amount of Progress Payment Application. Unless otherwise provided by the Contract Documents, the amount of each individual progress Payment Application shall be computed as follows:

* Take that portion of the total Contract Sum properly allocable to completed Work, as determined by multiplying the percentage of completion of each category of Work by the share of the total Contract Sum allocated to that portion in the Schedule of Values. Inclusion of amounts for materials will be subject to Section 2.1.7 and Section 4.1.1.2.1.
* Subtract the amounts for retainage under Section 4.2.
* Subtract the aggregate of previous payments.
* Subtract amounts, if any, to be deducted, withheld, or nullified under Section 4.1.4 or any other provision of the Contract Documents or applicable law.

### Processing of Payment Application. Upon submission, the Payment Application will be reviewed by the Contract Compliance Specialist, Design Professional, and Owner’s Representative.

#### Contract Compliance Specialist Review of Payment Application. Upon submission, the Contract Compliance Specialist shall review the Payment Application for accuracy and to determine whether the Work is in place. If the Contract Compliance Specialist concurs that the Work is in place, he or she shall approve the Payment Application. If the CCS determines that the Payment Application is inaccurate, he or she shall confer with Construction Professional. If Construction Professional and the CCS cannot agree on the appropriateness of the Payment Application in question, Design Professional shall render a decision.

#### Design Professional’s Review of Payment Application. Design Professional shall visit the Site after Construction Professional and CCS have reviewed the Payment Application and conduct such inspections and reviews as are necessary to make a decision as to the accuracy of the Payment Application. Not later than seven (7) days after receipt of the Payment Application, Design Professional shall issue its certificate for such amount as it decides to be properly due or state in writing its reasons for withholding any sums in its certificate.

#### Owner’s Review of Payment Application. Owner shall review the Payment Application to determine the sufficiency, accuracy, and correctness of the Payment Application and all backup. If Owner determines that the Application is inaccurate or the backup is insufficient, it shall confer with Construction Professional.

### Timing of Payments. Subject to Owner’s right to withhold amounts in accordance with Section 4.1.4 and Owner’s right to adjust for overpayments, Owner shall make payment to Construction Professional no later than thirty (30) days after receipt of a properly completed Payment Application.

#### Disputed Payments. Owner and Construction Professional agree to use their best efforts to resolve all disputes concerning the Payment Application during the said thirty (30) day payment period. If Owner disputes a portion of the Payment Application, Owner shall make payment of all undisputed amounts within the thirty (30) day payment period.

#### Late Payments and Interest. Should Owner fail to timely pay as required by Section 4.1.3, Construction Professional shall provide Notice to Owner in writing by certified mail. If Owner fails to pay within seven (7) days of receipt of the Notice, Construction Professional shall receive, in addition to the payment due, interest thereon at the rate of one-half percent (1/2%) per month.

#### Prompt Payment Act. Pursuant to O.C.G.A. § 13-11-7(b), Owner and Construction Professional expressly agree to payment periods for Owner’s Payment to Construction Professional and interest rates on late payments that become due to Construction Professional for late payment by Owner that are different than those set forth in O.C.G.A. § 13-11-4(a) and O.C.G.A. § 13-11-7(a). The payment periods and interest rates set forth herein shall control to the exclusion of any provisions set forth in the Georgia Prompt Pay Act, O.C.G.A. § 13-11-1, *et seq.*, and the provisions of said Act are waived.

### Payments Withheld. Design Professional or Owner may withhold payment, or nullify the whole or part of any previous Payment Application, to such extent necessary to protect Owner from loss on account of any one or more of the following: (i) Non-Compliant Work; (ii) failure of Construction Professional to make payments due to Trade Construction Professionals; (iii) reasonable evidence that the Contract cannot be completed for the unpaid Contract Sum; (iv) damage to a Separate Contractor or to any other third party, or reasonable evidence that third parties may file claims against Owner due to acts or omissions of Construction Professional; (v) failure to maintain the Overall Project Schedule, (vi) requests for or prior payment of costs that are not required to be reimbursed hereunder, and (vii) any other reason Owner or Design Professional may withhold, reduce, deduct, or setoff, or demand return of, payment or certification for payment hereunder, including but not limited to reducing payment for liquidated damages under Section 1.4.1.3. When the grounds for withholding payment are remedied (if applicable), payment shall be made for amounts withheld because of them. In the case of withholding payment for failure to pay Trade Contractors, Owner may agree to payment upon receipt of a satisfactory Consent of Surety.

### Payment Not Acceptance of Work. Neither payment by Owner nor any partial or entire use or occupancy of the Project by Owner or Using Agency shall constitute an acceptance of Work not in accordance with the Contract Documents.

### Documentation of Costs. Construction Professional shall keep full and detailed records and accounts related to the costs of the Work and exercise such controls as may be necessary for proper financial management to substantiate all costs incurred. Owner and Owner’s designated auditor shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, Construction Professional’s records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor’s proposals, purchase orders, vouchers, memoranda, and other data relating to this Contract. Construction Professional shall preserve such records for a period of three (3) years after final payment, or for such longer period as may be required by law.

## Retainage

### Retainage. Until the payment for Material Completion, Owner shall withhold retainage in the amount of five (5%) from each Payment Application, subject to the terms below.

#### Retainage Release. When Material Completion is achieved, retainage shall be paid to Construction Professional with the payment for Material Completion in accordance with the terms of Section 6.1.

### Trade Contractor’s Retainage Release. Upon request by Construction Professional, Owner may, in it is sole discretion, permit an amount equal to the retainage associated with a Trade Contractor to be separately released from the retainage held by Owner upon completion of the Trade Contractor’s Work.

#### Form of Retainage Release Request. To request Trade Contractor retainage release, Construction Professional shall submit a Trade Contractor Retainage Release Form which shall certify that the Trade Contractor’s Work is complete and the amount due, shall contain a release of all claims by the Trade Contractor and shall be executed by the Trade Contractor, Construction Professional, and Design Professional.Before receiving a Trade Contractor’s retainage release, Construction Professional will be required to furnish a Payment Affidavit executed in the exact form as shown in GSFIC Forms Packet.

# CONTRACT SUSPENSION, TERMINATION AND CLAIMS

## Suspension of Work, Termination

### Right to Suspend Work.

#### Owner and Design Professional’s Right to Suspend Work. Owner and Design Professional may stop the Work upon observation of apparent Non-Compliant Work or whenever such stoppage may be necessary to protect the Work or protect the interests of Owner. The stop work order may be given orally, with Notice to be provided to Construction Professional within seventy-two (72) hours. If the Work is later determined by Design Professional to be conforming Work, and Construction Professional then complies with Section 5.2.2, Construction Professional shall be entitled to a compensable time extension in accordance with Section 1.4.2.3. If the Work is determined by Design Professional to be Non-Compliant Work, then Construction Professional shall not be entitled to any increase in Contract Sum or extension of Contract Time, and Owner may exercise any right hereunder with regard to such Non-Compliant Work.

#### Owner’s Right to Suspend Work for Convenience. Owner may suspend the Work at any time, at Owner's sole discretion, upon giving Construction Professional five (5) days’ Notice thereof. Upon resumption of the Work, if Construction Professional complies with Section 5.2.2, Construction Professional shall be entitled to a compensable time extension in accordance with Section 1.4.2.3.

### Owner’s Right to Terminate Contract Without Cause. Owner may terminate the Contract at any time, without cause, upon giving Construction Professional fifteen (15) days’ Notice. In the event Owner elects to terminate the Contract after, Owner shall pay Construction Professional, in accordance with the applicable provisions of Section 4 for all Work executed prior to termination, and for the costs incurred by Construction Professional because of the termination, up to the unpaid balance of the Contract Sum.

### Owner’s Right to Terminate Contract for Cause. Owner may terminate the Contract for the causes listed below, without prejudice to any other right or remedy under this Contract, at equity, or in law, upon giving Construction Professional and its Surety fifteen (15) days’ Notice of Owner’s intent to terminate for cause.

#### Causes for Termination. Owner may terminate the Contract if Construction Professional is in breach of a Notice of Non-Compliance; if Construction Professional makes a general assignment for the benefit of its creditors or if a receiver is appointed on account of its insolvency; if Construction Professional persistently disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction over the Project; if Construction Professional abandons the Project for a period of fourteen (14) or more days; if Construction Professional is otherwise guilty of a substantial violation of any provision of this Contract; or for any reason that would permit Owner to terminate the Contract under applicable law.

#### Owner’s Right to Complete Work Upon Termination. Upon termination, Owner shall have the right to take possession of the Work, together with all materials, equipment, tools, and improvements thereon and to finish the Work by whatever reasonable method Owner may deem expedient.

#### Payment Due Upon Termination for Cause. Upon termination for cause, Construction Professional shall not be entitled to receive any further payment until the Work is completed. Upon completion, Construction Professional shall pay to Owner the positive excess of (i) Owner’s cost of completion of the Work, plus any damages incurred by Owner due to such termination and the basis for such termination, including but not limited to liquidated damages for delays in completion, over (ii) the unpaid balance of the Contract Sum. Upon completion, Owner shall pay the positive excess of (i) the unpaid balance of the Contract Sum over (ii) Owner’s cost of completion of the Work, plus any damages incurred by Owner due to such termination or the basis for such termination, including but not limited to liquidated damages for delays in completion.

#### Determination of Wrongful Termination. In the event a court of competent jurisdiction determines (or the parties agree to settle with a consent determination) that a termination for cause is wrongful or not authorized by the terms of the Contract, the termination shall be considered to be a Termination For Convenience, and the sole remedy available to Construction Professional shall be the contractual treatment of the termination pursuant to Section 5.1.2 without any other damages, relief, or compensation.

### Construction Professional’s Right to Terminate. Construction Professional may terminate the Contract for the causes listed below upon giving Owner fifteen (15) days’ Notice of Construction Professional’s Intent to Terminate.

#### Termination for Project Delay. Construction Professional may terminate the Project if the Work is stopped for a period of thirty (30) days or more, through no fault of Construction Professional, because of (i) an order of any court or other public authority having jurisdiction over the Project, (ii) an act of government (excluding Owner) that requires all Work to be stopped, such as a declaration of a national emergency, or (iii) a suspension by Owner under Section 5.1.1.2.

#### Termination for Nonpayment. If Owner fails to pay Construction Professional the amount due within the time required by the Contract Documents, Construction Professional must give Notice to Owner of such nonpayment. If Owner fails to pay such amount or provide a Notice of a dispute as to the amount sought by Construction Professional within thirty (30) days after receipt of Construction Professional's Notice of nonpayment, Construction Professional may terminate this Contract.

#### Payment Due Upon Termination. If Construction Professional terminates the Contract for cause as provided in Section 5.1.4, upon providing Owner with all releases and waivers of liens in the same manner as would be required upon Final Completion, Owner will pay Construction Professional, as provided in the applicable provisions of Section 4, for the Work properly executed, and, only if Construction Professional submits a Claim in the manner and time provided in Section 5.2.2, for any proven damages sustained or cost incurred for any materials, equipment, tools, construction equipment and machinery, and cancellation charges on obligations of Construction Professional outstanding as of the termination. The remedies provided in this Section shall be the sole remedies of Construction Professional for such termination for cause.

### Notices of Termination. Notwithstanding any other provision of this Contract, if either party elects to terminate this Contract under any provision in Section 5.1, then the terminating party will issue a written Notice of Termination that shall be sent by Certified Mail, Return Receipt Requested.

### Cumulative Remedies. Except as otherwise provided herein, each of Owner’s rights and remedies provided for in this Contract shall be cumulative and shall be in addition to every other right or remedy provided for in this Contract, at law, or in equity, or by statute or otherwise. The exercise or beginning of the exercise of any one or more of the rights or remedies provided for in this Contract, at law, or in equity, or by statute or otherwise, shall not preclude the simultaneous or later exercise of any or all other rights or remedies provided for in this Contract, at law, or in equity, or by statute or otherwise. Owner’s rights and remedies hereunder shall survive any termination by Owner or Construction Professional.

## Contract Claims and Disputes

### General Provisions.

#### No Arbitration. There is no agreement to arbitrate any dispute arising under the Contract Documents. Any and all references to arbitration in any of the Contract Documents, including without limitation any exhibits, attachments, or references, are hereby deleted and rendered null and void.

#### Continuation of the Work. Unless otherwise agreed in writing, and notwithstanding any other rights or obligations of either of the parties under the Contract Documents, Construction Professional must proceed with the performance of the Work during the pendency of any Claim, dispute, protest, and other matter in question or during any alternative dispute resolution proceeding, court proceeding, or other proceeding to resolve any Claim, dispute, protest, and other matter in question. Unless otherwise provided herein, Owner will continue to make payments in accordance with the Contract Documents, but Owner is under no obligation to make payments on or against such Claim, dispute, protest, and other matter in question during the time required to resolve such Claim, dispute, protest, and other matter in question.

### General Claims for Contract Adjustments and Disputes. If Construction Professional desires to assert a Claim against Owner, it shall issue a Notice of Claim within the time and in the form provided in this Section. Any and all Claims not made within the required time period, or in the required form, are waived by Construction Professional. The requirement of Construction Professional to provide a Notice of Claim under this Section shall be in addition to any requirement to provide Notice under any other Section hereof.

#### Form of Claims. A Notice of Claim shall be made in writing, shall be hand delivered or sent via U.S. Mail with return receipt, shall include a title or subject line that clearly identifies the document as a “Claim,” shall identify the specific provision of the Contract upon which the Claim is based, and must set forth in detail the basis for the Claim. Claims for adjustments to the Contract Sum or other damages or compensation shall identify the amount of the Claim and shall include appropriate documentation of the amount claimed. Claims for extensions of Contract Time shall identify the number of days claimed, the cause of any delay, the affected schedule activities, and information to demonstrate critical path was extended.

#### Time for Submission of Claims. A Notice of Claim shall be made within fourteen (14) days after the occurrence of the event giving rise to the Claim or within fourteen (14) days after the event giving rise to the Claim should have been first observed, whichever is first, unless the Contract Documents specify a shorter or longer period with respect to such event, in which case such specific provision shall govern. In the case of a continuing delay as a result of a single event, only one Notice of Claim is necessary.

#### Claims Limited to Actual Costs. Unless otherwise provided herein, Claims for increase in the Contract Sum shall be no greater than the actual direct, jobsite costs incurred by Construction Professional. If any other provision of the Contract Documents limits or precludes additional compensation to Construction Professional in certain events or circumstances, then any Claim for additional compensation related to such event or circumstance shall be limited or precluded as provided in such provision. As an additional condition to increase the Contract Sum, Construction Professional shall retain contemporaneous documentation of all costs supporting such increase and shall submit copies thereof to Owner along with the Notice of Claim or, for continuing Claims, on a daily basis after submitting the Notice of Claim.

#### Claims for Extension of Contract Time. The provisions of 1.4 shall govern Construction Professional’s entitlement to an extension of Contract Time and any additional compensation related thereto, but as a condition precedent to such extension of Contract Time or such additional compensation, Construction Professional shall further comply with this Section 5.2.2.

#### Protest of Decision. Owner may protest Design Professional’s Decision by issuing a Notice of Protest to Construction Professional and Design Professional. If Construction Professional desires to protest any Design Professional’s Decision, including any determinations regarding Claims by Construction Professional, then it shall issue a Notice of Protest to Owner and Design Professional no later than thirty (30) days after the Design Professional’s Decision. Construction Professional’s Notice of Protest shall be made in writing, shall include a title or subject line that clearly identifies the document as a “Notice of Protest” and shall set forth in detail the basis for the Protest. Construction Professional’s failure to issue a Notice of Protest shall result in a waiver of Construction Professional’s rights, remedies, or recovery arising from the Claim or dispute giving rise to such Protest.

### Dispute Resolution.

#### Initial Dispute Resolution. If a dispute arises out of or relates to this Contract, the parties shall endeavor to settle the dispute first through direct discussions between the parties’ representatives who have the authority to settle the dispute. If the parties’ representatives are not able to promptly settle the dispute, they shall refer the dispute to the senior administrators of the parties who have the authority to settle the dispute, who shall meet within fourteen (14) days thereafter. If the dispute is not settled by the senior administrators, the parties may submit the dispute to mediation in accordance with Section 5.2.3.2.

#### Mediation. If the dispute cannot be settled pursuant to Section 5.2.3.1, the parties may elect to submit the dispute to mediation. The parties agree to commence such mediation within sixty (60) days of electing mediation. The parties shall select a mutually agreeable mediator and shall share the cost of the mediator equally. Either party may terminate the mediation at any time after the first session, but the decision to terminate shall be communicated directly by the party’s representative to the other party’s representative and the mediator.

#### Multiparty Proceeding. All parties necessary to resolve a Claim shall be parties to the same dispute resolution proceeding and shall share the costs equally. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the consolidation of such dispute resolution procedures.

#### No Litigation. No litigation may be commenced without first following the initial dispute resolution process in this Section. Litigation may be filed only in the Superior Court of Fulton County, Georgia, pursuant to O.C.G.A. § 50-21-1, after the filing party provides thirty (30) days’ Notice to the opposing party. The parties hereby agree that the Superior Court of Fulton County, Georgia shall have exclusive jurisdiction and venue in all matters concerning this Contract.

# Project Completion

## Material Completion

### Pre-Requisites to Material Completion. To achieve Material Completion, the Work shall be materially complete so that the Using Agency can use and occupy the entire Project for its intended purpose. Additionally, Construction Professional shall complete the following Work and submit the Final Documents listed below as prerequisites to Material Completion. One set of original Final Documents and two (2) copies are required and shall be submitted in a format suitable for the presentation, use, and retention of the documents.

#### Operation and Maintenance Training for Using Agency. Prior to the inspection for Material Completion, Construction Professional shall provide the Using Agency training in the operation and maintenance of all mechanical, electrical, and other operating systems and equipment in the presence of Design Professional and Owner. Construction Professional shall give Notice to Design Professional, Owner, and Using Agency at least fifteen (15) days prior to the date it proposes for the training.

#### Manufacturer’s Certification of Major Building System Components. Prior to Inspection for Material Completion, Construction Professional shall provide certification from the manufacturer that the major building system components have been installed and are operating properly in accordance with the terms below.

##### Major Building System Components Requiring Certification. Construction Professional shall provide manufacturer’s certification for the following Major Building System Components: elevators, moving walks, dumbwaiters, escalators, lifts, major components of air conditioning systems (i.e., cooling towers, compressors, condensers, absorption units, chiller units, fan coil units, air handling units, boilers, base mounted pumps, and temperature controls); major components of heating systems (i.e., boilers, base mounted pumps, air handling units, unit ventilators, fan coil units, temperature controls, and boiler chemical feed systems); major components of plumbing systems (i.e., boilers, base mounted pumps, sewage pumps, and water treatment systems) and incinerator systems. Installation instructions for each system shall be submitted along with the manufacturer’s certification.

##### Certification Requirements. A field representative of the manufacturer shall perform start-up, testing, and placing into operation the Major Building System components. “Start-up" is defined as putting the equipment into action. "Testing" is defined as performing such testing as is stipulated in the Contract Documents to be performed. "Placing into operation" is defined as operating the equipment for a sufficient period of time for the determination to be made that it is performing properly. In all cases where the equipment of two or more manufacturers ties in and functions together, Construction Professional shall require the field representatives to perform simultaneously the initial start-up, the testing, and the placing of their equipment into operation.

##### Certification Form. The field representative shall execute a certificate in the format shown in GSFIC Forms Packet, on the letterhead of the manufacturer, certifying that "the equipment has been installed in strict compliance with the recommendations of the manufacturer and is operating properly.” All certification forms shall be provided to Design Professional at least seven (7) days prior to the inspection for Material Completion.

#### Initial Test and Balance. Prior to Material Completion, Construction Professional shall perform an initial test and balance on the heating, ventilating and air conditioning system. Construction Professional shall submit the initial test and balance report to Design Professional at least seven (7) days prior to the proposed date of Inspection for Material Completion. Two (2) additional Test and Balance Reports are required after Material Completion and occupancy.

#### Operation and Maintenance Manuals. At least seven (7) days prior to the proposed date of Inspection for Material Completion, Construction Professional shall provide Design Professional with manufacturer’s manuals providing operation and maintenance instructions for all items which require operation or maintenance after occupancy. Design Professional will review these documents for compliance and deliver documents to Owner and Using Agency at Material Completion. Operation and Maintenance Manuals shall be provided electronically or in hard copy as requested by the Using Agency.

#### Warranties, Certificates of Manufacturers, and Service Agreements. Construction Professional shall electronically submit all warranties, certificates of manufacturers, and maintenance service agreements as called for in the Specifications at least seven (7) days prior to the proposed date of Inspection for Material Completion. Each document shall specify the term and contact information for enforcement and shall be in such form as to permit direct enforcement by Owner and Using Agency. The effective date of all warranties and guarantees shall be the Material Completion Date.

#### Cleaning Prior to Material Completion. Prior to the inspection for Material Completion, Construction Professional shall remove from the Site all waste and perform a thorough cleaning of the Work. Construction Professional shall dust all hard surfaces, mop all hard floors, vacuum all carpet, remove any stains and paint spots, clean and polish all plumbing fixtures and equipment, clean all electrical and mechanical equipment, and clean all ductwork and filters if dirty. Construction Professional shall also restore any existing facilities such as roads, landscaping, pavement, fencing, curbing, and the like at the Site to at least their pre-construction conditions. Construction Professional may leave equipment at the Site as necessary to achieve Final Completion of the Project. To achieve Material Completion, Construction Professional shall have fully cleaned the Site.

#### Keys for Using Agency. At Material Completion, Construction Professional shall provide Owner keys with tags attached indicating the door or lock to which the key applies. Construction Professional shall prepare and furnish with the keys an itemized key schedule in quintuplicate listing the door or room number and/or description, serial number of key, and number of keys being delivered for each door or lock.

#### Attic Stock and Loose Equipment for Using Agency. If the Contract Documents provide for the furnishing of any loose equipment or furnishings or attic stock of materials, Construction Professional shall make arrangements to locate such material in a secure location at the Project site to facilitate inspection by Design Professional, Owner, and Using Agency, and shall transfer them to the Using Agency at Material Completion.

#### Marked-up Construction Documents. At the inspection for Material Completion, Construction Professional shall provide a complete set of Marked-up Construction Documents to Design Professional, which shall reflect all changes caused by field changes, Change Orders, or observed changes by Construction Professional or Subcontractors for the purpose of Design Professional’s issuance of Record Documents to Owner.

#### Final Certification of Costs. Construction Professional shall submit its anticipated Final Certification of Costs in the format set forth in GSFIC Forms Packet at the inspection Material Completion.

#### Five Year Bond on Roofs and Walls. Construction Professional shall submit a Five Year Bond on Roofs and Walls on the form shown in GSFIC Forms Packet. The Five Year Bond on Roofs and Walls shall be issued by a surety authorized to do business in the State of Georgia and in the penal sum of the actual cost of the walls, wall cladding, wall insulation, roof, insulation, and roof deck. The effective date of the Bond shall be the Material Completion Date.

#### Initial Punchlist. Prior to the Inspection for Material Completion, Construction Professional shall prepare an Initial Punchlist itemizing all Minor Items and Permitted Incomplete Work and shall provide a copy of the Initial Punchlist to Design Professional and Owner. Construction Professional is encouraged to consult with Design Professional and Owner prior to finalizing the Initial Punchlist, in particular in arriving at consensus for Minor Items and Permitted Incomplete Work.

#### Material Completion Checklist. Construction Professional shall submit its Material Completion Checklist in the format set forth in GSFIC Forms Packet at the inspection Material Completion.

### Inspections for Material Completion. Construction Professional shall request an Inspection for Material Completion when it has completed all Work, except for Minor Items and Permitted Incomplete Work and submitted all required documents, including Final Documents.

#### Notice of Readiness for Inspection for Material Completion. When Construction Professional determines that the Project is ready for Inspection for Material Completion, Construction Professional shall give Notice to Design Professional and Owner requesting Inspection for Material Completion. Such Notice shall be provided at least seven (7) days in advance of the date requested for Inspection for Material Completion. Such Notice shall include a copy of the Initial Punchlist.

#### Liability of Construction Professional for False Starts. If Construction Professional requests inspection for Material Completion and it is determined by Design Professional that the Project has not reached Material Completion, referred to as a "false start," then Construction Professional shall be liable for the costs and damages resulting therefrom, including but not limited to those costs and damages identified in Section 2.3.2.2.2.

#### Conducting the Inspection for Material Completion. Design Professional shall conduct the Inspection for Material Completion. It shall also confirm the Initial Punchlist by adding or deleting Minor Items or Permitted Incomplete Work as appropriate.

#### Executing Material Completion Certificate. Upon completion of the Inspection for Material Completion, if Design Professional determines the Work has reached Material Completion, Design Professional shall execute the Certificate of Material Completion and attach a first draft of a Final Punchlist, which may be handwritten or in electronic format and which shall list all Minor Items and Permitted Incomplete Work.

#### Final Punchlist. Design Professional shall complete the creation of the Final Punchlist within five (5) days after the execution of the Certificate of Material Completion.

##### Completion Dates for Punchlist Items. The Final Punchlist shall include completion dates for the Permitted Incomplete Work. All Minor Items shall be completed within thirty (30) days of Material Completion.

##### Amount to be Withheld from Payment for Punchlist Items. Design Professional shall include in the Final Punchlist amounts to be withheld from the Payment for Material Completion on account of each Minor Item and Permitted Incomplete Work. Generally, the amount to be withheld for Minor Items shall be equal to 200% of Design Professional’s value for completing each Minor Item. The amount to be withheld for Permitted Incomplete Work shall be equal to the amount to be paid for completion of the Permitted Incomplete Work.

##### Amount to be Withheld for Mechanical and HVAC Systems. One percent of the value of the heating and cooling systems, as reported on the Schedule of Values, or a minimum of one thousand dollars ($1,000.00) shall be withheld for Mechanical and HVAC Systems. Upon successful completion and certification by Design Professional of the first Seasonal Test and Balance, one-half of the amounts withheld for the heating and cooling systems may be released. The remainder shall be released upon completion and certification by Design Professional of the second Seasonal Test and Balance required by Section 6.1.1.3.

##### Amount to be Withheld for Certification of Major Building Components. For each certificate required for major components, a sum of not less than five hundred dollars ($500.00) shall be withheld until such certificate shall have been filed with Owner and Using Agency.

### Payment for Material Completion. Upon Material Completion, Construction Professional shall submit a Payment Application. Construction Professional shall certify, by its signature on the Payment Application, that the Work has been completed as provided for by the Contract Documents, and that the amount billed, including retainage, is due and payable, except for those amounts determined by Design Professional to be withheld as Minor Items or Permitted Incomplete Work. Construction Professional shall submit a Payment Affidavit and Consent of Surety along with the Payment Application when requesting payment for Material Completion.

#### Effect of Payment for Material Completion and Release of Claims. Acceptance of Payment for Material Completion by Construction Professional shall operate as settlement, waiver, release, discharge, and payment in full of all claims (including Claims) against Owner of any nature arising out of the Project except for the Work associated with the Minor Items and the Permitted Incomplete Work.

### Effect of Failure to Achieve Material Completion. Should Material Completion not be achieved by the Material Completion Date, the following matters are conclusively determined:

#### Breach of Covenant of Time. As time is of the essence in the completion of the Work, Construction Professional is in breach of the covenant of time and is subject to termination.

#### Liquidated Damages. As provided in Section 1.4.1.3, Liquidated Damages at the specified daily rate in Section 6 of the Form of Contract begin to accrue and are payable on the day immediately following the Material Completion Date.

#### Ineligibility to Bid or Propose on State Contracts. If Construction Professional fails to achieve Material Completion by the Material Completion Date, Construction Professional is ineligible to bid or propose on any contract with the Georgia State Financing and Investment Commission, the Board of Regents of the University System of Georgia, or any unit of the University System of Georgia. In the event a bid has been submitted but the bid award has not been made, Construction Professional’s ineligibility requires that its bid be rejected.

##### Automatic Restoration of Eligibility to Bid. Construction Professional’s eligibility to bid upon state contracts shall be restored automatically as of the date of achievement of Material Completion as evidenced by Design Professional’s Certificate of Final Completion.

##### Application to Reinstate Eligibility to Bid. Construction Professional’s eligibility to contract with the State may be reinstated upon Construction Professional’s written application to Owner requesting reinstatement of eligibility and showing of just cause why Construction Professional’s eligibility should be reinstated, or that there is good and just cause to excuse Construction Professional’s failure to achieve Material Completion.

### Effect of Achieving Material Completion. Upon the date when Material Completion is achieved, the following matters occur:

#### Occupancy of the Work. The Using Agency may immediately occupy and secure the Work without restriction.

#### Warranty Periods. All warranties begin to run from the date of Material Completion.

#### Utilities. All utilities become the responsibility of the Using Agency.

#### Insurance. The Using Agency is responsible for property insurance for the Project.

### Material Completion Not a Waiver. A determination that Construction Professional has achieved Material Completion, the issuance of a Certificate of Material Completion, or Owner’s Payment for Material Completion shall not preclude or diminish Owner’s rights or remedies for Non-Compliant Work discovered after such events. All such rights and remedies set forth herein shall continue after such events.

## Interim Punchlist Completion

### Inspections for Interim Punchlist Completion. Construction Professional shall request an Inspection for Interim Punchlist Completion when it has completed all Minor Items listed on the Final Punchlist, which shall be no later than thirty (30) days after the Material Completion Date.

#### Notice of Readiness for Inspection for Punchlist Completion. When Construction Professional believes that the Project is ready for Inspection for Interim Punchlist Completion, Construction Professional shall issue to Design Professional and Owner a Notice of Readiness for Inspection for Interim Punchlist Completion.

#### Updates to Final Documents. Any Final Documents or updates to Final Documents not yet submitted must be submitted with the Notice of Readiness for Inspection for Interim Punchlist Completion.

#### Liability of Construction Professional for False Starts. If Construction Professional issues a Notice of Readiness for Inspection for Interim Punchlist Completion and Design Professional determines that all Minor Items are not complete, referred to as a "false start," then Construction Professional shall be liable for the costs and damages resulting therefrom, including but not limited to those costs and damages identified in Section 2.3.2.3.2.

#### Inspection for Interim Punchlist Completion and Issuance of Punchlist Completion Certificate. Design Professional shall conduct the Inspection for Interim Punchlist Completion to confirm the status of all items listed on the Final Punchlist. Upon successful completion of all Minor Items, Design Professional shall execute a Certificate of Interim Punchlist Completion and shall issue a Report of Interim Inspection noting any Permitted Incomplete Work which remains to be accomplished and the date by which it is to be completed.

### Effect of Failure to Achieve Interim Punchlist Completion Within Thirty (30) Days After Material Completion. If Construction Professional fails to achieve Interim Punchlist Completion within thirty (30) days of Material Completion, Owner will issue to Construction Professional a fourteen (14) day Notice as a final warning to complete all Minor Items. If Interim Punchlist Completion is not achieved by the end of the fourteenth (14th) day from the date of the Notice, the following matters are conclusively determined:

#### Breach of Covenant of Time. As time is of the essence in the completion of the Work, Construction Professional is in breach of the covenant of time and is subject to termination. Owner may pursue all remedies available for Construction Professional’s failure to timely complete the Work.

#### Ineligibility to Bid or Propose on State Contracts. If Construction Professional fails to achieve Interim Punchlist Completion within thirty (30) days of the Material Completion Date, Construction Professional is ineligible to bid or propose on any contract with the Georgia State Financing and Investment Commission, the Board of Regents of the University System of Georgia, or any unit of the University System of Georgia. In the event a bid has been submitted but the bid award has not been made, Construction Professional’s ineligibility requires that its bid be rejected.

##### Automatic Restoration of Eligibility to Bid. Construction Professional’s eligibility to bid upon state contracts shall be restored automatically as of the date of achievement of Interim Punchlist Completion as evidenced by Design Professional’s Certificate of Interim Punchlist Completion.

##### Application to Reinstate Eligibility to Bid. Construction Professional’s eligibility to contract with the State may be reinstated upon Construction Professional’s written application to Owner requesting reinstatement of eligibility and showing of just cause why Construction Professional’s eligibility should be reinstated, or that there is good and just cause to excuse Construction Professional’s failure to achieve Interim Punchlist Completion.

## Final Completion

### Final Completion. Final Completion is the completion of all Work, including completion of all Permitted Incomplete Work and the Seasonal Test and Balance. When all Work has been completed and inspected, and the Report of the Seasonal Test and Balance has been submitted, Design Professional shall issue the Certificate of Final Completion.

#### Seasonal Test and Balancing of HVAC Systems. In order to reach Final Completion, Construction Professional shall provide two (2) additional Test and Balance Reports after the Material Completion Date, as provided in Section 6.1.1.3. One (1) report shall be prepared on or about the peak cooling season and the other on or about the peak heating season. These two (2) reports are required in addition to the Initial Test and Balance Report submitted at Material Completion and prior to occupancy.

#### Inspection of All Permitted Incomplete Work. In order to achieve Final Completion, all Permitted Incomplete Work must be completed and inspected for Final Completion. If Permitted Incomplete Work remains after the Interim Inspection for Punchlist Completion, Construction Professional shall request inspection for Final Completion when all Work is complete. Design Professional shall confirm completion of all Permitted Incomplete Work.

### Payment for Final Completion. Upon Final Completion, Construction Professional shall submit a Payment Application. Construction Professional shall certify, by its signature on the Payment Application, that the Work has been completed as provided for by the Contract Documents. Construction Professional shall submit a Payment Affidavit and Consent of Surety along with the Payment Application when requesting payment for Final Completion.

### Effect of Payment for Final Completion and Release of Claims. Acceptance of Payment for Final Completion by Construction Professional shall operate as settlement, waiver, release, discharge and payment in full of all claims against Owner of any nature arising out of the Project.

### Effect of Failure to Achieve Final Completion. If Final Completion is not achieved within one year of Material Completion, Owner may issue to Construction Professional a Notice as a final warning to complete the Work. If Final Completion is not achieved by the end of the fourteenth (14th) day from the date of the Notice, the following matters are conclusively determined:

#### Breach of Covenant of Time. As time is of the essence in the completion of the Work, Construction Professional is in breach of the covenant of time and is subject to termination. Owner may pursue all remedies available for Construction Professional’s failure to timely complete the Work.

#### Ineligibility to Bid or Propose on State Contracts. If Construction Professional fails to achieve Final Completion within one year of the Material Completion Date, Construction Professional is ineligible to bid or propose on any contract with the Georgia State Financing and Investment Commission, the Board of Regents of the University System of Georgia, or any unit of the University System of Georgia. In the event a bid has been submitted but the bid award has not been made, Construction Professional’s ineligibility requires that its bid be rejected.

##### Automatic Restoration of Eligibility to Bid. Construction Professional’s eligibility to bid upon state contracts shall be restored automatically as of the date of achievement of Final Completion as evidenced by Design Professional’s Certificate of Final Completion.

##### Application to Reinstate Eligibility to Bid. Construction Professional’s eligibility to contract with the State may be reinstated upon Construction Professional’s written application to Owner requesting reinstatement of eligibility and showing of just cause why Construction Professional’s eligibility should be reinstated, or that there is good and just cause to excuse Construction Professional’s failure to achieve Final Completion.

### Effect of Achieving Final Completion. A determination that Construction Professional has achieved Final Completion, the issuance of a Certificate of Final Completion, or Owner’s Payment for Final Completion shall not preclude or diminish Owner’s rights or remedies for Non-Compliant Work discovered after such events. All such rights and remedies set forth herein shall continue after such events.

### GSFIC FORMS PACKET

The GSFIC Forms Packet is available on the GSFIC website at [www.gsfic.ga.gov](http://www.gsfic.ga.gov). Downloadable, fillable versions of the forms are available in eBuilder.

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**SUPPLEMENTARY GENERAL REQUIREMENTS**

1. Construction Professional shall be required to use Owner’s free Project Management Program, e-Builder, for contract administration processes, including but not limited to Completion of certain forms, Requests for Information, Change Orders, Payment Applications, Notices of Non-Compliance, Incumbrance Records, and submission of warranties and other Final Documents. Construction Professional shall attend a training session at Owner’s office, or other mutually agreeable location, within thirty days of the execution of this Contract. Construction Professional shall contact the Owner’s Project Manager within fourteen days of the execution of this contract to schedule the training session. Failure to timely attend the training session may result in delays to the Project.

2. Rock: Bidders are to include in the Bid the cost of excavating **0** cubic yards of <Rippable-Mass-Trench-Caisson> rock. Payment will be made for all <Rippable-Mass-Trench-Caisson> rock in excess of **0** cubic yards at the net unit price of **$0.00** per cubic yard, which includes all overhead and profit. In the event it is necessary to excavate less than **0** cubic yards of <Rippable-Mass-Trench-Caisson> rock, the Owner will take a credit of **$0.00** per cubic yard. The unit price of **$0.00** per cubic yard shall include the excavation, haul off, and disposal of all <Rippable-Mass-Trench-Caisson> rock, as indicated in the Contract Documents, and replacement with earth as required by <insert specification section> of the specifications and compacted as required by <insert specification section> of the specifications.

Bidders are to include in the Bid the cost of importing **0** cubic yards of additional fill material to the site. Payment will be made for all fill material in excess of **0** cubic yards at the net unit price of **$0.00** per cubic yard, which includes all overhead and profit. In the event it is necessary to haul in less than **0** cubic yards of fill material, the Owner will take a credit of **$0.00** per cubic yard. The unit price of **$0.00** per cubic yard shall include the haul in, placement, and compaction of fill material in accordance with the project specifications for fill material.

3. Pollution Liability Insurance *(Delete if Project does not involve removal, remediation etc of hazardous materials)*

Construction Professional shall procure and maintain a broad form contractor’s pollution liability insurance. The policy shall provide coverage for third party liability, clean-up, and corrective action including assessment remediation and defense costs, bodily injury, property damage (including loss of use of damaged property or of property which has not been physically injured or destroyed), investigation, settlement of claims, caused by pollution conditions (including sudden and non-sudden pollution conditions) arising from the services and operations of Contractor or its subcontractors pursuant to this Agreement including pollution conditions which arise from encountering preexisting environmental conditions at the project site and for liability resulting from the transportation of hazardous wastes. The policy may be written on either an occurrence form or claims made with minimum limits of liability coverage of:

Each Occurrence $ 1,000,000

Aggregate $ 2,000,000

Umbrella Liability $ 2,000,000

If coverage is written on a claims-made basis, an extended reporting period, or tail coverage, shall be provided for one (1) year following Material Completion. The policy retroactive date shall be no later than the effective date of this Agreement. The policy shall be endorsed to name the Owner and Using Agency as additional insureds.

4. Davis-Bacon Wage Rates. (*Delete if inapplicable)*

Construction Professional agrees that all laborers and mechanics employed or working on the site of the work will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). Construction Professional shall pay all laborers and mechanics employed or working upon the site of work at rates not less than those on the Wage Determination attached hereto as “Supplementary General Requirements Exhibit - 1.” Construction Professional shall submit payrolls required pursuant to the Davis-Bacon Act through eComply, a software application for labor compliance management that is provided by the Owner. Contractor shall require all resultant covered contractors to submit payrolls through eComply and shall incorporate a provision into all covered contracts to require such use.

Construction Professional shall be bound by the standard Davis-Bacon Act clauses found in 29 C.F.R. 5.5(a) and incorporated below and shall cause these clauses be incorporated in any resultant covered contracts for construction, alteration or repair (including painting and decorating).

29 C.F.R. § 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, Provided, That such modifications are first approved by the Department of Labor):

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees -

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or § 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the conract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.