**­GSFIC-AD-160**

Version 7/13/2020

**DESIGN-BUILD AGREEMENT**

**BETWEEN**

**(INSERT NAME OF Design-Builder)**

**(Design-Builder)**

**AND**

**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)**

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**FORM OF CONTRACT**

 THIS DESIGN BUILD AGREEMENT (hereinafter the “Contract”) is made this       day of      ,       by and between (Insert Design-Builder), hereafter “Design-Builder,” and the Georgia State Financing and Investment Commission, hereafter called “Owner,” for the construction of Project (Insert Project No. & Description) for the use and benefit of (Insert Using Agency), hereafter called “Using Agency.”

 Design-Builder and Owner agree as follows:

1. **Scope of Basic Services and the Work.** Design-Builder shall perform all of the Basic Services and furnish all of the materials and perform all of the Work described in the Contract Documents and shall do everything required by or reasonably inferable from the Contract Documents.
2. **Existing Documents**. Design-Builder affirms that it has reviewed the Using Agency’s Project Development Information, attached hereto as Exhibit A, and the Preliminary Design and Construction Schedule, attached hereto as Exhibit B; that it has taken them into consideration in preparing its proposal for the General Conditions and Fee; and that it knows of no reason why the Project could not be completed within the current GMP Cost Limitation by the Material Completion Date.
3. **The Contract.** The Contract includes the General Requirements, Exhibits A through E, GSFIC Design-Build Forms, and Supplementary General Requirements, each of which are incorporated herein.
4. **Notice**. Notice in accordance with Section 1.1.7 of the General Requirements shall be given to the following addresses:

|  |  |
| --- | --- |
| **Design-Builder:** |                Attention:      Phone Number:       |
| **OWNER:** | Georgia State Financing and Investment Commission270 Washington Street, S.E.Atlanta, Georgia 30334Owner’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. **Key Design Personnel.** The name of the Design Professional that will seal the Construction Documents is       and his or her Georgia State Board of Architects and Interior Designers Registration Number is       (“Architect of Record”). Design-Builder acknowledges and agrees that it was selected on the basis of the qualifications of its key personnel and consultants. A list of Design-Builder’s key personnel and consultants is attached hereto as Exhibit C. Design-Builder agrees that its key personnel and consultants shall provide the services required under this Contract and further agrees that the key personnel assigned to the Project shall not be changed without the written consent of Owner.
2. **GMP Cost Limitation.** The Guaranteed Maximum Price, which shall be the maximum Contract Sum established in accordance with Section 4.2.1 of the General Requirements, shall not exceed the following amount: **Dollars ($     )** (the “GMP Cost Limitation”).The GMP Cost Limitation is subject to modification until execution of the GMP Change Order.
3. **Pre-Construction Sum**. Design-Builder’s compensation for its Pre-Construction Phase Services (“Pre-Construction Sum”) shall be **Dollars ($     )**.
4. **Design Fee and Construction Contract Administration Fee:** Design-Builder’s compensation for the Design Services shall be  and Design-Builder’s compensation for the Construction Contract Administration Services of its Design-Professional shall be **.** Fee for Design and Construction Contract Administration Services for Change Orders due to unforeseen conditions or Owner requested changes shall be as follows:      % for Design Services and      % for Construction Contract Administration multiplied by the Change Order Sum, unless Owner determines that the fee is not commensurate with the services required, in which case payment shall be based on the hourly rates shown in Exhibit C, or on agreed upon lump sum.
5. **Construction Phase Fee.** The Construction Phase Fee shall be and the Construction Phase Fee Percentage is      **%** (the “Construction Phase Fee Percentage”). The Construction Phase Fee is calculated based on the GMP Cost Limitation. If the GMP Cost Limitation is modified in accordance with Section 1.3.2.43, the Construction Phase Fee will be recalculated based upon the new GMP Cost Limitation in accordance with Section 1.3.2.21.
6. **Design-Builder Construction Phase General Conditions Costs.** Compensation arising from Design-Builder’s Construction Phase General Conditions Costs shall not exceed **Dollars ($****)**.
7. **Material Completion.** The Material Completion Date is. The Construction Phase shall commence upon the Proceed Order Date and the Work shall reach Material Completion as of the Material Completion Date.
8. **Liquidated Damages.** The agreed amount for Liquidated Damages is **Dollars ($     )** per day.
9. **Anticipated Weather Delay Days.** As referenced in Section 1.4.2.1.3, 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 may 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 Design-Builder hereby agree to the full performance of the Contract. The failure of Owner at any time to require performance by Design-Builder 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 Design-Builder and constitutes the full, complete, and entire agreement between Owner and Design-Builder. 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.

**(THIS SPACE INTENTIONALY LEFT BLANK – SIGNATURES ON FOLLOWING PAGE)**

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

**Design-Builder**

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:

Governor Brian Kemp, Chairman

By:

Marty W. Smith, Director, Construction Division

# GENERAL PROVISIONS

## General Contract Requirements

### Project Team. Owner intends to employ a team concept for design and construction of the Project. The Project Team consists of Design Professional, Design-Builder, 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 Design-Builder 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-Builder’s Design Professional. Design-Builder’s Design Professional (hereinafter referred to as “Design Professional”) is the employee of the Design-Builder or individual or firm under contract with Design-Builder to perform the duties of the Design Professional as required by the terms of this Contract. Design-Builder represents that the Design Professional has all necessary licenses to act as the Design Professional for the Project and that Design Professional has the expertise, experience, and knowledge to perform the Design Services in accordance with the terms of the Contract.

#### Design-Builder. Design-Builder 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 Design-Builder. Design-Builder 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 Design-Builder.

##### Design-Builder Duty of Good Faith and Fair Dealing. Design-Builder owes Owner the duties of good faith, trust, confidence, and candor, and must exercise a high standard of care in managing money and property of Owner in connection with the Project. Design-Builder shall perform the Work in the most economical manner that is consistent with the Owner’s objectives and the Contract Documents.

#### Owner, 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 Design-Builder.

#### 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. Design-Builder 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 to perform the role of Program Manager.

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

### No Diminution of Design-Builder’s Obligations. The presence of Owner, Owner’s Representative, CCS, Using Agency, Using Agency’s Representative, Program Manager, or Commissioning Agent does not relieve Design-Builder of any of its responsibilities for quality control, independent testing, or any other obligation set forth in the Contract Documents. Design-Builder 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. Design Professional shall objectively interpret the terms of the Contract Documents and make decisions on issues when required by the Contract Documents. 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 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.

### 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. Design-Builder 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.” Design-Builder 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, Design-Builder 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. Design-Builder 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. Design-Builder 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. Design-Builder 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 Design-Builder 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. Design-Builder shall track the value of all Georgia-based materials installed in the project. Design-Builder 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. Design-Builder 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, Design-Builder 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 Design-Builder 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. Design-Builder 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. Design-Builder warrants that it has registered with and uses the federal work authorization program commonly known as “E-Verify.” Design-Builder 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. Design-Builder 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. Design-Builder 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.. Design-Builder 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. Design-Builder 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. Design-Builder 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 DESIGN-BUILDER has employees and Subcontractors that are regularly on State premises or who will regularly interact with State personnel, Design-Builder certifies that:

- Design-Builder 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;

- Design-Builder 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, Design-Builder 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 Design-Builder to design the Project to comply with applicable codes 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 Design-Builder 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 Design-Builder 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. Such costs shall not constitute Allowable Costs.

#### 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 Design-Builder or its Trade Contractors under a performance specification) pursuant to this Contract are the property of Owner. Neither Design-Builder 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.

#### Licenses and Easements. Licenses and easements for permanent structures or permanent changes in existing facilities shall be obtained and paid for by Owner unless otherwise specified. Owner shall cooperate with Design-Builder as Design-Builder secures building and other permits, licenses, and inspections that are required to be obtained by Design-Builder.

#### Surveys. 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. Design-Builder 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 Design-Builder, to perform other work at the Site.

#### Design-Builder’s Duty to Work with Owner’s Separate Contractors. Design-Builder shall afford Owner and Separate Contractors reasonable access to the Site, subject to the Separate Contractors’ compliance with Design-Builder’s safety rules and Site specific policies, reasonable areas for storage of materials and equipment, and reasonable opportunity to execute work at the Site. Design-Builder 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 Design-Builder's costs or extends the time of performance, subject to the requirements, limitations, and conditions of Section 6.2.2, Design-Builder may submit a Claim in accordance with Section 6.2.2.

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

## Bonds, Insurance and Indemnification

### Bonds. Design-Builder shall furnish both a performance bond and a payment bond in the exact form set forth in GSFIC Required Forms. Design-Builder 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. Design-Builder shall provide performance and payment bonds prior to the execution of the first Component Change Order with a penal sum in at least the amount of the Component Change Order Maximum Price. When each Component Change Order or GMP Change Order is issued and executed by Owner, Design-Builder shall provide performance and payment bonds, or a rider thereto, to increase the penal sum to at least the total of all Component Change Order Maximum Prices or the Guaranteed Maximum Price. When any subsequent Change Order, or combination of Change Orders, increases the Guaranteed Maximum Price by five percent (5%) or more, Design-Builder shall obtain a rider to the payment and performance bonds increasing the penal sum to match the increased Guaranteed Maximum Price.

#### 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. Design-Builder 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 Design-Builder, its Subcontractors, its agents, employees, or others working at the direction of Design-Builder or on its behalf, or due to any breach of this Contract by Design-Builder, 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 Design-Builder, and will survive the termination of the Contract or Design-Builder’s performance hereunder and the dissolution or, to the extent allowed by law, the bankruptcy of Design-Builder. 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"), Design-Builder agrees to reimburse the Funds for such monies paid out by the Funds. Whenever Design-Builder is obligated to defend the Owner or any other Indemnitee pursuant to this Agreement, Design-Builder 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 Design-Builder and its general liability insurer named on the insurance certificate informed regarding the claims and settlement.

#### Suits or Claims for Infringement. Design-Builder 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 Design-Builder. The obligations of Design-Builder 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.

#### Design-Builder’s Required Insurance Coverage. Design-Builder shall procure the insurance coverages identified below in accordance with the policy requirements listed below. Design-Builder shall provide Owner with a Certificate of Insurance showing the required coverage prior to execution of this Contract. If Owner requests, Design-Builder 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 Design-Builder’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 Design-Builder in connection with the Work |
| **Commercial Umbrella Liability**  | **Minimum Coverage Limit** |
| Projects with GMP Less than $15,000,000 | $ 10,000,000 Per Occurrence and General Aggregate  |
| Projects with GMP 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 GMP  |
| **Professional Liability (E&O) Insurance** | **Minimum Coverage Limit** |
| Projects with GMP less than $20,000,000 | **Design Professionals:** $1,000,000 per claim and $2,000,000 in aggregate coverage;**Subconsultant Engineers and Architects:**$1,000,000 per claim and $1,000,000 aggregate coverage**Other Consultants:**$1,000,000 per claim and $1,000,000 in aggregate coverage |
| Projects with GMP greater than $20,000,000 and less than $30,000,000 | **Design Professionals:** $2,000,000 per claim and $3,000,000 in aggregate coverage;**Subconsultant Engineers and Architects:**$1,000,000 per claim and $2,000,000 aggregate coverage**Other Consultants:**$1,000,000 per claim and $1,000,000 in aggregate coverage |
| Projects with GMP greater than $30,000,000 | **Design Professionals:** $3,000,000 per claim and $4,000,000 in aggregate coverage;**Subconsultant Engineers and Architects:**$2,000,000 per claim and $3,000,000 aggregate coverage**Other Consultants:**$1,000,000 per claim and $2,000,000 in aggregate coverage |

#### 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. With prior written approval of Owner, Design-Builder may implement a Contractor Controlled Insurance Program (CCIP) for the Project, and Design-Builder shall follow Owner’s requirements regarding limits, coverages, and enrollment for any such CCIP.

#### 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. Design-Builder 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 Professional Liability).

#### Builders Risk Policy Requirements. Builder’s Risk Policy shall be made payable to Owner and Design-Builder, as their interests may appear, and shall include in the interests of Design-Builder’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 Design-Builder, 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 Design-Builders 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.

#### Professional Liability Insurance Requirements. The Design-Builder either directly or through its Design Professional shall maintain professional liability insurance that shall be either a practice policy or project-specific coverage. Professional liability insurance shall contain prior acts coverage for services performed by the Design Professional for this Project. If project-specific coverage is used, these requirements shall be continued in effect for two years following the issuance of the Certificate of Final Completion for the Project.

#### Waiver of Subrogation. Design-Builder 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 Design-Builder shall require similar waivers from its Subcontractors. All insurance policies required to be maintained by Design-Builder 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. Design-Builder’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 Design-Builder, 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. Design-Builder 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 Design-Builder’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 Design-Builder 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 Design-Builder fails to maintain the insurance as set forth herein, Owner shall have the right, but not the obligation, to purchase said insurance at Design-Builder's expense as long as the insurance is available at commercially reasonable rates. Alternatively, Design-Builder'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 Design-Builder 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 Design-Builder's final invoice and annually thereafter. Upon demand by the Owner, Design-Builder shall provide certified copies of any policy set forth herein.

#### Subcontractor Insurance Requirements. Unless Design-Builder provides a CCIP for the Project, Design-Builder shall require each Subcontractor performing Work or performing any activity on the Project Site to provide 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 Design-Builder 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. Design-Builder shall submit the Subcontractor’s insurance certificates with each Component Change Order, Guaranteed Maximum Price Change Order, or as new Subcontractors are engaged.

## 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 Design-Builder 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.

#### Affiliate. Any entity that is owned by, under common ownership or control with, or having a common principal or shareholder with, Design-Builder, whether such relationship is direct or indirect, or any entity affiliated with Design-Builder as a partner or joint venturer with respect to any commercial venture. Such term shall also include “affiliated corporation” as defined in O.C.G.A. § 13-10-23.

#### Allowable Change Order Costs. Defined in Section 5.1.5.

#### Allowable Costs. Defined in Section 5.1

#### Basic Services. The Design Review and Consulting, Cost Estimation, Scheduling, and Construction Supervision and Planning Services required to be provided by Design-Builder.

#### 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 Design-Builder seeking an adjustment of the Contract Sum, Contract Time, or both, or regarding other disputes or requests by Design-Builder for relief arising out of or relating to the terms of the Contract or Contract Documents.

#### Component. A portion of the Work that is designed as a separate package so that the portion of the Work can be procured and commenced prior to completion of Construction Documents for the entire Project.

#### Component Change Order or CCO. A Change Order that incorporates Component Construction Documents into the Contract Documents and authorizes Design-Builder to proceed with the Component.

#### Component Change Order Completion Date (CCO Completion Date). The date by which Design-Builder shall achieve Material Completion (defined as if such term applied to completion and use of Component Change Orders instead of the Project) with respect to the Work of a Component Change Order.

#### Component Change Order Cost Category or CCO Cost Category. The four categories of Allowable Costs included in a Component Change Order include (i) Trade Contractor and General Requirements Costs, (ii) General Conditions Costs, (iii) Contingency Costs, and (iv) the portion of the Construction Phase Fee associated with the proposed CCO Work.

#### Component Change Order Maximum Price or CCO Maximum Price. Defined in Section .

#### Component Change Order Sum or CCO Sum. The sum of all compensation authorized by a Component Change Order.

#### Component Change Order Work or CCO Work. Work authorized under a Component Change Order.

#### Component Construction Documents. The Construction Documents issued by Design Professional for a Component.

#### Construction Documents. The Specifications, Drawings and addenda or bulletins that set forth the design for the Project.

#### Construction Document Change Order. The Change Order that incorporates the Construction Documents into the Contract.

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

#### Construction Phase Fee. The Construction Phase Fee is stated in Section 8 of the Form of Contract. The Construction Phase Fee is calculated by multiplying the Construction Phase Fee Percentage by the result obtained when the Preconstruction Sum is subtracted from the GMP Cost Limitation and the result is divided by the sum of 1 plus the Construction Phase Fee Percentage.

#### Construction Progress Schedule. A schedule, as more fully defined in Section 2.2.3, prepared by Design-Builder indicating proposed Milestone dates, activity sequences, and durations.

#### Contingency Costs. Defined in Section 5.1.6.

#### Contingency Fund. The Cost Category established for payment of Contingency Costs.

#### Contract Documents. The Contract Documents include only the 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.

#### Cost Category. Categories of cost to which the Guaranteed Maximum Price or CCO Maximum Price is allocated.

#### 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, and calendar months, respectively.

#### Design Development. An interim step in the design process where Design Development Documents are produced which fix and illustrate the size and character of the entire Project in its essentials as to kinds of materials, type of structure, grade elevations, sidewalks, utilities, roads, parking areas, mechanical and electrical systems, and such other Work as may be required.

#### 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 7.1.1.

#### 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. Those costs identified in Section 5.1.3.

#### General Requirements. The Work specified in Division 1 of the Specifications that Design-Builder is to directly provide.

#### General Requirements Costs. Defined in Section 5.1.2.7.

#### Guaranteed Maximum Price (GMP). The maximum amount that Owner is obligated to pay Design-Builder for the Project pursuant to the GMP Change Order.

#### Guaranteed Maximum Price Change Order, GMP Change Order. The Change Order setting the Guaranteed Maximum Price and authorizing Design-Builder to proceed to construct the entire Project pursuant to the Construction Documents.

#### GMP Cost Category. The five categories of Allowable Costs that make up the Guaranteed Maximum Price include (i) Trade Contractor and General Requirements Costs, (ii) General Conditions Costs, (iii) Contingency Costs, (iv) Pre-Construction Phase Sum, (v) Construction Phase Fee, and (vi) the sum of all approved Change Orders, including all Component Change Orders.

#### GMP Cost Summary. Defined in Section 4.2.1.2.4.1

#### GMP Cost Limitation. The GMP Cost Limitation, set forth in Section 6 of the Form of Contract, is the Owner’s budgeted amount for design and construction of the Project. The GMP Cost Limitation does not include the cost of fixtures, furniture, or equipment unless expressly stated in the Predesign Study or Program. Fixtures, furniture, or equipment not included in the Predesign Study or Program may be added as a design requirement and included in the GMP Cost Limitation by an amendment to this Contract. GMP Cost Limitation does not include Owner contingency, or Site acquisition costs. The GMP Cost Limitation may include funds from the Using Agency, bond funds that are authorized in the State of Georgia’s General Appropriations Act or Amended General Appropriations Act, or bond funds that are expected to be authorized in the State of Georgia’s General Appropriations Act or Amended General Appropriations Act, or other funding sources. The GMP Cost Limitation is subject to change until execution of the GMP Change Order.

#### Initial Punchlist. The punchlist prepared by Design-Builder 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.

#### Labor Costs. Defined in Section 5.1.3.2.

#### 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 set by the Contract, as amended by Change Order, by which Design-Builder is to achieve Material Completion of the Work.

#### 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 Design-Builder 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 or Owner regarding Non-Compliant Work.

#### Notice of Readiness. The Notice provided by Design-Builder 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 Design-Builder 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 Design-Builder, such as recently added Change Order Work that is permitted by the Change Order to be performed after Material Completion.

#### Pre-Construction Phase. The phase of the Project, starting with the execution of the Contract and ending with Design-Builder’s submission of the Final Executive Summary of Design-Builder’s Design Review Services, during which Design-Builder commences its Basic Services to prepare for the commencement of Work on the Project Site.

#### Pre-Construction Phase Sum. Defined in Section 7 of the Form of Contract.

#### Proceed Order. With respect to each Component Change Order and the GMP Change Order, such term shall mean a Notice from Owner to Design-Builder that authorizes Design-Builder to commence Work under each such Component Change Order or GMP Change Order, respectively. The first of such Proceed Orders directs Design-Builder to commence Construction Phase services.

#### 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 Design-Builder to Design Professional requesting information or clarification of the Construction Documents.

#### Schematic Design. The beginning of the design process, sometimes commonly known as Preliminary Design, where Schematic Design Documents are prepared which include the Schematic Site Plan, Floor Plans, and Elevations.

#### Separate Contractor. Any person or entity other than Design-Builder that contracts directly with Owner to perform work on the Site.

#### Site. The real property furnished by Owner for the Work and use of Design-Builder.

#### Sole Source. A Subcontractor specified by name in the 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.

#### 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 Design-Builder 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 Design-Builder to perform portions of the Work including the furnishing of materials.

#### Trade Contractor Costs. With regard to Change Order Work (other than CCO Work or Work under the GMP Change Order), defined in Section 5.1.5.2, and with regard to CCO Work or Work under the GMP, defined in Section 5.1.2.

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

#### Using Agency’s Program. The pre-design planning documents and programmatic documents which provide the general description of the purposes and requirements of the Project.

#### 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 Design-Builder of apparent non-compliant or defective Work that arises or is discovered after Material Completion.

#### Work. All construction, materials, and services, including Basic 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. Design-Builder 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. Design-Builder 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 Design-Builder does not achieve Material Completion by the Material Completion Date and Design-Builder shall therefore compensate Owner (for itself and on behalf of Using Agency) for the delay as provided herein.

#### Time is Fair and Reasonable. Design-Builder 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. Design-Builder 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 Design-Builder as a basis for an extension of Contract Time or increase in Contract Sum.

#### Liquidated Damages for Delay. If Design-Builder fails to achieve Material Completion by the Material Completion Date, Liquidated Damages shall be assessed at the daily rate specified in Section 10 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 Design-Builder, Design-Builder 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 Design-Builder’s sole remedy for any delays not the fault of Design-Builder or its Design-Professional or 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, Design-Builder shall not be entitled to an extension of Contract Time or increase in Contract Sum, and Design-Builder waives any right to assert a Claim therefor.

#### Extensions of Time forAbnormal Weather Delay Days. Design-Builder shall be entitled to an extension of Contract Time for each Abnormal Weather Delay Day verified by the CCS that has delayed the critical path of Work based on the Overall Project Schedule on the condition that Design-Builder 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 Design-Builder 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 11 of the Contract that Design-Builder 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, Design-Builder 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 Design-Builder and contemporaneously submitted to Owner’s Contract Compliance Specialist for verification. Not later than ten days after the end of each calendar month, Design-Builder shall submit a report to Design Professional documenting the number of Weather Delay Days, verified by the CCS, incurred in the previous month. 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 Design-Builder 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.

#### 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 Design-Builder or its Design-Professional or Subcontractors by an event that is beyond the reasonable control of Design-Builder or its Design-Professional or 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, Design-Builder 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 6.2.2.

#### Exception to General Rule – Compensable Delay. Design-Builder 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 the Owner or Separate Contractor, and for unanticipated Hazardous Materials subject to the provisions of Section 3.1.12, and for Differing Site Conditions subject to the provisions of Section 3.1.13, on the condition that it submits a Notice of Claim in conformance with, and by the time set forth in, Section 6.2.2. As an additional condition precedent to such extension of Contract Time and adjustment to the Contract Sum, Design-Builder must prove that (i) such delays extended the critical path of Work based on the Overall Project Schedule; (ii) Design-Builder has taken all reasonable actions to mitigate the effects of the delay events; (iii) the fault or negligence of Design-Builder or Design-Builder’s Design-Professional or Subcontractors did not contribute to such delay events; and (iv) Design-Builder shall have provided Notice to Owner of the cause or causes of such delay within seven (7) days from the date on which Design-Builder 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 3.1.13.

#### Time Extension Administration. If Design-Builder 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 Design-Builder 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, Design-Builder shall only be entitled to an extension of Contract Time if Design-Builder 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.

# PRECONSTRUCTION PHASE

## Design Services

### Design Services. Design-Builder, through its Design Professional shall provide the Design Services. Design-Builder shall be responsible to the Owner for the Design Professional’s Construction Documents and shall ensure the Construction Documents are produced in accordance with the Overall Project Schedule and shall further ensure that the GMP shall not exceed the GMP Cost Limitation. Design Services shall include all normal and customary professional services of the Design Professional and its consultants required to produce Schematic Design, Design Development, and Construction Documents, and those specialized Design Services set forth in Section 2.1. Design Services shall be provided consistent with the Owner’s Instructions to Design Professionals, which is attached hereto as Exhibit D and incorporated herein. All Construction Documents shall conform to applicable building codes, laws, regulations and generally accepted construction industry standards. The Design Professional shall signify its responsibility for the Construction Documents prepared pursuant to this Contract by affixing its signature, date, and seal thereto.

#### Program Validation. Design Professional shall review the Program with the Owner to confirm its understanding of the Owner’s requirements. The Design Professional shall assist the Owner in refining or making clarifications to the Owner’s requirements for the Project. If extensive changes from the Program are required, the Design Professional’s compensation and schedule may be equitably adjusted.

#### Site Investigation Services. The Design-Builder shall perform Site evaluation services as described herein and shall compile the information into a Site Investigations Report on the Form which is included in the Design-Builder Forms Packet attached hereto. Site evaluation and planning functions should proceed concurrently with the accomplishment of Schematic Design, Design Development, and Construction Documents. The Site Investigations Report shall be submitted to the Owner prior to the preparation of any Component Change Order that would involve grading or site work.

##### Preliminary Evaluation. Design-Builder shall conduct a preliminary review of the Site based on information furnished by the Owner. Design-Builder shall obtain a survey if one is not provided by the Owner. The Design-Builder will advise the Owner of potential Site-related problems that the Design Professional notes from such review.

##### Geotechnical Analysis. The Design-Builder shall select a licensed geotechnical engineer to consult with the Owner and Design Professional and perform geotechnical evaluations of the Site, complete the Stage 1 Statement set forth in the Site Investigations Report and ultimately produce the Stage 2 Statement. The Design Professional shall fully utilize the geotechnical engineer to identify to the extent practicable all adverse site conditions such that the Design Professional has sound information upon which to base the design of the Project and to minimize the risk of unforeseen site conditions upon commencement of construction.

##### Subsurface Utility Engineering (SUE). The Design-Builder, through its consultant engineers, shall perform subsurface mapping and assessing of existing utilities at appropriate quality levels and shall coordinate the design and relocation of such utilities as needed, in accordance with ASCE standards.

#### Georgia Energy Efficiency and Sustainable Construction Act of 2008 Related Services. The following services are to be provided by the Design Professional if this project is subject to the Georgia Energy Efficiency and Sustainable Construction Act of 2008 (“Energy Act”). See Section 10 of the Form of Contract to determine if the Energy Act is applicable.

##### Commissioning. The Design Professional will assist the Owner in completing the Commissioning Checklist which Checklist determines which systems must be commissioned. A copy of the Commissioning Checklist is included in the Design-Builder Forms Packet. Commissioning will be performed by the party indicated in Section 10 of the Form of Contract.

##### Water Use Reductions. The Project shall be designed, constructed, and commissioned or modeled to achieve a 15 percent reduction in water use when compared to water use based on plumbing fixture selection in accordance with the Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776. The Design Professional shall complete the Water-Use Reduction Checklist included in the Design-Builder Forms Packet to certify compliance with the Water Use Reduction provisions.

##### Georgia Based Materials and Products. The Project shall 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. The Design Professional shall include the 10 percent minimum requirement in the specifications to ensure that sufficient Georgia based materials and products are incorporated into the Project.

####  Building Commissioning Support and Coordination Services. If a separate Commissioning Agent is retained, the Design Professional shall consult with, coordinate with, and support the Commissioning Agent throughout the Design, Pre-Construction, and Construction Contract Administration Phases of the Project. The Design Professional shall cooperate with the Owner, Commissioning Agent, and Design-Builder to create the 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. Additionally, the Design Professional will incorporate acceptable Commissioning Agent recommendations into the project design. Satisfactory completion of commissioning shall not relieve, alter, or diminish Design Professional’s obligations under this Contract.

#### Permitting and Approval of Governmental Authorities. Upon completion of the Construction Documents and approval by the Owner, the Design Professional will submit the Construction Documents to the appropriate authority for review and permitting. The Design Professional shall assist the Owner in filing any required documents for the approval of governmental authorities having jurisdiction over the Project, when applicable.

#### Building Information Modeling. Design Professional shall produce Building Information Modeling in accordance with the GSFIC BIM Guidelines and the BIM Execution Plan.

#### Basic Acoustic Treatments. For spaces without critical or specialized acoustic requirements or when the services of an acoustic specialist are not required, Design Professional will design, select materials, and coordinate with engineering consultants to meet recognized educational standards for acceptable sound levels. Example spaces include hallways, offices, conference rooms, and basic classrooms.

#### Basic Audio/Visual Design. For projects without programmed, specific or specialized audio/visual requirements, the Design Professional will exercise its best professional judgment to design spaces and coordinate with engineering consultants to provide for basic current and future audio/visual needs. Example spaces would include administrative areas, conference rooms, and basic classrooms

#### Basic Building Envelope Evaluation. For renovations in which exterior building elements are to be affected, or for additions to existing buildings, Basic Design Services will include evaluating those exterior elements, providing recommendations, and proposed detailing of the building exterior to achieve a weatherproof, energy efficient building.

#### Basic Validation of Owner-Provided Scaled Documentation. For Projects involving renovation or expansion of existing buildings, the Design Professional shall generally observe existing conditions and notify the Owner upon discovery of any inaccuracies in the information furnished. Field measurement or other means of documentation are Additional Services.

#### Basic Landscape Planning and Design. Design Professional shall provide, or secure through a landscape architect, landscape and irrigation planning for the Project and lands adjacent to the campus or facility.

#### Basic Space Planning and Generic FF&E Layouts. Design Professional shall illustrate all significant furniture, fixtures, and equipment items on the project floor plans during Schematic Design. All fixtures and fixed equipment to be installed or supplied by the Design-Builder shall thereafter be shown through the completion of Construction Documents.

#### Basic Building and Interior Lighting. The Design Professional shall provide a design utilizing standard energy-efficient lighting fixtures and systems throughout the interior and on the exterior of the building based on intended use.

#### Basic Code-Required Signage. The Design Professional will include basic building, level, and room identification as well as all code-required signage using the Using Agency’s or another standard signage system.

### Design Document Phases. Schematic Design, Design Development, and Construction Documents shall be provided in accordance with the Preliminary Design and Construction Schedule. Separate sets of Construction Documents shall be provided for those Components listed in Section 5 of the Form of Contract and the Construction Document Change Order. All documents shall be drafted and submitted in accordance with the Owner’s Instructions to Design Professionals. All Construction Documents shall be provided in electronic form in such format as required by the Owner.

#### Concept Design Studies. The Design Professional shall prepare Concept Design Studies, consisting of a site plan, building plans, sections, elevations, and such other graphic and narrative information as is necessary to describe fully the Design Professional’s proposed design to the Owner, and will submit same to Owner for review and approval. These studies shall consider land use, the environment, master plans, traffic, parking, transportation, utilities, and functional relationships within the Project and building systems. Design Professional shall prepare and submit to the Owner cost estimates for the Concept Design Studies.

#### Schematic Design Phase. Upon approval of the Concept Design Studies, the Design Professional shall prepare and submit Schematic Design Documents. These Schematic Design Documents shall represent a further development of the approved design concept, providing additional detail and specificity regarding the intended design. The Schematic Design Documents shall include site plans, building plans, and outline specifications.

##### SD Site Plan Requirements. The site plan shall illustrate paving and parking requirements, finish building grades, storm drainage solutions, existing utility locations, site retaining walls, and site lighting requirements.

##### SD Building Plan Requirements. The building plans shall include the principal floor plans, exterior wall sections, mechanical/electrical/plumbing systems outline of suggested equipment, finish schedule by room types, structural foundation system, typical structural framing system, and roof system sections. Typically, all such documents shall be drawn to scale, indicating materials and assemblies, as appropriate, to convey the design intent and to illustrate the Project’s basic elements, scale and relationship to the Site. All major pieces of furniture and equipment to be fixed or supplied by the Design-Builder shall be illustrated to scale.

##### Schematic Design Approval. The Design Professional and Design-Builder shall meet with the Owner and Using Agency for the purpose of presenting and reviewing the Schematic Design Documents and the Design-Builder’s estimate. To the extent the Design-Builder’s estimate submitted with the Schematic Design Documents significantly deviates from the GMP Cost Limitation, the Design-Builder shall discuss the deviations with the Owner and prepare and submit a plan to address the differences. The Design-Builder shall, on the Preliminary Design and Construction Schedule, show the progress to date, confirm the remainder of the design portion of the schedule, and update the projected construction portion of the schedule. The Design-Builder shall obtain the written approval of the Owner of the Schematic Design Documents before proceeding with the next phase.

#### Design Development Phase. The Design Professional shall prepare and submit to the Owner the Design Development Documents based upon approval of and comments made by the Owner regarding the Schematic Design Documents. The Design Development Documents shall include site plans, building plans, and specifications that fix and illustrate the size and character of the entire Project in its essentials.

##### DD Phase Site Plan Requirements. The site plan shall indicate building locations and site improvements (including all paved areas, site utilities, and landscaping ideas), topographical information, utility location, and demolition plans and information.

##### DD Phase Building Plan Requirements. The building plans shall include floor plans, exterior wall sections, building elevations and sections, structural foundation design, typical structural framing, preliminary finish schedule with material selections, typical interior wall types, acoustical guidelines and mechanical, electrical and plumbing system descriptions with one line diagrams reflecting the design of the HVAC, plumbing, fire protection, and electrical systems, and riser diagrams with panel information. The floor plans shall show spaces by name, number, actual net area of each space, structural module, mechanical spaces, equipment, chases and circulation area.

##### DD Phase Specification Requirements. The Design Development Documents shall also prepare outline specifications giving basic descriptions of essential components of all systems. The outline specifications shall identify major materials and systems and establish in general their quality levels.

##### Design Development Documents Approval. The Design-Builder and Design Professional shall meet with the Owner and Using Agency for the purpose of presenting and reviewing the Design Development Documents and the Design-Builder’s estimate. To the extent the estimate submitted with the Design Development Documents significantly deviates from the GMP Cost Limitation, the Design-Builder shall discuss the deviations with the Owner and prepare and submit a plan to address the differences. The Design-Builder shall, on the Preliminary Design and Construction Schedule, show the progress to date, confirm the remainder of the design portion of the schedule, and update the projected construction portion of the schedule. The Design-Builder shall obtain the written approval of the Owner of the Design Development Documents before proceeding with the next phase.

### Construction Documents Phase. The Design Professional shall prepare and submit to the Owner the Construction Documents based upon approval of and comments made by the Owner regarding the Design Development Documents. The Construction Documents shall consist of building plans, site plans, specifications and all design documents required for regulatory approvals necessary to receive operating permits and a Certificate of Occupancy. The Construction Documents must indicate, in detail, the requirements for the construction of the Project (including all on-site and off-site work).

#### Specification Requirements. The specifications must be in the full Construction Specifications Institute (CSI) Division Three-Part Format as established in the CSI Manual of Practice covering required materials, products, and equipment, their installation and operation, quality assurances, reference standards, and submittal requirements. The specifications must provide all supplemental information and requirements included but not elsewhere covered by the Contract Documents. The Design Professional should ensure that the specifications do not conflict with the terms of the Design-Builder Contract.

#### Plan Requirements. The plans must include, where applicable, at least the following:

##### Civil Engineering documents to consist of grading, storm drainage, erosion control, paving, fencing, Site sanitary system, and Site water system.

##### Architectural floor plans, exterior elevations, interior elevations, building sections, wall sections, reflected ceiling plans, interior and exterior details, door and finish schedules, and roof plans. All architectural floor plans shall be at not less than 1/8" = 1' 0" scale, must be fully coordinated with all other disciplines and all required equipment, and must show all required partitions, partition types, doors and door numbers, windows, room names and numbers, dimensions and any other required notes and information for complete floor plans.

##### Wall sections and interior elevations at scales appropriate to illustrate with sufficient detail and clarity the intended work and thereby facilitate its construction.

#####  Reflected ceiling plans at the same scale as the respective floor plans. All reflected ceiling plans must be fully coordinated with all the engineering disciplines and must show all required ceiling lights, diffusers, access panels, returns, fans, smoke detectors and any other required devices on the ceiling. The architectural reflected ceiling plan takes precedence over all the other engineering plans in regards to fixture and device locations. Sprinkler head requirements shall be per NFPA requirements and coordinated with the reflected ceiling plan.

#####  Structural construction drawings (e.g., structural steel and cast-in-place concrete work, as well as foundation reinforcing steel and any other structural elements) must include top of foundation elevation and complete structural details at not less than 1/2" = 1' scale.

##### HVAC, plumbing, and fire protection layouts showing major equipment and mains as well as typical distribution branches, riser diagrams, supply and return grilles, fire dampers, and a schedule of plumbing fixtures valves, and all other "end product” elements and features. All HVAC, plumbing, and fire protection plans must be fully coordinated with the architectural floor plans and reflected ceiling plans. All such drawings shall be at not less than 1/8” = 1’ 0” scale.

##### Electrical systems and separate signal and data/telecom conduit systems layouts, as well as riser diagrams for the building, and all other "end product" elements and fixtures. All electrical power and lighting plans must be fully coordinated with the architectural floor plans and reflected ceiling plans. Electrical site plans at not less than 1” = 50' scale.

#####  If professional design services or certifications related to systems, materials, or equipment are specifically required of the Design-Builder by the Contract Documents, the Design Professional will specify all performance and design criteria that such services must satisfy. Where appropriate, the Design Professional shall indicate in the Contract Documents when particular shop drawings will require the seal of a specialty consultant before being submitted for review.

#### Construction Documents Approval. The Design-Builder and Design Professional shall meet with the Owner and Using Agency for the purpose of presenting and reviewing the Construction Documents and the Design-Builder’s estimate. To the extent the estimate submitted with the Construction Documents significantly deviates from the GMP Cost Limitation, the Design Professional shall discuss the deviations with the Owner and prepare and submit a proposal to address the differences. The Design-Builder shall, on the Preliminary Design and Construction Schedule, show the progress to date, confirm the remainder of the design portion of the schedule, and update the projected construction portion of the schedule. The Design-Professional shall promptly revise without additional compensation those documents that have not been previously approved by the Owner or to which the Owner has reasonable and timely stated objections.

### Component Construction Documents. In accordance with the Preliminary Design and Construction Schedule, the Design Professional shall issue Component Construction Documents for those components listed in the Form of Contract. The Component Construction Documents shall be stamped and sealed by the Architect of Record or his or her engineering consultant, meet all regulatory and Fire Marshal requirements, and be sufficiently detailed to preclude the necessity for rework as the Construction Documents proceed to 100% completion. The Component Construction Documents shall be bound into a Project Manual which shall include the Contract, General Requirements, Supplementary General Requirements and Specifications.

### GMP Construction Documents. GMP Construction Documents shall be issued at the time stated in the Preliminary Design and Construction Schedule, but only when the Owner and Design-Builder agree that the Construction Documents are sufficiently developed to allow detailed and accurate pricing. The GMP Construction Documents shall be stamped and sealed by the Architect of Record or his or her engineering consultant, meet all regulatory and Fire Marshal requirements, and be sufficiently detailed to preclude the necessity for rework as the Construction Documents proceed to 100% completion. The GMP Construction Documents shall be bound into a Project Manual which shall include the Contract, General Requirements, Supplementary General Requirements and Specifications.

### 100% Construction Documents. Upon completion of all Construction Documents, Design Professional shall submit them to the Owner for approval. Upon the Owner’s approval, the 100% Construction Documents shall be bound into a Project Manual which shall include the Contract, General Requirements, Supplementary General Requirements and Specifications.

### Copyright

#### Copyright. Upon execution of this Contract, the Design-Builder expressly grants, assigns, and transfers, to the Owner, its successors, and assigns, pursuant to 17 U.S.C. § 201(d), all common law, statutory, and other reserved rights, including copyrights in both the Instruments of Service and in the buildings, improvements, and structures embodying the architectural and engineering works that constitute the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums, when due, under this Contract. The Design-Builder shall obtain similar grants, assignments, and transfers from its Design Professional and consultants consistent with this Contract. The Design-Builder warrants (and shall cause the Design-Professional and its consultants to warrant also) that this transfer of copyright and other rights is valid under U.S. laws.

#### Definition of Instruments of Service. Instruments of Service are those drawings, specifications, and other documents, including those in electronic form, prepared specifically for this Project by the Design Professional and its consultants. In recognition of the public ownership of the Project, the Design Professional and its consultants agree and shall be deemed to have prepared their respective Instruments of Service as architectural and engineering works and as works for hire as defined in 17 U.S.C. §§ 102(a)(8) and 201(b), thereby transferring and vesting in the Owner, pursuant to 17 U.S.C. § 201(d), all common law, statutory, and other reserved rights, including copyrights in the Instruments of Service and in the buildings, improvements, and structures constituting the Project.

#### Reserved Rights and License to the Design Professional. Notwithstanding the rights, ownership, grants, assignments, and transfers set forth in Sections 2.1.7.1 and 2.1.7.2, the Design Professional shall retain its rights to all its previously created standard design elements included within the Instruments of Service, including its standard details, standard specifications and other standard design documents generated and authored by the Design Professional for its repeated and regular use in other instruments of service for its clients; provided, however, that Design Professional grants and transfers an irrevocable license to Owner to use, reuse, and create derivative works of such standard design elements for use in the buildings, improvements, structures and the campus of the Project. In addition, the Owner expressly grants, assigns, and transfers a permanent and exclusive license to the Design Professional, its successors, and assigns, for the Design Professional’s Instruments of Service, and to each consultant (including the consultant’s successors and assigns) of the Design Professional for such consultant’s Instruments of Service, to use, reproduce, sell, transfer, and accomplish derivative works therefrom, for any and all purposes.

#### Release of Liability. The Owner agrees and hereby forever releases the Design-Builder and Design Professional from all liabilities that might arise from the Owner’s use of the Instruments of Service or other licensed portions of the Construction Documents for any alterations, additions, subtractions, or modifications of the Instruments of Service or of the buildings, improvements, and structures of the Project resulting therefrom, or for use in other projects; provided, however, that this release does not apply to liabilities arising from the original Instruments of Service and the buildings, improvements, and structures of the Project that have not been altered, added to, subtracted from, or modified subsequent to completion of construction of the Project by the Owner, its successors, or assigns.

#### Use of Instruments of Service. Except for the rights and licenses granted in this Section, no other license or right shall be deemed granted or implied under this Contract. The Owner permits and authorizes the Design-Builder and all Subcontractors to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work.

### Forms and Specimen Documents. The forms required for the Design-Builder and Design Professional to complete the duties required by the terms of the Contract are included in the Design-Builder Forms Packet. The Design-Builder acknowledges that it has reviewed the forms, including the Certificate of Material Completion, Certificate of Interim Punchlist Completion, and Certificate of Final Completion. The Owner and Design-Builder agree that the required certifications do not require knowledge, services, or responsibilities that are beyond the scope of this Contract.

## Pre-Construction Services

### Pre-Construction Phase Design Review and Consulting Services. During the Pre-Construction Phase, Design-Builder shall commence Design Review and Consulting Services and shall actively participate in Design Coordination Meetings in order to enable the Project Team to make the best design decisions possible.

#### Design Meetings. Periodically during the initial phases of Schematic Design and Design Development, Design-Builder shall schedule meetings with the Design Professional, Owner and Using Agency to describe the design work in progress, address questions, and prepare for Owner’s and Using Agency’s approval. The Design-Builder shall take appropriate minutes and distribute them to the Owner, Using Agency, attendees, and other interested parties. Design-Builder shall also schedule design coordination meetings directly with the Design Professional for the purpose of collaborating and coordinating the development of Component Construction Documents, GMP Change Order Documents, 100% Construction Documents, and the Overall Project Schedule.

#### Design Review and Consulting Services. Design-Builder shall review and advise on the following issues as part of its Design Review and Consulting Services.

##### Review for Constructability, Cost Savings, and Other Benefits to Owner. Design-Builder shall continuously review the Construction Documents for constructability and consistency with the Using Agency’s Program, as well as for any potential conflicts, inconsistencies, ambiguities, errors, or omissions. Design-Builder shall take into account life-cycle costs and shall conduct value engineering analyses in order to recommend changes that will reduce costs or expedite the Project without reducing quality or make any other recommendations that may be in the best interest of Owner and Using Agency.

##### Review for Code Compliance. Design-Builder shall continuously review the Construction Documents for consistency, errors, omissions, and non-conformance with applicable laws, statutes, regulations, and building codes. Design-Builder shall give Notice upon the discovery of any such inconsistency, error, omission or non-compliance.

##### Recommendations for Selection of Materials. Design-Builder shall provide advice regarding Site use and improvements and the selection of materials, building systems, and equipment. Design-Builder shall make recommendations to reduce costs without sacrificing quality, reduce procurement or installation time, and minimize adverse effects of labor or material shortages.

##### Recommendations on Phasing of Components. Design-Builder shall make recommendations to Owner and to Design Professional to facilitate the development of Components of the Work. In recommending phasing of components, Design-Builder shall take into consideration such factors as the time of performance, the availability of labor, long lead-time items, overlapping trade jurisdictions, provisions for temporary facilities, and the reduction of areas of conflict and overlapping in the Work to be performed by Design-Builder or by Trade Contractors.

##### Utilities & Environmental Review. Design-Builder shall advise and assist Owner and Design Professional with the preparation of all applications for water, sewer, electrical, gas, telephone, other utility services and any other environmental compliance necessary for the completion and operation of the Project.

#### Annotation of Potential Design Conflicts. When potential design issues are identified during the Design Review process, Design-Builder shall annotate the Construction Documents and shall issue an RFI, or Change Order, or call for a Design Coordination Meeting as appropriate.

#### Design Coordination Meetings for Material Design Issues. Design-Builder shall call for a Design Coordination Meeting when a potential design issue may materially affect the sequencing or accomplishment of the Work, or may cause delays to the Project.

### Pre-Construction Budgeting Services. The Design-Builder is responsible for ensuring that the Project is designed so that the GMP shall not exceed the GMP Cost Limitation. Design-Builder shall prepare and submit Construction Cost Estimates as required below.

#### Timing of Estimates. Construction Cost Estimates shall be provided to Owner and Using Agency with the submission of the Schematic Design Documents, the Design Development Documents, any Component Construction Documents and prior to submission of the Guaranteed Maximum Price Proposal.

#### Format of Construction Cost Estimates. All Construction Cost Estimates shall be provided in CSI Format. Construction Cost Estimates for Schematic Design and Design Development Phases shall be in CSI Format Level 3. For Construction Documents, Construction Cost Estimates shall be at CSI Format Level 3 or greater. All Construction Cost Estimates shall represent the facts existing as of the date of execution of the statement and shall contain such provisions for inflation or deflation as may be reasonably anticipated within the construction industry. The inflation or deflation factor shall be applied based upon the anticipated start date of construction.

#### Costs Exceed GMP Cost Limitation. In the event that the Design-Builder or Design-Professional finds that the probable construction costs will potentially exceed the GMP Cost Limitation, the Design Professional shall immediately stop work and give written notice to the Owner. The Design-Builder shall be responsible for proposing changes to bring the Project into budget. If the Owner agrees to increase the GMP Cost Limitation because the Project as designed exceeds the GMP Cost Limitation, there shall be no increase in the Design Fee or the Design-Builder’s Fee as a result thereof. If the Owner elects to reduce the scope of the Project or make any other changes to bring the Project within budget, the Design Professional shall, at no additional cost to the Owner, revise or redraft any and all documents necessary so as to bring the probable GMP within the GMP Cost Limitation and maintain the Preliminary Design and Construction Schedule.

### Pre-Construction Phase Scheduling Services. Design-Builder shall submit a Construction Progress Schedule at the time stated in the preliminary design and construction schedule. The Construction Progress Schedule shall be prepared 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 (and each Component’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. Design-Builder 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:

- Design Coordination Meetings

- Component Construction Documents and Construction Documents receipt and approval

- Submittal of Component Change Orders and GMP Change Order

- Construction Start

- Phase Construction (if applicable)

- 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.

* + - 1. Design Professional’s Review of Construction Progress Schedule. The Design Professional shall review the Construction Progress Schedule to determine whether it is in compliance with the Preliminary Design and Construction Schedule, meets the requirements of the Design-Builder Construction Contract, and is reasonable and achievable. The Design Professional shall review the Submittal Schedule to determine whether it conforms to the Overall Project Schedule and allows adequate time for review of submittals. If the Design Professional determines that the Construction Progress Schedule and Submittal Schedule meet the foregoing requirements, it shall issue its approval. If the Design Professional determines that the Construction Progress Schedule and Submittal Schedule do not meet the foregoing requirements, it shall notify the Owner and Design-Builder and detail the deficiencies. The Design Professional shall review and give comment or approval within fourteen (14) days from receipt of the Construction Progress Schedule.

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

### Pre-Construction Phase Construction Supervision & Planning Services. During the Pre-Construction Phase, Design-Builder shall provide the following Construction Supervision Services.

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

##### Design-Builder’s Staffing Plan. The Construction Management Plan shall include Design-Builder’s staffing plan, an estimate of the manpower requirements for each trade and the anticipated availability of such manpower. Design-Builder 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 Design-Builder 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. Design-Builder shall establish and require all Trade Contractors to establish reasonable safety programs. No imposition of responsibility on Design-Builder 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, Design-Builder shall submit to Owner 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. Design-Builder 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 Design-Builder 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.

### Design-Builder Site Plan and Land Disturbance Permit. The Design-Builder, with the design assistance of the Design Professional, is contractually required to obtain the land disturbance permit(s) to comply with the National Pollution Discharge Elimination System (NPDES) general permit for storm water management for construction activities. As a general principle, compliance requires that there be properly designed Best Management Practices (BMPs), properly installed BMPs, and inspection and maintenance of the installed BMPs. With assistance of the Design-Builder, Design Professional shall resolve with the local permitting official any deficiencies with a goal that all environmental permitting and plans be approved by the end of the Pre-Construction Period. Land Disturbance Permitting.

#### Unit Costs, Abnormal Weather Conditions, Changes. Design-Builder shall submit unit prices to cover the addition or reinstallation of BMPs, by type and linear foot. The Design Professional shall review the unit prices to determine whether they are reasonable, and if so, shall recommend Owner acceptance of the unit prices.

### Submission of Rental Rates and Unit Prices. Prior to the issuance of the first Proceed Order, Design-Builder 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. Unit Prices shall include all costs associated with the Work, including Trade Contractor overhead and profit and Design-Builder’s Mark-Up.

#### Rental Rates for Heavy Construction Equipment and Wage Rates. Design-Builder shall submit rental rates for heavy construction equipment and wage rates for operation of heavy equipment and other types of Project labor. Design-Builder shall include rates for hourly, daily, weekly, and monthly rental.

#### Unit Prices for Stormwater Management BMPs. Design-Builder 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. Design-Builder 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 Owner’s Special Inspection Firmdetermines that Design-Builder 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. Design-Builder 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 Design-Builder 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.

### Submission of Documents for Issuance of Proceed Order. Design-Builder shall submit the documents listed below as a prerequisite to Owner’s issuance of each Proceed Order. No Work shall be performed on the Site until a Proceed Order is issued. A separate Proceed Order shall be required for each Change Order, Component Change Order and GMP Change Order. Prior to acceptance of all subsequent Component Change Orders and the Guaranteed Maximum Price Change Order, Design-Builder shall update, supplement, or amend all documents previously submitted. Design-Builder shall timely submit the required documents so that Work may commence in accordance with the Preliminary Design and Construction Schedule, or the Overall Project Schedule if it has been approved by the Owner and Design Professional. The Owner’s failure to issue a Proceed Order shall not be a Delay Event under Section 1.4.2.3 if such delay is caused by Design-Builder’s failure to submit Documents necessary for Issuance of Proceed Order.

- Payment and Performance Bonds

- Proof of insurance for all insurance required

- 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

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

- Construction Management Plan, which includes Design-Builder’s Staffing Plan, Security Program and Safety Program (required for GMP Change Order)

- Quality Control Program (required for GMP Change Order)

- Construction Progress Schedule, including Submittal Schedule (required for GMP Change Order)

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

- Proposed Rental Rates and Unit Prices

- Any Component Change Orders executed by Design-Builder and Design Professional

# CONSTRUCTION PHASE

## Construction Phase Basic Services

### Commencement of the Construction Phase. The Construction Phase Commences with the first Component Change Order that authorizes Work to begin on the Project Site. No Work shall begin on the Project Site until a Notice to Proceed is issued by the Owner.

### Construction Phase Design Review and Consulting Services. Design-Builder shall continue the Design Review and Consulting Services for the duration of the Construction Phase and shall give written Notice to Owner and Design Professional of any inconsistency, ambiguity, error, or omission which Design-Builder or its Subcontractors may discover before proceeding with the affected Work. Design-Builder shall review and compare all newly issued Construction Documents to the documents previously issued by Design Professional. Design-Builder shall perform such review as early in the Project as practicable so that any conflicts or interpretations can be addressed in time to minimize impacts upon the Overall Project Schedule. The issuance, or the express or implied approval, by Owner or Design Professional of the Construction Documents shall not relieve Design-Builder of the continuing duties imposed hereby.

#### Requests for Information (RFI). In the event the Construction Documents are not complete, definite, and clear to Design-Builder, or appear to have conflicting information, Design-Builder shall issue in writing an RFI to Design Professional with 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. Design-Builder shall maintain a log of RFIs and the responses received from Design Professional.

####  Contract Documents at Site and Recording Changes. Design-Builder 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. Design-Builder 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.

### Construction Phase Cost Estimating Services. Design-Builder shall revise and refine the Construction Budget to aid Owner in monitoring the progress of the Work. Design-Builder shall revise and refine the Construction Budget at appropriate intervals as required by the conditions of the Work. Design-Builder shall identify variances between actual and budgeted costs and shall advise Owner and Design Professional promptly whenever projected costs may exceed the budgeted cost. Design-Builder shall maintain cost accounting record of all Work in compliance with GASB 34 accounting requirements.

### Construction Phase Scheduling Services. During the Construction Phase, Design-Builder 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. Design-Builder shall schedule and conduct Construction Progress Meetings (also known as O.A.C. 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). Design-Builder 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. Design-Builder shall maintain a daily log of construction activities. 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. Design-Builder 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. Design-Builder 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.

#### Design-Builder’s Failure to Meet Schedule Requirements. In the event Design-Builder is delinquent in achieving a Milestone date in the Overall Project Schedule, Owner may demand Design-Builder to take action to promptly bring the Work into compliance with the Overall Project Schedule. Within seven (7) days after receipt of such demand, Design-Builder 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 Design-Builder from liability for breach of the covenant as to time or failure to achieve Material Completion by the Material Completion Date. Design-Builder shall not be entitled to an increase in Contract Sum or a Claim for the costs resulting from the actions required by this Section.

### Construction Phase Construction Supervision & Planning Services. Design-Builder 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. Design-Builder shall be responsible for and shall coordinate all construction means, methods, techniques, sequences, and procedures.

#### Responsibility for Qualified Employees & Subcontractors. Design-Builder shall at all times enforce strict discipline and good order among its employees and Subcontractors. Design-Builder shall not employ on the Project any unfit person or anyone not skilled in the work assigned. Design-Builder shall require all Subcontractors to employ only skilled and experienced workers to perform the task assigned to them. Design-Builder 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. Design-Builder 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. Design-Builder shall immediately replace or cause to be replaced any Subcontractor or Subcontractor’s employee whose Work, as determined by Design-Builder, does not meet such requirements.

#### Failure of Subcontractor Does Not Excuse Design-Builder. Non-performance, improper performance, or other default by any Subcontractor or employee of Design-Builder shall not excuse Design-Builder from its obligation to assure timely performance of the Work in compliance with the Contract Documents. Design-Builder 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. Design-Builder 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 Design-Builder.

#### 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 Design-Builder’s employ. Design-Builder 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. Design-Builder is fully responsible to Owner for the acts and omissions of its officers, employees, agents, Design-Professional all Subcontractors and their respective officers, employees and agents, and all other persons on the Site at the direction of Design-Builder or to perform Work. Design-Builder shall promptly remedy damages or loss to property at the Site caused thereby.

### Responsibility to Coordinate Work of Separate Contractors. Design-Builder 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. Design-Builder 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, Design-Builder 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, Design-Builder shall re-install BMPs at established unit prices under Section 2.2.5.1. Installation, Inspection, and Maintenance. Design Professional is responsible for and shall obtain the services of a qualified testing laboratory, acceptable to Owner, to inspect the BMPs in accordance with the permits, the costs of such inspections to be borne by the Owner.

### Responsibility for Protection of Site and Project Safety. Design-Builder 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. Design-Builder 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. Design-Builder 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. Design-Builder 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. Design-Builder 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. Design-Builder 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. Design-Builder shall maintain standard monthly safety reports to submit to Owner and Design Professional.

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

#### Dust Control and Cleaning. Design-Builder 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, Design-Builder 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, Design-Builder 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 Design-Builder.

### Geological and Archeological Specimens. If Design-Builder, 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 Design-Builder acknowledges that title to the foregoing is vested in Owner. Design-Builder 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 Design-Builder shall be addressed under the provision for changed conditions.

### Submittals. Design-Builder shall provide all Submittals as required by the Contract Documents in accordance with the Submittal Schedule. Design-Builder shall perform no portion of the Work for which the Contract Documents require Submittals until Design Professional has approved the respective Submittal. The Design Professional shall not redesign, add or change scope on Submittals without first requesting a change request and approval by the Owner. Design-Builder shall maintain at the Site one copy of all approved Submittals.

### Hazardous Materials. Design-Builder 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 Design-Builder encounters unanticipated Hazardous Materials on the Site, then Design-Builder 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. Design-Builder 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 Design-Builder 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 Design-Builder 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 2.2.8.4 below.)

#### Prohibition Against Selecting and Installing Products Containing Hazardous Materials. Design-Builder 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. Design-Builder 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) Design-Builder 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) Design-Builder 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 Design-Builder to be inadequate to prevent foreseeable personal injury to persons encountering the hazardous condition, Design-Builder 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 Design-Builder or contract with a Separate Contractor, to resolve the condition.

### Differing Site Conditions. Design-Builder acknowledges, warrants, and represents that it has visited the premises and has taken into consideration all conditions that might affect the Work. In addition, Design-Builder acknowledges, warrants, and represents that it has reviewed all Contract Documents before execution by Design-Builder, and all Construction Documents at the time each Construction Document is developed and issued, and has correlated personal observations and field measurements with the requirements and conditions of the Contract Documents and Construction Documents. Differing Site Conditions are physical conditions existing at the Project Site which differ materially from (i) conditions explicitly identified in the Contract 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 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 Design-Builder believes it has encountered Differing Site Conditions, then Design-Builder shall give Notice to Owner 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, Owner shall promptly investigate such conditions. If Owner determines that the conditions encountered by Design-Builder are Differing Site Conditions and will result in an increase or decrease in the costs or time required for the performance of Work, then Owner will issue a Change Order. In such case, if Unit Prices have previously been 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 Owner determines that the conditions are not Differing Site Conditions, or no change in the Contract Sum or Contract Time is justified, or if Design-Builder has not complied with Section 6.2.2, then Owner shall so notify Design-Builder, providing the basis therefor.

### Office for Contract Compliance Specialist (CCS). Design-Builder 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 Design-Builder’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.

### Permits, Licenses, & Utilities. Design-Builder shall obtain and pay for all permits and licenses of a temporary nature necessary for the prosecution of the Work. Design-Builder 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, Design-Builder shall pay for all utilities until Material Completion has been achieved.

### Effect of Approval. Owner’s review, recommendation, approval, or acceptance of any cost estimate, budget, construction schedule, submittal schedule, plan, program (including but not limited to those referenced in 2) is not a warranty, guarantee, covenant, or promise that such cost estimate, budget, construction schedule, submittal schedule, plan, program is accurate, feasible, constructible, or otherwise appropriate, and Design-Builder shall make its own independent judgment thereof. Design-Builder shall not make any Claim based on such review, recommendation, approval, or acceptance, including but not limited to a Claim for an increase in the Contract Sum or extension of Contract Time.

## Trade Contractors; Self-Performance

### Use of Trade Contractors – No Direct Performance. Design-Builder shall contract for performance of all Work, except Basic Services and the General Requirements, through Trade Contractors that are not affiliates. Design-Builder shall not directly perform any Work, other than Basic Services and General Requirements, except as provided below. Performance of Work by the Design-Builder or any Affiliate shall be deemed “Self-Performance”. No action permitted under this Section shall increase the Guaranteed Maximum Price or give rise to a Claim, including but not limited to a Claim for increase in Contract Time or Contract Sum.

#### Self--Performance with Owner Approval Prior to Execution of GMP. Design-Builder may identify certain Trade Contract Work that it wishes to Self-Perform. Design-Builder must submit a proposal for the Self-Performance of Work in the same manner as all other Trade Contractors, but prior to the solicitation of the other Trade Contractors. Owner will determine, in its sole discretion, whether Design-Builder’s proposal provides the best value for Owner. Design-Builder shall perform approved Self-Performance Work in accordance with the same terms and conditions as its other Trade Contractors and shall be paid the lump sum stated in Design-Builder’s proposal for such Work.

####  Self-Performance by Design-Builder When Trade Contractors are Over Budget. After execution of the GMP Change Order, if the lowest responsible Trade Contractor proposal received by Design-Builder exceeds Design-Builder's GMP Cost Category for such Work or no responsible proposal is received, and any permitted redesign does not eliminate the budget shortfall or result in the submission of an acceptable proposal, then Design-Builder may perform such Work with its own forces for the lump sum amount stated in the GMP Cost Category for such Work, but only with Owner’s written approval.

#### Self-Performance After Default of Trade Contractor. Design-Builder may directly perform Work encompassed within any Trade Contract upon the default and termination of such Trade Contractor. Design-Builder shall perform such Work, or the balance remaining at termination, for the Contract Sum specified in the Trade Contract, or the unexpended balance remaining at the time of termination, with Owner’s written approval.

#### Self-Performance of Change Order Work. If Design-Builder is Self-Performing the Work of a Trade Contractor under Section 3.2.1.1, Section 3.2.1.2, or Section 3.2.1.3 , then Design-Builder may Self-Perform any Change Order Work associated with such Self-Performed work.

#### Design-Builder Supplied Equipment or Supplies. With the prior written approval of Owner, Design-Builder may supply equipment or supplies necessary to the performance of the Work. The Allowable Cost of self-supplied equipment or supplies shall not exceed the lower of (i) the amount that would be paid by Design-Builder for the procurement of such equipment or supplies under a competitive proposal procurement, or (ii) the applicable Unit Price agreed to pursuant to Section 2.2.6.

### Selection of Trade Contractors. Trade Contractors shall be selected by Design-Builder after completion of the selection process outlined below. Design-Builder shall make reasonable efforts to ensure that Trade Contractors local to the Project Site are given the fair opportunity to be considered for the award of Trade Contractor packages required for the Project.

#### Proposed Trade Contractor List. Prior to each solicitation of Trade Contractor proposals, Design-Builder shall submit to Owner a list of recommended responsible Trade Contractors and shall identify any portions of the Work that it wishes to self-perform. Design-Builder may require prospective Trade Contractors to undergo a pre-qualification process to permit Design-Builder affirmatively to determine that a Trade Contractor is a responsible proposer. To be deemed a responsible Trade Contractor, the proposed Trade Contractors shall be reputable, skilled, reliable, competent, and qualified in the trade or field in which they are to perform, have the ability to obtain a performance bond from a surety acceptable to Design-Builder, have the ability to obtain the insurance required by the Contract Documents and Design-Builder, and not be included in the Owner’s list of debarred firms or the list of debarred firms maintained by the Georgia Department of Administrative Services.

#### Development of Trade Contractor Packages and Selection Criteria. Design-Builder, in consultation with Design Professional and Owner, shall develop appropriate criteria for the selection of Trade Contractors. The cost of the Work shall be a factor for consideration in every selection, but may not necessarily be the determining factor. Design-Builder shall develop Trade Contractor packages that describe the Work using Design-Builder’s own forms and procedures. Proposers shall be required to submit a proposal encompassing the full contract price for the Work to be procured. Design-Builder shall submit proposals from not less than three (3) proposers. If Design-Builder is unable to obtain three proposals for a Trade Contract, Design-Builder shall document its good faith effort to solicit proposals and confer with the Owner regarding potential changes to the Construction Documents to increase Trade Contractor competition.

#### Trade Contractor Proposal Review. Upon receipt, Design-Builder shall prepare a thorough analysis of the Trade Contractor proposals for Owner’s review. The analysis shall clearly indicate the Trade Contractors preferred by Design-Builder and shall be accompanied by a copy of each proposal received. If the preferred Trade Contractor is not the lowest in price, Design-Builder’s analysis shall include a justification for selecting the preferred Trade Contractor over the lowest-price Trade Contractor. Design-Builder shall provide Trade Contractor proposals to Owner with sufficient time for Owner to review and to avoid delay.

##### Owner’s Right to Reject Trade Contractor. Owner reserves the right to require Design-Builder to reject any Trade Contractor. If Owner exercises its right to require Design-Builder to reject a Trade Contractor, Design-Builder shall recommend an acceptable substitute Trade Contractor. If Owner requires, in writing, rejection of a Trade Contractor after the acceptance of the GMP Change Order by Owner and the substitute Trade Contractor has submitted a higher proposal or price, then Owner will issue a Change Order to adjust the GMP Change Order and the associated GMP Cost Category to reflect the difference between the amount of the rejected proposal or price and the higher accepted proposal or price. Additionally, if Owner’s election under this Section causes a delay, then Design-Builder may seek an extension of Contract Time under Section 1.4.2.2. As a condition to any adjustment provided in this Section, Design-Builder shall comply with Section 5.2.2.

#### Award of Trade Contracts. Unless Owner exercises its right to reject a Trade Contractor, Design-Builder shall award each Trade Contract to its preferred Trade Contractor. Design-Builder shall provide Owner with a copy of all Trade Contracts upon Owner’s request.

#### Trade Contractor Procurement Schedule. Design-Builder shall maintain a schedule of proposed and awarded Trade Contractor packages and shall submit a current copy to Owner and Design Professional. The schedule shall be on a format acceptable to Owner and shall include the following headings and data:

- Description

- Bid Date

- Award Date

- Name of Trade Contractor

- Contract Execution Date

- Award Amount

- Design-Builder Estimate

- Variance

### Contract Provisions Required in All Trade Contracts. Design-Builder 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.

#### Payment of Subcontractors. Trade Contactors shall 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 5.2.1. Trade Contractors shall 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.

#### Payment of Trade Contractors. Design-Builder shall pay Trade Contractors the amount paid to Design-Builder on account of the Trade Contractor’s Work within seven (7) days of receipt of payment from Owner unless Design-Builder has obtained approval from Owner to pay Trade Contractor within a different period of time or unless the contract between Design-Builder 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 5.2.1. Design-Builder shall pay the Trade Contractor a just share of any property insurance proceeds received by Design-Builder and due to Trade Contractor for Work performed by Trade Contractor and paid for by insurance.

#### Assignment of Trade Contracts. 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 Design-Builder under said Trade Contract. Such assignment shall become effective only upon the termination of this Contract, whereupon the Owner may elect in writing to assumet he rights and obligations of Design-Builder under such Trade Contracts.

#### Third Party Beneficiary. Design-Builder shall expressly name Owner as an intended third-party beneficiary of any subcontract.

### Effect of Owner’s Discretionary Decisions. Owner’s decision, approval, or rejection related to (i) Design-Builder’s proposal to self-perform Work or directly supply equipment or supplies, (ii) selection of Trade Contractors, or replacement Trade Contractors after default of an initial Trade Contractor, or (iii) any other decision or determination provided for in Section 3.2 shall not give rise to a basis or Claim for an increase in the Contract Sum or extension of the Contract Time, unless expressly provided herein. All such decisions, approvals, or rejections are in Owner’s sole discretion.

## 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. Design-Builder 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, Design-Builder shall provide all additional warranties called for in the Specifications. 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. Design-Builder shall provide a Five Year Bond on Roofs and Walls as required by Section 7.1.1.12.

#### 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 Design-Builder hereunder, including but not limited to the obligation correct the Work as set forth in Section 3.3.5. 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 Design-Builder 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 Design-Builder to ensure that all Work complies with the Contract Documents. The failure of Owner, Design Professional, or other third-parties to discover or notify Design-Builder of the existence of Non-Compliant Work shall not relieve Design-Builder 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 Design-Builder of responsibility to ensure that all Work complies with the Contract Documents.

#### Design-Builder’s Inspection of the Work. Design-Builder 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. Design-Builder shall not rely on an inspection by Owner, Design Professional, or any other third party to identify Non-Compliant Work.

#### Inspections of the Work by Design Professional. There is no local Building Inspector with jurisdiction over the Project, other than the State Fire Marshal. The Design Professional shall inspect the Work to determine compliance with the Contract Documents and applicable building codes. In addition, the Design Professional shall monitor the Work to determine compliance with the Overall Project Schedule. These inspections may be performed by a principal of the Design Professional’s firm or the Design Professional’s consultant. The Design Professional shall not accept, authorize the covering of, or certify for payment Work in a field or trade in which the Design Professional is not skilled and competent, except upon the personal advice and written approval of said consultants. The Design Professional is fully responsible for any Work designed, approved, certified, or accepted by its consultants the same as if the said Work were designed, approved, certified, or accepted by the Design Professional. The responsibility of Design Professional for enforcing the compliance with the Contract Documents is not affected in any respect by the presence of a contract compliance specialist at the site or by inspections by other employees or contractors of the Owner.

#### Coordination of Special Inspections. Special Inspections shall be performed by testing firms under contract with the Owner. In accordance with the GSFIC Special Inspections Guidelines, the Design Professional shall coordinate Special Inspections as required by the Georgia Standard Codes, prepare the Statement of Special Inspections, and review and distribute all Special Inspection reports.

#### Other Testing. The Owner shall contract for initial independent construction testing as required by the Contract Documents, laws, ordinances, or any public authority having jurisdiction over the Project.

#### Fire Marshal’s Inspection of the Work. The State Fire Marshal may make inspections at any time. Design-Builder 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 Design-Builder 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.

### Inspections Prior to Covering Work. If the Contract Documents, laws, ordinances, or any public authority require any Work to be specially tested or inspected, Design-Builder 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. Inspections by Design Professional shall be made promptly and, where practicable, at the source of supply. Design Professional shall provide written notice of its consent to cover the Work.

#### 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 Design-Builder shall uncover such Work for inspection by Design Professional. Design-Builder 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. Such costs and fees shall not constitute Allowable Costs.

#### 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 Design-Builder. 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 Design-Builder satisfies all requirements and conditions thereunder, Design-Builder may submit a Claim for compensable delay under Section 1.4.2.3. If the Work is found to be Non-Compliant Work, then (i) Design-Builder shall pay the costs of inspection, retesting, and the cost of uncovering, correcting, replacing, and recovering the Non-Compliant Work, (ii) such costs shall not constitute Allowable Costs, and (iii) Design-Builder shall not be entitled to assert a Claim for increase in Contract Time or Contract Sum.

#### False Starts. In the event Design-Builder shall have issued Notice of Readiness prematurely, its action shall be deemed to be a "false start.” Design-Builder 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. Such costs and damages shall not constitute Allowable Costs.

### 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. A Notice of Non-Complaint Work may also be issued by the Owner. The Notice of Non-Compliant Work shall be in writing, dated, and 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 Design-Builder 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 the Owner incurs increased costs due to re-inspection of Work that was found to be Non-Compliant, Design-Builder 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. Such costs shall not constitute Allowable Costs.

### Duty to Promptly Correct Work. Design-Builder 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. Design-Builder 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. Such costs shall not constitute Allowable Costs. Design-Builder 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. Design-Builder 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, Design-Builder shall deliver to Design Professional and Owner a written plan explaining how Design-Builder 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. Design-Builder's plan must provide sufficient detail to allow Design Professional and Owner to determine the proposal's feasibility.

#### Owner’s Option to Accept Non-Compliant Work. If Owner deems 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 Design-Builder’s next payment. 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 Design-Builder does not correct the Non-Compliant Work within the Cure Time stated in the Notice of Non-Compliance, Design-Builder shall be deemed to have breached the Notice of Non-Compliant Work. If Design-Builder 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 Design-Builder, (i) correct the Non-Compliant Work, prosecute the Work, or supplement the labor of Design-Builder or its Subcontractors and (ii) deduct the costs thereof from any payment then or thereafter due to Design-Builder and recover any resulting deficit from Design-Builder. 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. Design-Builder shall promptly remedy any Non-Compliant Work upon receipt of a Warranty Complaint received within one (1) year from the date of Material Completion.

#### Design-Builder’s Initial Response to Warranty Complaint. Within seven (7) days of receipt of a Warranty Complaint from the Owner, Design-Builder shall issue a written response to the Owner stating Design-Builder’s plan to correct the Work and the time needed to correct the Work. If Design-Builder believes the Warranty Complaint is the result of a design defect or Using Agency abuse, Design-Builder 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 user abuse.

#### Time for Correction of Warranty Complaint. Design-Builder shall promptly commence correction of the Work unless the Owner and Design Professional agree that the Warranty Complaint is the result of Using Agency abuse. Design-Builder 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 Design-Builder 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 Design-Builder 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), Design-Builder is requested to correct the Work, it shall respond to the Warranty Complaint in emergency situations within twenty-four (24) hours. If Design-Builder fails to respond within such time limit, Owner may remedy the Warranty Complaint and charge the cost thereof to Design-Builder, including but not limited to any resulting damage to the Work or other property. If Design-Builder corrects the work and it is determined that the Warranty Complaint is not the responsibility of Design-Builder, then Design-Builder 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 Design-Builder, including but not limited to any resulting damage to the Work or other property.

#### Owner’s Remedy Upon Design-Builder’s Failure to Remedy Warranty Complaints. If Design-Builder 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 Design-Builder.

### Warranty Walk-Through. Design-Builder and Design-Professional shall participate in a walk-through of the Project with the Owner to observe and evaluate the function of building systems to identify actual and potential warranty items, as well as any deficiencies or defects that require correction. The walk-through shall be scheduled by the Owner within one year from Material Completion.

### No Limitation. Nothing contained in this Section 3 shall be construed to establish a period of limitation with respect to Design-Builder's liability for defective or Non-Compliant Work under this Contract, at law, or in equity. The remedies stated in this Section are in addition to the remedies otherwise available to Owner and are without prejudice to any other remedies.

# CHANGE ORDERS

### Component Change Order Proposal. Design-Builder shall submit a proposed Component Change Order when any Owner-approved Component Construction Documents are issued.

#### Component Change Order Format. The proposed Component Change Order shall state the proposed CCO Maximum Price, the proposed CCO Completion Date, and shall include the information listed below.

##### Component Change Order Cost Summary. The proposed Component Change Order shall include a CCO Component Cost Summary that itemizes the proposed CCO Maximum Price into separate CCO Cost Categories, which shall include: (i) Trade Contractor and General Requirements Costs, (ii) General Conditions Costs, (iii) Contingency Costs, and (iv) the portion of the Construction Phase Fee associated with the proposed CCO Work.

##### Construction Budget. The proposed Component Change Order shall include a detailed Construction Budget which shall include a summary sheet broken down by CSI Division and detailed cost information organized by CSI Division.

##### Bid Backup and All Estimates. The proposed Component Change Order shall include bid backup and all estimates of Trade Contractor Costs and General Requirements Costs.

#### Design-Builder’s Acknowledgement of Component Construction Documents. By executing the proposed Component Change Order, Design-Builder acknowledges and represents that it has received, reviewed, and carefully examined the Construction Documents that are incorporated by the Component Change Order, and in the capacity of a Design-Builder and has found them to be generally complete, accurate, adequate, consistent, coordinated, and sufficient for construction of the Work.

#### Design Professional’s Review of Component Change Orders. The Design Professional shall review the Design-Builder’s proposed Component Change Order to determine compliance with the terms of the Design-Builder Construction Contract and recommend approval or rejection. With its recommendation, Design Professional shall (i) provide an analysis of the Change Order Cost in relation to Estimates of Probable Construction Cost, and (ii) provide a recommended amount to be established by Owner as an Owner's contingency. If the Design-Builder’s proposed Component Change Order Cost materially exceeds the estimate for the Component, the Design Professional shall recommend such corrective action, if any, which the Design Professional shall deem necessary or appropriate so that the Project Cost shall not exceed the GMP Cost Limitation.

#### Owner’s Time for Review of Component Change Order. Owner shall have seven (7) days following its receipt of Design-Builder's proposed Component Change Order to accept or reject the proposed Component Change Order.

#### Rejection of Component Change Order. If Owner rejects Design-Builder's proposed Component Change Order, Design-Builder may revise and resubmit same but shall not be obligated to do so. If Owner rejects Design-Builder's proposed Component Change Order, Owner may remove the Component from the Contract Documents and may use a Separate Contractor for the CCO Work and Design-Builder shall not be entitled to any Fee or compensation for such Work. In addition, Owner may equitably reduce the Contract Time associated with such CCO Work, and Owner may rely on the CCO Completion Date proposed by Design-Builder to determine such equitable reduction.

#### Acceptance of a Component Change Order. If Owner accepts Design-Builder's proposed Component Change Order, Owner shall execute the Component Change Order and issue a Proceed Order. Upon execution by Owner, the Component Change Order shall become a part of the Contract Documents, and Design-Builder shall complete CCO Work by the CCO Completion Date.

#### Compensation and Maximum Liability. Unless a different method of compensation is set forth in a Component Change Order, or if no compensation method is stated, Design-Builder shall be compensated for its Allowable Costs (as defined in Section 5.1.5) in performing the CCO Work, up to the CCO Maximum Price. Additionally, each CCO Cost Category set forth in the Component Change Order shall be the maximum amount that Owner is required to pay for each CCO Cost Category.

#### Effect of GMP Change Order. Upon execution of the GMP Change Order, each Component Change Order shall be incorporated into GMP Change Order and Owner shall receive a credit for all payments on Component Change Orders toward the GMP.

#### Adjustments to Component Change Order. For any Component Change Order, the CCO Work may be changed, the Change Order Maximum Price may be increased or decreased, and the CCO Completion Date may be adjusted, only in those circumstances in which other Sections of this Contract expressly authorize a change in Work, an increase or decrease in the GMP or Contract Sum, or adjustment in the Material Completion Date. In such case, the limitations, requirements, and conditions set forth in such other Sections of this Contract shall apply.

## GMP Change Order

### Guaranteed Maximum Price Proposal. Design-Builder shall propose a Guaranteed Maximum Price (GMP) Change Order which, if accepted, shall set the maximum Contract Sum and shall include all Work required for construction of the Project in accordance with the all previously issued Construction Documents and Component Construction Documents and the assumptions stated in the GMP Change Order. Upon execution, the proposed GMP Change Order will become a part of the Contract Documents.

#### Timing of Guaranteed Maximum Price Proposal. The GMP Change Order shall be proposed at the time stipulated in the Overall Project Schedule, but only when Owner and Design-Builder agree that the Construction Documents are sufficiently developed to allow detailed pricing. If Design-Builder believes the Construction Documents are not sufficiently developed to allow detailed pricing by the date set forth in the Overall Project Schedule for proposing the GMP Change Order, then Design-Builder shall immediately provide written Notice to Owner of the specific portions of the Construction Documents that are not sufficiently developed and an explanation of what information is needed by Design-Builder to allow detailed pricing.

#### GMP Change Order Proposal Requirements. Design-Builder's proposed GMP Change Order shall be submitted to Owner and shall include the information listed below.

##### Material Completion Date. The GMP proposal shall include a statement identifying the guaranteed Material Completion Date for all Work.

##### List of Construction Documents. The GMP proposal shall include a list of all Construction Documents which were used in preparing the GMP proposal.

##### Assumptions & Clarifications. The GMP proposal shall include a list of all the assumptions and clarifications and a listing of any items that are not included in the GMP.

##### GMP Cost Summary, Back-Up, and Construction Budget. Design-Builder shall submit a GMP Cost Summary, backup and a Construction Budget as detailed below.

###### GMP Cost Summary. The GMP Cost Summary shall list the following estimated amounts as separately identified GMP Cost Categories: (i) Trade Contractor and General Requirements Costs, (ii) General Conditions Costs, (iii) Contingency Costs, (iv) Pre-Construction Phase Sum, (v) Construction Phase Fee, and (vi) the sum of all approved Change Orders, including all Component Change Orders.

###### Construction Budget. The proposed GMP Change Order shall include a Construction Budget which shall include a summary sheet broken down by CSI Division and detailed cost information organized by CSI Division. While allowances may be utilized in the cost calculations for portions of the Project not yet fully designed during the Pre-Construction Phase, Design-Builder shall not include any allowances in the proposed GMP Change Order, except those specifically agreed to by the parties in writing.

######  Bid Backup and All Estimates. The proposed GMP Change Order shall include bid backup and all estimates of Trade Contractor Costs and General Requirements Costs.

##### Updated Documents. The proposed GMP Change Order shall include updates of the documents listed in Section 2.2.7, or if such documents have been submitted and previously approved by Owner, the name and date of document previously submitted and approved.

##### Design Professional’s Schedule Concurrence. The proposed GMP Change Order shall include Design Professional's concurrence with the updated Overall Project Schedule, which shall include, without limitation, the anticipated date of completion of Construction Documents, and the Submittal Schedule.

### Acceptance or Rejection of Proposed GMP Change Order. Owner shall promptly review and accept or reject the proposed GMP Change Order no later than thirty (30) days from receipt thereof.

#### GMP Proposal Review Meeting. Following Design-Builder's submission of the proposed GMP Change Order and prior to its acceptance, Owner and Design Professional shall meet with Design-Builder to review the proposed GMP Change Order. Owner and Design Professional shall promptly notify Design-Builder of any errors or omissions they discover in information submitted with the proposed GMP Change Order during such meeting. Prior to its acceptance by Owner, Design-Builder shall be entitled to make any necessary adjustments to the proposed GMP Change Order as a result of any errors or omissions, and shall immediately provide Notice to Owner of such adjustments. Neither Design Professional nor Owner has any duty to examine the proposed GMP Change Order to discover such errors or omissions, and no error or omission discovered after acceptance by Owner of the GMP Change Order shall constitute a basis for a Claim or Change Order by Design-Builder.

#### Acceptance of GMP Change Order. If Owner accepts the proposed GMP Change Order, Owner shall execute and return the GMP Change Order and shall issue a Proceed Order. Upon Owner’s acceptance, the proposed GMP Change Order shall become effective as the GMP Change Order and will constitute one of the Contract Documents.

#### Rejection of GMP Proposal. If the proposed GMP exceeds the GMP Cost Limitation, the Owner may approve the GMP as proposed or required the Design Builder through its Design Professional, without additional compensation, to revise the Construction Documents to reduce the Cost of Work to meet the GMP Cost Limitation. If the Owner agrees to accept the GMP that exceeds the GMP Cost Limitation, there shall be no increase in the Design Fee or the Design-Builder’s Fee as a result thereof. In the event no proposed GMP Change Order can be agreed upon, Design-Builder shall continue its performance under any Component Change Orders then outstanding and with the performance of any other services required under this Contract until such time that a GMP Change Order is approved or either party elects to terminate this Contract in conformance with the terms hereof.

## Construction Documents Change Order

### Construction Documents Change Order. Upon completion of Construction Documents, Design Professional shall submit them to Design-Builder along with a proposed Construction Document Change Order to incorporate the Construction Documents into the Contract, unless the Construction Documents were previously incorporated into the GMP Change Order. Design-Builder shall promptly accept or reject the proposed Construction Document Change Order, but no later than thirty (30) days after its receipt. If Design-Builder accepts the proposed Construction Document Change Order, then the proposed Construction Documents Change Order will be forwarded to Owner for acceptance or rejection.

#### Design-Builder’s Final Construction Documents Coordination Review. Prior to its acceptance of the proposed Construction Document Change Order, Design-Builder shall promptly conduct a final review of the Construction Documents. In addition to the review described in Section 2.2.1, Design-Builder shall review and give Notice of any inconsistencies, conflicts, or omissions between the Construction Documents and the assumptions set forth in the GMP Change Order.

#### Effect of Failure to Give Notice. If Design-Builder accepts any proposed Construction Documents Change Order without such Notice as required in Section 4.3.1.1, then Design-Builder shall make no Claim based on any actual or alleged inconsistency between the Construction Documents and assumptions set forth in the GMP Change Order or identified under Section 4.2.1.2.3.

#### Design-Builder’s Acknowledgement of Complete and Accurate Construction Documents. By executing the Construction Documents Change Order, or a GMP Change Order that incorporates the final Construction Documents, Design-Builder acknowledges and represents that it has received, reviewed, and carefully examined the Construction Documents that are incorporated by the Change Order, and in the capacity of a Design-Builder has found them to be generally complete, accurate, adequate, consistent, coordinated, and sufficient for construction of the Work.

#### Rejection of the Construction Document Change Order. Design-Builder may reject the proposed Construction Documents Change Order only if the proposed Construction Documents are not consistent with the assumptions set forth in the GMP Change Order or identified under Section 4.2.1.2.3, and the variance will increase the estimated Allowable Costs or will require an extension of Contract Time set forth in the GMP Change Order. Additionally, Design-Builder may reject the proposed Construction Documents Change Order if the Construction Documents designate a Sole Source which has not been previously designated and the Sole Source is a Trade Contractor that refuses to provide performance and payment bonds for the Trade Contract Sum or warranties required under the Contract.

##### Notice of Rejection of Construction Documents Change Order. In the event that Design-Builder rejects the proposed Construction Documents Change Order, Design-Builder shall give Notice to Owner and Design Professional stating the basis for rejection. The Notice shall state the specific portion of the proposed Construction Documents and assumptions set forth in the GMP Change Order or identified under Section 4.2.1.2.3 that Design-Builder contends are inconsistent, or the specific Sole Source Trade Contractor that refuses to provide performance and payment bonds for the Trade Contract Sum or warranties required under this Contract. The Notice shall also state a proposed increase to the GMP Change Order or change in the Material Completion Date under which Design-Builder would accept the proposed Construction Documents Change Order or propose modifications in the Construction Documents to eliminate the Sole Source designation while maintaining equal quality and function.

##### Owner’s Rights Upon Design-Builder’s Rejection of Construction Documents. If Design-Builder rejects the proposed Construction Documents Change Order, Owner shall consult with Design-Builder and Design Professional to investigate Design-Builder’s basis for rejection. In its sole discretion, Owner may (i) require Design Professional to revise the Construction Documents to conform to the assumptions set forth in the GMP Change Order or identified under Section 4.2.1.2.3 or (ii) accept Design-Builder's proposed changes to the GMP Change Order, in which case, such changes will be incorporated into a Change Order, or (iii) exercise any other right hereunder, including but not limited to the right to terminate for convenience.

#### Failure to Reject within Time Limits. Notwithstanding the requirements for a valid Change Order, Design-Builder's failure to reject the proposed Construction Documents Change Order within the time limitations stated herein shall be deemed Design-Builder's acceptance of the Construction Documents Change Order without any exceptions or variance. Design-Builder’s acceptance of the proposed Construction Documents Change Order shall constitute a waiver and release of any Claim for any inconsistency between the Construction Documents and the assumptions stated in the GMP Change Order or identified under Section 4.2.1.2.3.

## 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, Design-Builder shall not make any changes in the Work or perform any work that is not a part of the Contract Documents, nor shall Design-Builder receive any compensation or make any Claim therefor.

### 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 Design-Builder and Owner.

#### Design-Builder’s Response to Proposed Change Order. Design-Builder shall respond to the proposed Change Order within fourteen (14) calendar days, or within such other reasonable time as Owner may direct. Design-Builder’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 4.4.2.1.2. Design-Builder’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.

##### Design-Builder’s Justification for Increase in Contract Time. As a condition to Owner’s approval of an increase in Contract Time for Change Order Work, Design-Builder 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, Design-Builder 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, Design-Builder 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, Design-Builder 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. For a Change Order payable by lump sum (“Lump Sum Change Order”), upon acceptance by the Owner, the agreed Change Order Sum shall be the lump sum, and Design-Builder shall be paid the Change Order Sum upon completion of the Change Order Work without the need to submit back-up proving the actual costs incurred. Design-Builder 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 Design-Builder 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 Design-Builder the warranties, bonds, terms or schedule required under the Contract Documents, then Design-Builder 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 Design-Builder'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 Design-Builder cannot acquire the full contractually required warranties from the Sole Source, Design-Builder 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 Design-Builder shall provide all information required under Section 4.4.2.1 that would apply to increases in Contract Sum or Contract Time. Design-Builder’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 Design-Builder’s response and shall agree or disagree with any proposed changes in Contract Time, Contract Sum, and any other adjustments proposed by Design-Builder 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 Design-Builder shall be deemed rejected by Owner.

##### Disagreement as to Change in Contract Sum. If Design Professional or Owner disagree with Design-Builder 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 Design-Builder’s response under 4.4.2.1, 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 4.4.5. In no event shall any increase in the Contract Sum for such Change Order Work exceed the increase identified in Design-Builder’s response under Section 4.4.2.1.

##### Disagreement as to Change in Contract Time or Other Disagreements. If Design Professional or Owner disagree with Design-Builder 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 Design-Builder’s response under 4.4.2.1, 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 6.2. In no event shall any increase in the Contract Time exceed the increase identified in Design-Builder’s response under Section 4.4.2.1.

### Acceptance of Proposed Change Order. If Owner agrees with Design-Builder’s proposed changes submitted pursuant to Section 4.4.2.1, then the 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 Design-Builder shall be entitled to no adjustment to the Material Completion Date. Design-Builder 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 Design-Builder shall constitute conclusive evidence of Design-Builder’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. Design-Builder, 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. All Change Orders shall contain the following language: “The change in Contract Time and Contract Sum (if any) provided by this Change Order constitutes compensation in full to Design-Builder for the Change Order Work and accounts for all delays and impacts related thereto.” Any changes or reservations by Design-Builder to the representations and releases in the Change Order shall be a material breach of this Contract.

### Force Account Change Orders. A Force Account Change Order may be used in the event (i) Design-Builder 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) the Owner and Design-Builder 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 Owner otherwise determines.

#### Initiation of Force Account Change Order. A Force Account is authorized by the issuance of a Force 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 5.1.5 and shall set forth the maximum amount that Design-Builder shall be paid for the Change Order Work. It shall be the sole responsibility of Design-Builder 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, Design-Builder 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, Design-Builder 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, Design-Builder 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, Design-Builder 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 Design-Builder may include the Force Account Work on a Payment Application.

# COMPENSATION

## Allowable Costs

### Allowable Costs. During the Pre-Construction Phase, Owner will pay the Pre-Construction Sum in the amount stated in Section 7 of the Form of Contract and the Design Fee stated in Section 8 of the Form of Contract. During the Construction Phase, Owner will pay the Construction Contract Administration Fee stated in Section 8 of the Contract, the Construction Phase Fee as stated in Section 9 of the Contract, Trade Contractor and General Requirements Costs, General Conditions Costs, the Change Order Sum for each Change Order, and Contingency Costs (collectively, “Allowable Costs”), as each are defined and limited in this Section 5.1, but in no event shall Owner be obligated to pay more than (i) before execution of the GMP Change Order, the CCO Maximum Price for any CCO Work or (ii) after Owner’s execution of the GMP Change Order, the Guaranteed Maximum Price. Design-Builder’s compensation for each CCO Cost Category or GMP Cost Category shall be limited to the respective amount stated in the applicable Component Change Order or GMP Change Order.

### Trade Contractor and General Requirements Costs. Trade Contractor and General Requirements Costs include the items specifically listed below.

#### Costs of Trade Contracts. Trade Contractor Costs include the costs paid to a Trade Contractor pursuant to a Trade Contract. Trade Contractor Costs do not include any charges for small tools or other expendables.

#### Costs of Materials Stored on Site. Trade Contractor Costs include the costs of all materials properly stored on the Project Site prior to their incorporation in the Work.

#### Costs of Materials Stored Off-Site With Owner Approval. If approved in writing by Owner prior to the issuance of the GMP, and pursuant to an agreement for storing materials off-site executed by GMP execution, Trade Contractor Costs include the costs of materials stored off the Project Site. 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.

#### Trade Contractor Payment and Performance Bonds or Subcontractor Default Insurance. Trade Contractor Costs include the costs of payment and performance bonds covering Trade Contractors’ Work or the cost of subcontractor default insurance, and other insurance required of the Trade Contractors. Subcontractor default insurance may be utilized in place of subcontractor payment and performance bonds only where Owner issues prior written approval and where Design-Builder’s subcontractor default insurance complies with Owner requirements.

#### Taxes; Change in Tax Rates. Trade Contractor Costs include sales, use, payroll, or any other similar direct tax that is applied to any portion of the Trade Contractor Costs. If the rate of such tax increases after execution of GMP Change Order, then the GMP Cost Category for Trade Contractor and General Requirements Costs shall be increased by the amount of such additional taxes incurred by Design-Builder as a result of such change in tax rate. A Notice of Claim shall be made promptly after Design-Builder receives notice of such tax increase. If such tax rates decrease, the estimated amount of saved taxes due to the decrease shall be released to Owner from the Contingency Fund.

#### Self-Performed Work Costs. If Design-Builder self performs any Work pursuant to Section 3.2.1, Design-Builder shall be paid the agreed upon lump sum value for the self-performed Work, not the actual cost of the Work, but the lump sum amount of such self-performed work shall be accounted for under the Trade Contractor and General Requirements Cost Category. No costs associated with such self-performed Work are Allowable Costs.

####  General Requirements Costs. General Requirements Costs include the costs of the Work listed in Division 1 of the Contract Specifications, unless those items are listed as General Conditions Costs on Exhibit E, in which case those items shall not be reimbursable as General Requirements Costs. General Requirements Costs exclude the costs of any Design-Builder employee performing Basic Services, but may include the costs of any Design-Builder employee performing General Requirements Work.

### General Conditions Costs. General Conditions Costs include those Overhead Costs and Expenses and Labor items listed on Exhibit E, subject to the terms below.

#### Overhead Costs and Expenses. Overhead Costs and Expenses include the following:

##### Insurance and Bond Costs. Overhead Costs and Expenses include the costs of premiums for Design-Builder’s payment and performance Bonds for the Project, the cost of insurance premiums covering risks solely related to the Project, and the cost of premiums for insurance required by the Contract Documents.

##### Field Office Costs. Overhead Costs and Expenses include all costs associated with establishing, equipping, operating, maintaining, and demobilizing the field office. For items that remain the property of the CM/CG, the costs shall be the purchase price less the salvage or residual value on such items used.

##### Utility Costs. Overhead Costs and Expenses include the costs of utilities such as water, power, gas, sewer, and fuel required for Design-Builder’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. Overhead Costs and Expenses include permits, fees, licenses, tests, royalties, sales, use, or any other such taxes, tariffs, or duties related to the Work for which Design-Builder is responsible, but not including any fines or interest due to Design-Builder’s failure to meet legal requirements associated with such items

##### Travel Expenses. Overhead Costs and Expenses may include travel costs. If Design-Builder 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. Design-Builder’s Labor Costs include the wages or salaries of their personnel only as listed on Exhibit E performing the Basic Services when stationed at the Site or when off-site and performing administrative functions essential to the Basic Services, as listed on Exhibit E. Such costs may also include costs incurred by Design-Builder for taxes, insurance contributions, pensions, and other benefits for such personnel.

##### Additional Personnel After Contract Execution. If Design-Builder determines that it needs staffing to perform the Basic Services in addition to those persons listed on Exhibit E (Construction Phase Labor Costs), Design-Builder may apply to the Owner for approval to be compensated for additional staffing from unexpended funds in the General Conditions Cost Category. Owner, in its sole discretion, shall have the ability to approve or reject Design-Builder’s request. If Owner approves the request, Design-Builder shall be compensated for the additional staff from its General Conditions Costs, but in no event shall Design-Builder’s compensation for its General Conditions Costs exceed the amount state in Section 8 of the Form of Contract.

### Change Order Sum

#### Lump Sum and Unit Price Change Orders. The compensation due Design-Builder 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 5.1.5.6 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. No costs associated with Lump Sum or Unit Price Change Order Work are Allowable Costs or Allowable Change Order Costs.

#### Force Account Change Orders. For Force Account Change Orders, the Change Order Sum shall solely include the Allowable Change Order Costs listed in this Section 5.1.4 that Design-Builder incurs in performing the Force Account Work, but such Change Order Sum shall not exceed Stipulated Maximum Sum established pursuant to Section 4.4.5.1.

### Allowable Change Order Costs. Allowable Change Order Costs include Allowable Design Fees, Allowable Trade Contractor Costs, Design-Builder’s Payment and Performance Bond and Insurance Costs, General Requirements Costs, General Conditions Costs, Mark-Up for General Conditions and Fee and Costs of Self-Performed Work, subject to the conditions below.

#### Allowable Design Fees. If the Change Order Work is due to unforeseen conditions or Owner requested change and not a result of the Design Builder or Design Professional’s breach or negligence, Design-Builder’s Fee for Design Professional’s Design and Construction Contract Administration Services for Change Orders shall be as stated in Paragraph 8 of the Contract.

#### Allowable Trade Contractor Costs. Allowable Trade Contractor Costs for Change Order Work shall exclusively include the costs identified in this Section 5.1.5.1.

##### 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 5.1.5.2.1 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 5.1.5.2.1.

#### Design-Builder’s Payment and Performance Bond and Insurance Costs. Allowable Change Order Costs include the increases in premiums for Design-Builder’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 Design-Builder’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 incurred exclusively for completion of the Change Order Work.

#### General Conditions Costs. If the Change Order authorizes a compensable increase in Contract Time, Allowable Change Order Costs include General Conditions Costs incurred exclusively for such extended Contract Time.

#### Markup for General Conditions Costs and Fee. If Design-Builder is not awarded its General Conditions Costs pursuant to Section 5.1.5.5, Design-Builder shall be allowed a mark-up on the Allowable Change Order Costs set forth above as compensation for Design-Builder’s General Conditions Costs and Fee (“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 Design-Builder is awarded General Conditions Costs under Section 5.1.5.5, Design-Builder’s Mark-Up shall be equal to the Construction Phase Fee Percentage (defined in Section 9 of the Form of Contract) of the Allowable Change Order Costs without any additional Mark-Up.

#### Allowable Costs for Self-Performed Work. If Design-Builder is Self-Performing Change Order Work as provided in Section 3.2.1.4, or Self-Performing Change Order Work with the Owner’s prior express approval, Allowable Change Order Costs for such Self-Performed Change Order Work shall be limited to 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, along with Payment and Performance Bonds and Insurance Costs, General Requirements Costs, General Conditions Costs, and Markup for General Conditions Costs and Fee as provided above. Design-Builder shall not be entitled to a Trade Contractor Mark-Up as provided in Section 5.1.5.2.4.

### Contingency Costs; Contingency Fund. Contingency Costs are costs incurred by Design-Builder that are payable from the Contingency Fund as provided in this Section, but payment of such costs shall not exceed the GMP Cost Category associated with the Contingency Fund.

#### Allowable Uses for Contingency Funds. Until Material Completion, Design-Builder may be reimbursed from the Contingency Fund for the following costs, unless such costs are otherwise reimbursed or recovered by Design-Builder as another Allowable Cost or are attributable to Design-Builder's gross negligence or willful misconduct. Contingency Funds are specifically not to be used for Design-Builder’s rework caused by the performance of Non-Compliant Work or improper covering of Work under Section 3.3.3.2, unforeseen conditions, or to correct errors or omissions in the Construction Documents. Contingency Funds cannot be used to pay for any General Conditions Costs.

##### Design Contingency. Contingency Funds may be used until execution of the 100% Construction Documents Change Order for resolving unforeseen issues during the design period, allowing for interfaces that may be designed later in the design process, for Work for which the design has not been completed and, for enhancing the project as recommended by the design team and agreed upon by the Owner.

##### Trade Contractor Defaults. If a Trade Contractor defaults under a written Trade Contract, then Design-Builder can use Contingency Funds to pay any increase in the Trade Contractor Costs for a replacement Trade Contractor. If Contingency Funds are used for such purpose, and if the defaulted Trade Contractor provided a performance bond, then Design-Builder shall attempt to recover such increase in costs from the Trade Contractor’s surety. Any recovery shall be forwarded to Owner to the extent Contingency Funds were used under this Section.

##### Recovery of Schedule. If a Notice of Non-Compliance is issued because Design-Builder is behind schedule, Contingency Funds can be used to pay costs incurred in expediting the progress of the Work to achieve the Owner approved recovery schedule pursuant to Section 3.3.6.1.

#####  Scope Gap. Contingency Funds can be used to pay any costs of interfacing omissions between the scopes of work of Trade Contracts which a prudent Design-Builder could not have reasonably detected.

#####  Buyout. If a Trade Contract is over the amount stated in the GMP Cost Category or CCO Cost Category, then Design-Builder can use Contingency Funds to pay the difference in cost.

#####  Other. Design-Builder can use Contingency Funds to pay for any other cost approved in writing and in advance by Owner in Owner’s sole discretion.

####  Monitoring and Use of Contingency Fund. Design-Builder and Owner shall monitor funds in the Contingency Fund. Design-Builder shall submit a Contingency Log with each Payment Application that shall document each use of Contingency Funds and shall list the provision of the Contract authorizing same. Design-Builder shall notify Owner of its use of the Contingency Fund at each OAC Meeting. The Contingency Fund, once established, shall fluctuate as Design-Builder enters into Trade Contracts. If the actual price of a Trade Contract is less than the projected amount, then the Contingency Fund shall be increased by difference between the projected cost and the actual cost. If the actual cost of a Trade Contract is greater than the projected amount, then the Contingency Fund will be decreased by the difference between the projected amount and the actual cost.

#### Release of Contingency Funds. Any funds remaining in the Design Contingency shall be returned to the Owner upon execution of the GMP Change Order. Any funds remaining in the Construction Contingency Fund upon Material Completion shall be returned to Owner. Additionally, as the Work progresses and the Cost of the Work becomes more certain, Design-Builder shall negotiate with Owner for the release of any anticipated surplus Contingency Funds so that Owner may use those remaining funds to pay for enhancements to the Project. Any such release shall be confirmed by Change Order.

## Retainage

### Retainage. Until the payment for Material Completion, Owner shall withhold retainage in the amount of ten (10%) percent from each Payment Application subject to the terms below.

#### Costs Not Subject to Retainage. Retainage shall not be withheld on the Preconstruction Sum, the Design Fee, Construction Contract Administration Fee, or Construction Phase Fee.

#### Freezing Retainage. After one-half (1/2) of the Contract Sum has been paid, upon submission of the next Payment Application following the payment of one-half of the Contract Sum, if the Work is on or ahead of schedule according to the Overall Project Schedule and there are no unresolved breaches of Non-Compliant Work, Design-Builder may request that Owner stop the collection of retainage. Upon Owner approval, the previously withheld retainage will be converted to a lump sum to be held by Owner until Material Completion and Owner will collect no additional retainage unless retainage is reinstated.

#### Reinstatement of Retainage. After retainage is frozen under Section 5.2.1.2, Owner will reinstate collection of retainage if the Work is five percent (5%) or more behind schedule according to the Overall Project Schedule or if Design-Builder breaches a Notice of Non-Compliant Work. Owner will continue the collection of retainage under this Section until the breach is cured or the time is recovered and the Project is on or ahead of schedule.

#### Retainage Release. When Material Completion is achieved, retainage shall be paid to Design-Builder with the payment for Material Completion in accordance with the terms of Section 6.

#### Trade Contractor’s Retainage Release. Upon request by Design-Builder, 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, Design-Builder 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, Design-Builder, and Design Professional. Before receiving a Trade Contractor’s retainage release, Design-Builder will be required to furnish a Payment Affidavit executed in the exact form as shown in GSFIC Forms Packet.

## Payment

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

### Payment for Design and Pre-Construction Services. Design-Builder shall be paid for its Design and Pre-Construction Services in accordance with the schedule below. Design-Builder shall submit a Payment Application upon completion of each of the following milestones.

### Completion Schematic Design Documents and Design Review and Construction Cost Estimates for Schematic Design Documents: Twenty percent (20%) of Design Fee and Twenty percent (20%) of Pre-Construction Sum.

### Completion of Design Development Documents and Design Review and Construction Cost Estimates for Design Development Documents: Forty percent (40%) of Design Fee and Forty percent (40%) of Pre-Construction Sum.

### Completion Construction Documents and Design Review and Construction Cost Estimates for Construction Documents: Thirty percent (30%) of Design Fee and Thirty percent (30%) of Pre-Construction Sum

### Execution of GMP Change Order: Ten percent of Design Fee (10%) and Ten percent (10%) of Pre-Construction Sum

### Payment For Construction Phase Services

#### Construction Contract Administration Services Fee Payment Schedule. Payments for the Design Professional’s Construction Contract Administration shall be made in equal monthly payments during the Construction Phase and shall be calculated by dividing 95% of the Construction Contract Administration Fee by the total number of months in the Construction Schedule. The remaining 5% of the Construction Contract Administration Fee shall be paid after the Design Professional has issued the Certificate of Material Completion and provided the Record Documents.

#### Construction Phase Fee Payment Schedule. During the Construction Phase, Design-Builder shall be paid the portion of the Construction Phase Fee (stated in Section 9 of the Form of Contract) equal to the percentage completion of the Project.

#### Timing of Payment Application for Construction Phase Services. During the Construction Phase, Design-Builder 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. Design-Builder shall submit no more than one (1) Payment Application during each month.

#### Form of Application. The Payment Application shall include a Cost Summary showing each GMP Cost Category and shall include a cost breakdown by CSI Category. Design-Builder shall attach backup materials to each Payment Application to substantiate all Allowable Costs, which backup may include, but not be limited to receipts or other vouchers showing payments for materials and labor, including payments made to Trade Contractors.

#### 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. Design-Builder 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. Design-Builder 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. Design-Builder 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. The Owner may require Design-Builder to obtain the Surety’s consent for payment whenever Design-Builder submits a Payment Application and there are outstanding claims for payment against Design-Builder for Work on this Project.

#### Schedule of Values. Before submitting its first Payment Application during the Construction Phase, Design-Builder 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 total sum of the Contract in the same manner as the Payment Application Form. If requested, Design-Builder shall provide evidence of the accuracy of the Schedule of Values.

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

#### 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 Design-Builder. If Design-Builder 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. The Design Professional shall review all Payment Applications submitted by the Design-Builder and the Work included in each Payment Application to determine whether the Work billed conforms to the terms of the Contract and is properly installed. Design Professional shall visit the Site after Design-Builder 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. If the Design Professional determines that the Work billed complies with the terms of the Design-Builder Construction Contract and is properly installed, the Design Professional shall certify the Payment Application. Such certification shall constitute a representation by the Design Professional to the Owner that to the best of the Design Professional’s knowledge, information or belief, the Work has progressed to the point indicated, and that the quality of Work is in accordance with the Construction Documents, and that the Design-Builder is entitled to payment in the amount requested. If the Design Professional declines to certify all or a portion of the amounts requested by the Design-Builder, he or she shall state the reasons therefore and shall provide written notice to the Design-Builder of the same. 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 Design-Builder.

### Timing of Payments. Subject to Owner’s right to withhold amounts in accordance with Section 4.3.4 and Owner’s right to adjust for overpayments, Owner shall make payment to Design-Builder no later than thirty (30) days after receipt of a properly completed Payment Application.

### Disputed Payments. Owner and Design-Builder 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 4.3.3, Design-Builder shall provide Notice to Owner in writing by certified mail. If Owner fails to pay within seven (7) days of receipt of the Notice, Design-Builder 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 Design-Builder expressly agree to payment periods for Owner’s Payment to Design-Builder and interest rates on late payments that become due to Design-Builder 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 Design-Builder to make payments due to Trade Contractors; (iii) reasonable evidence that the Contract cannot be completed for the Contract balance; (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 Design-Builder; (v) failure to maintain the Overall Project Schedule, (vi) requests for or prior payment of costs that are not required to be reimbursed hereunder, including but not limited to costs excluded by Section 4.1.7 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.

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

### 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.

### Discounts, Rebates, Etc. Design-Builder shall provide Owner an opportunity to provide funds for Design-Builder to take advantage of discounts for prompt payment of Allowable Costs. Any trade or quantity discounts, rebates, refunds, and/or proceeds from the sale of surplus materials or equipment shall be credited to reduce Allowable Costs.

### Proper Costs and Documentation. To the extent compensation to Design-Builder is based on costs (whether Allowable Costs, Allowable Change Order Costs, or otherwise) under any Section of the Contract Documents, such costs shall be limited to those costs necessarily incurred by Design-Builder in the proper performance of the Work. Except as explicitly provided in Section 5.1.6, such costs shall not include those costs incurred due to breach of the Contract Documents, negligence, or wrongful acts or omissions, or Non-Compliant Work by Design-Builder or any of its Subcontractors. Such costs shall also not include those costs for which Design-Builder has failed to maintain documentation as required under Section 5.3.14. If at any time, costs are paid by Owner which are not required to be reimbursed under the Contract, or which do not comply with this Section, then Design-Builder shall remit any payment associated with such costs, including any associated markup or fee, to Owner within five (5) days.

### Documentation of Costs. Design-Builder 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 the 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, Design-Builder’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. Design-Builder 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.

# CONTRACT SUSPENSION, TERMINATION AND CLAIMS

### Right to Suspend Work.

#### Owner and Design Professional’s Right to Suspend Work. Owner or 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 Design-Builder within seventy-two (72) hours. If the Work is later determined to be conforming Work, and Design-Builder then complies with Section 6.2.2, Design-Builder shall be entitled to a compensable time extension in accordance with Section 1.4.2.3. If the Work is determined to be Non-Compliant Work, then Design-Builder 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 Design-Builder five (5) days’ Notice thereof. Upon resumption of the Work, if Design-Builder complies with Section 6.2.2, Design-Builder 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 Design-Builder fifteen (15) days’ Notice.

#### Termination for Convenience Prior to Execution of GMP Change Order. In the event Owner elects to terminate the Contract prior to the execution of the GMP Change Order, Owner shall pay Design-Builder, in accordance with the applicable provisions of Section 5, for all Work properly executed and installed prior to termination and for the costs incurred by Design-Builder because of the termination, up to the unpaid balance of all approved Change Orders and Component Change Orders. If such termination occurs during the Pre-Construction Phase, as Design-Builders’s exclusive compensation under the Contract, Owner will pay a percentage of the Pre-Construction Phase Sum in proportion to the quantity of Work performed to the total amount of Work required during the Pre-Construction Phase, plus the Design Fee in accordance with Section 5.3.2.

#### Termination for Convenience After Execution of GMP Change Order. In the event Owner elects to terminate the Contract after execution of the GMP Change Order, Owner shall pay Design-Builder, in accordance with the applicable provisions of Section 5 for all Work executed prior to termination, and for the costs incurred by Design-Builder because of the termination, up to the unpaid balance of the GMP.

### 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 Design-Builder and its Surety fifteen (15) days’ Notice of Owner’s intent to terminate for cause.

#### Causes for Termination. Owner may terminate the Contract if Design-Builder is in breach of a Notice of Non-Compliance; if Design-Builder makes a general assignment for the benefit of its creditors or if a receiver is appointed on account of its insolvency; if Design-Builder persistently disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction over the Project; if Design-Builder abandons the Project for a period of fourteen (14) or more days; if Design-Builder 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 Prior to CCO or GMP. If such termination occurs prior to Owner’s execution of any Component Change Order or GMP Change Order, Owner shall pay to Design-Builder the percentage of the Pre-Construction Phase Sum in proportion to the quantity of Work performed to the total amount of Work required for the Pre-Construction Phase, plus the Design Fee in accordance with Section 5.3.2 less such damages as may be incurred by Owner by reason of such termination or the basis for such termination.

#### Payment Due Upon Termination for Cause after CCO or GMP. If such termination occurs after execution of a Component Change Order or GMP Change Order, Design-Builder shall not be entitled to receive any further payment until the Work is completed. Upon completion, Design-Builder shall pay to Owner the positive excess of (i) Owner’s cost of completion of the Work required by such Change Orders, 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 such Change Orders. Upon completion, Owner shall pay the positive excess of (i) the unpaid balance of such Change Orders over (ii) Owner’s cost of completion of the Work required by such Change Orders, 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 Design-Builder shall be the contractual treatment of the termination pursuant to Section 6.1.2 without any other damages, relief, or compensation.

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

#### Termination for Project Delay. Design-Builder may terminate the Project if the Work is stopped for a period of thirty (30) days or more, through no fault of Design-Builder, because of (i) an order of any court or other public authority having jurisdiction over the Project, (ii) an act of government (excluding Owner) which requires all Work to be stopped, such as a declaration of a national emergency, or (iii) a suspension by Owner under Section 6.1.1.2.

#### Termination for Nonpayment. If Owner fails to pay Design-Builder the amount due within the time required by the Contract Documents, Design-Builder 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 Design-Builder within thirty (30) days after receipt of Design-Builder's Notice of nonpayment, Design-Builder may terminate this Contract.

#### Payment Due Upon Termination. If Design-Builder terminates the Contract for cause as provided in Section 6.1.4, upon providing Owner with all releases and waivers of liens in the same manner as would be required upon Final Completion, Owner will pay Design-Builder, as provided in the applicable provisions of Section 1.4.2.3, for the Work properly executed, and, only if Design-Builder submits a Claim in the manner and time provided in Section 6.2.2, for any proven damages sustained or cost incurred for any materials, equipment, tools, construction equipment and machinery, and cancellation charges on obligations of Design-Builder outstanding as of the termination. The remedies provided in this Section shall be the sole remedies of Design-Builder for such termination for cause.

### Notices of Termination. Notwithstanding any other provision of this Contract, if the either party elects to terminate this Contract under any provision in Section 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 Design-Builder.

## 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, Design-Builder 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 Design-Builder 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 Design-Builder. The requirement of Design-Builder 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 Design-Builder. If any other provision of the Contract Documents limits or precludes additional compensation to Design-Builder 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, Design-Builder 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 Section 1.4 shall govern Design-Builder’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, Design-Builder shall further comply with this Section 6.2.2.

### 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 6.2.3.2.

#### Mediation. If the dispute cannot be settled pursuant to Section 6.2.3.1, 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, Design-Builder 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, Design-Builder 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. Design-Builder 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, Design-Builder 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. Design-Builder 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, Design-Builder 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, Design-Builder shall perform an initial test and balance on the heating, ventilating and air conditioning system. Design-Builder 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, Design-Builder 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. Design-Builder 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, Design-Builder shall remove from the Site all waste and perform a thorough cleaning of the Work. Design-Builder 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. Design-Builder 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. Design-Builder may leave equipment at the Site as necessary to achieve Final Completion of the Project. To achieve Material Completion, Design-Builder shall have fully cleaned the Site.

#### Keys for Using Agency. At Material Completion, Design-Builder shall provide Owner keys with tags attached indicating the door or lock to which the key applies. Design-Builder 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, Design-Builder 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, Design-Builder 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 Design-Builder or Subcontractors for the purpose of Design Professional’s issuance of Record Documents to Owner.

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

#### Payment Affidavit and Bonds to Discharge Claims. Design-Builder shall submit the Payment Affidavit in the exact form as shown in GSFIC Forms Packet, along with any Bonds to Discharge Claim issued to any Trade Contractors at the Inspection for Material Completion. After approval, Owner shall retain the original set and furnish a copy to the Using Agency.

#### Five Year Bond on Roofs and Walls. Design-Builder 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, but not less than the Allowable Costs incurred for such roof and wall systems. The effective date of the Bond shall be the Material Completion Date.

#### Initial Punchlist. Prior to the Inspection for Material Completion, Design-Builder 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. Design-Builder 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. Design-Builder shall submit its Material Completion Checklist in the format set forth in GSFIC Forms Packet at the inspection Material Completion.

### Inspections for Material Completion. Design-Builder 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 Design-Builder determines that the Project is ready for Inspection for Material Completion, Design-Builder 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.

#### 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. The Design Professional shall review the Manufacturer’s Certification of Major Building System Components, Operations and Maintenance Manuals, Initial Test and Balance Report, and Marked-Up Construction Documents to determine compliance with the terms of the Design-Builder Construction Contract. The Design Professional shall not issue the Certificate of Material Completion until it has determined that the Final Documents have been submitted and are in compliance with the terms of the Contract.

#### 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 7.1.1.3.

##### 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, Design-Builder shall submit a Payment Application. Design-Builder 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. Design-Builder 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 Design-Builder 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, Design-Builder 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 12 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 Design-Builder fails to achieve Material Completion by the Material Completion Date, Design-Builder 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, Design-Builder’s ineligibility requires that its bid be rejected.

##### Automatic Restoration of Eligibility to Bid. Design-Builder’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. Design-Builder’s eligibility to contract with the State may be reinstated upon Design-Builder’s written application to Owner requesting reinstatement of eligibility and showing of just cause why Design-Builder’s eligibility should be reinstated, or that there is good and just cause to excuse Design-Builder’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 Design-Builder 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. Design-Builder 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 Design-Builder believes that the Project is ready for Inspection for Interim Punchlist Completion, Design-Builder 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.

#### 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 Design-Builder fails to achieve Interim Punchlist Completion within thirty (30) days of Material Completion, Owner will issue to Design-Builder 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, Design-Builder is in breach of the covenant of time and is subject to termination. Owner may pursue all remedies available for Design-Builder’s failure to timely complete the Work.

#### Ineligibility to Bid or Propose on State Contracts. Design-Builder 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, Design-Builder’s ineligibility requires that its bid be rejected.

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

### Record Drawings and Final Documents. Upon Interim Punchlist Completion, the Design Professional shall revise the original Construction Documents based upon documents incorporated by Change Orders, additional sketches, answered RFIs and as-built documents provided by the Design-Builder to show the Project “as built” (“Record Drawings”). The Design-Builder shall furnish and deliver to the Owner the Record Drawings within sixty (60) days of Interim Punchlist Completion. The Design Professional shall furnish the Owner, at no additional cost, up to three (3) bound sets of Record Drawings and an electronic copy in such format as required by the Owner. Record Drawings must be sealed by the Architect of Record.

## 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, Design-Builder shall provide two (2) additional Test and Balance Reports after the Material Completion Date, as provided in Section 7.1.1.3. 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, Design-Builder 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, Design-Builder shall submit a Payment Application. Design-Builder shall certify, by its signature on the Payment Application, that the Work has been completed as provided for by the Contract Documents. Design-Builder 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 Design-Builder 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 Design-Builder 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, Design-Builder is in breach of the covenant of time and is subject to termination. Owner may pursue all remedies available for Design-Builder’s failure to timely complete the Work.

#### Ineligibility to Bid or Propose on State Contracts. Design-Builder 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, Design-Builder’s ineligibility requires that its bid be rejected.

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

### Effect of Achieving Final Completion. A determination that Design-Builder 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

Exhibits

Contents:

Exhibit A - Using Agency’s Project Development Information

Exhibit B – Preliminary Design and Construction Schedule

Exhibit C – Key Personnel and Consultants

Exhibit D - Owner’s Instructions to Design Professionals

Exhibit E – Design-Builder’s General Conditions and Labor Costs