**­GSFIC-AD-151**

Version 4/5/2016

**CONSTRUCTION MANAGEMENT AGREEMENT**

**BETWEEN**

**(INSERT NAME OF CM/GC)**

**(CM/GC)**

**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 CONSTRUCTION MANAGER AS GENERAL CONTRACTOR AGREEMENT (hereinafter the “Contract”) is made this       day of      ,       by and between (Insert CM/GC), hereafter “CM/GC,” 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.”

CM/GC and Owner agree as follows:

1. **Scope of Basic Services and the Work.** CM/GC 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**. CM/GC 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 Exhibits A through C, the General Requirements, GSFIC Forms Packet, 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:

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

1. **GMP Cost Limitation.** The Guaranteed Maximum Price, which shall be the maximum Contract Sum established in accordance with Section 3.2.1 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 as provided in Section 1.3.2.43 of the General Requirements.
2. **Pre-Construction Sum**. CM/GC’s compensation for the Pre-Construction Phase Services (“Pre-Construction Sum”) shall be: **Dollars ($     )**.
3. **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 1.3.2.21**.**
4. **CM/GC General Conditions Costs.** Compensation arising from CM/GC’s General Conditions Costs shall not exceed **Dollars ($****)**.
5. **Material Completion.** The Material Completion Date is. The Construction Phase shall commence upon the Proceed Order Date and the Work shall reach Material Completion as of the Material Completion Date.
6. **Liquidated Damages.** The agreed amount for Liquidated Damages is **Dollars ($     )** per day.
7. **Anticipated Weather Delay Days.** As referenced in Section 1.4.2, the following number of Weather Delay Days are anticipated and will not be the basis for extensions of Contract Time or adjustment to the Contract Sum:

(Insert Chart)

1. **Energy Efficiency and Sustainable Construction Act of 2008.** This project  subject to the Energy Efficiency and Sustainable Construction Act of 2008 (“Energy Act”). Projects subject to the Energy Act require commissioning, water-use reduction, and use of not less than 10% of Georgia products.
2. **No Assignment.** This Contract and the proceeds of this Contract 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 CM/GC hereby agree to the full performance of the Contract. The failure of Owner at any time to require performance by CM/GC 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 CM/GC and constitutes the full, complete, and entire agreement between Owner and CM/GC. There can be no changes to this Contract by oral means, by course of conduct of the parties, or by custom of the trade. No change to this Contract will be binding on either party unless such change is properly authorized, in writing, and in accordance with the terms of this Contract.

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

**CM/GC**

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:

Chairman, Governor Nathan Deal

By:

Steven L. Stancil, 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, CM/GC, 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 CM/GC shall endeavor to promote harmony and cooperation among all members of the Project Team. Each team member shall communicate with all other team members to assure overall coordination, cooperation, and efficiency in order to achieve Project completion in an expeditious and economical manner.

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

#### CM/GC. CM/GC 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 CM/GC. CM/GC 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 CM/GC.

##### CM/GC Duty of Good Faith and Fair Dealing. CM/GC 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. CM/GC shall perform the Work in the most economical manner that is consistent with the Owner’s objectives and the Contract Documents.

#### 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 CM/GC.

#### 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 in the name of Owner. CM/GC may not act or rely upon any directive, interpretation, decision, act, or omission of Using Agency or the Using Agency’s Representative.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Limited Waiver of Sovereign Immunity *Ex Contractu.* CM/GC 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.” CM/GC 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, CM/GC 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. CM/GC 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. CM/GC 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. CM/GC 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 CM/GC 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. CM/GC shall track the value of all Georgia based materials installed in the project. CM/GC 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 CM/GC Forms Packet.

#### Use of Georgia Materials and Equipment and Georgia Forest Products. CM/GC 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, CM/GC 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 CM/GC 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. CM/GC 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. CM/GC warrants that it has registered with and uses the federal work authorization program commonly known as “E-Verify.” CM/GC 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. CM/GC 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.

### 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 CM/GC 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 where 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 CM/GC 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 CM/GC 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 CM/GC or its Trade Contractors under a performance specification) pursuant to this Contract are the property of Owner. Neither CM/GC 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.

### Permits, Licenses, 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 CM/GC as CM/GC secures building and other permits, licenses, and inspections that are required to be obtained by CM/GC.

#### 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. CM/GC 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 CM/GC, to perform other work at the Site.

#### CM/GC’s Duty to Work with Owner’s Separate Contractors. CM/GC shall afford Owner and Separate Contractors reasonable access to the Site, subject to the Separate Contractors’ compliance with the CM/GC’s safety rules and Site specific policies, reasonable areas for storage of materials and equipment, and reasonable opportunity to execute work at the Site. CM/GC 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 CM/GC's costs or extends the time of performance, subject to the requirements, limitations, and conditions of Section 5.2.2, CM/GC may submit a Claim in accordance with Section 5.2.2.

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

## Bonds, Insurance and Indemnification

### Bonds. CM/GC shall furnish both a performance bond and a payment bond in the exact form set forth in GSFIC Required Forms. CM/GC 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. CM/GC 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, CM/GC 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, CM/GC 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. CM/GC 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 CM/GC, its Subcontractors, its agents, employees, or others working at the direction of CM/GC or on its behalf, or due to any breach of this Contract by CM/GC, 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 CM/GC, and will survive the termination of the Contract or CM/GC’s performance hereunder and the dissolution or, to the extent allowed by law, the bankruptcy of CM/GC. 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"), CM/GC agrees to reimburse the Funds for such monies paid out by the Funds. Whenever CM/GC is obligated to defend the Owner or any other Indemnitee pursuant to this Agreement, CM/GC 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 Risk Management Division 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 CM/GC and its general liability insurer named on the insurance certificate informed regarding the claims and settlement.

#### Suits or Claims for Infringement. CM/GC 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 CM/GC. The obligations of CM/GC 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.

#### CM/GC’s Required Insurance Coverage. CM/GC shall procure the insurance coverages identified below in accordance with the policy requirements listed below. CM/GC shall provide Owner with a Certificate of Insurance showing the required coverage prior to execution of this Contract. If Owner requests, CM/GC 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 CM/GC’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 CM/GC 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 |

#### 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, CM/GC may implement a Contractor Controlled Insurance Program (CCIP) for the Project, and CM/GC 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. CM/GC shall cause its insurer to issue an additional insured Endorsement naming Owner, Using Agency, and all Indemnitees as additional insureds on all required liability policies (except for Workers Compensation and, if required, Professional Liability).

#### Builders Risk Policy Requirements. Builder’s Risk Policy shall be made payable to Owner and CM/GC, as their interests may appear and shall include in the interests of CM/GC’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 CM/GC, 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 CM/GCs of Owner or Using Agency*

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

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

#### Subcontractor Insurance Requirements. Unless the CM/GC provides a CCIP for the Project, CM/GC shall require each Subcontractor performing Work or performing any activity on the Project Site to obtain an insurance certificate showing proof of Commercial General Liability, Workers' Compensation Coverage and Employers Liability Insurance, Commercial Automobile Liability, Umbrella Liability, and Professional Liability (where required) with limits commercially appropriate for the work of such Subcontractor and in no event less than $1,000,000 per occurrence, claim, accident, or employee, as applicable to each line of coverage, and CM/GC 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. CM/GC 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 be held to 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 CM/GC 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, CM/GC, whether such relationship is direct or indirect, or any entity affiliated with CM/GC 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 4.1.4.

#### *Allowable Costs.* Defined in Section 4.1.1.

#### *Basic Services.* The Design Review and Consulting, Cost Estimation, Scheduling, and Construction Supervision and Planning Services required to be provided by CM/GC.

#### *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 CM/GC seeking an adjustment of the Contract Sum, Contract Time, or both, or regarding other disputes or requests by CM/GC 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 CM/GC to proceed with the Component.

#### *Component Change Order Completion Date (CCO Completion Date)*. The date by which CM/GC 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.* Defined in Section 3.1.1.1.1.

#### *Component Change Order Maximum Price or CCO Maximum Price*. Defined in Section 3.1.1.8.

#### *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 7 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 2.1.3, prepared by CM/GC indicating proposed Milestone dates, activity sequences, and durations.

#### *Contingency Costs*. Defined in Section 4.1.5.

#### *Contingency Fund*. The GMP Cost Category or CCO Cost Category that is associated with 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 6.1.1.

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

#### *General Conditions Costs.* Those costs identified in Section 4.1.3.

#### *General Requirements*. The Work specified in Division 1 of the Specifications that CM/GC is to directly provide.

#### *General Requirements Costs*. Defined in Section 4.1.2.7.

#### *Guaranteed Maximum Price (GMP)*. The maximum amount that Owner is obligated to pay CM/GC for construction of 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 CM/GC to proceed to construct the entire Project pursuant to the Construction Documents.

#### *GMP Cost Category*. Defined in Section 3.2.1.2.4.1.

#### *GMP Cost Summary*. Defined in Section 3.2.1.2.4.1

#### *GMP Cost Limitation.* The GMP Cost Limitation, set forth in Section 5 of the Form of Contract, is the Owner’s budgeted amount for construction of the Project. 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 if anticipated funding is not received by the Owner.

#### *Initial Punchlist*. The punchlist prepared by CM/GC 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 4.1.3.2.

#### *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 by which CM/GC shall achieve Material Completion with respect to the Work of the Project.

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

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

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

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

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

#### *Notice of Readiness*. The Notice provided by CM/GC 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 CM/GC to request payment from Owner.

#### *Permitted Incomplete Work*. Permitted Incomplete Work is 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 CM/GC, 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 the CM/GC’s submission of the Final Executive Summary of CM/GC’s Design Review Services, during which CM/GC commences its Basic Services to prepare for the commencement of Work on the Project Site.

#### *Pre-Construction Phase Sum*. Defined in Section 6 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 CM/GC that authorizes CM/GC to commence Work under each such Component Change Order or GMP Change Order, respectively. The first of such Proceed Orders directs CM/GC 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 CM/GC 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 CM/GC that contracts directly with Owner to perform work on the Site.

#### *Site*. The real property furnished by Owner for the Work and use of CM/GC.

#### *Sole Source.* A Subcontractor specified by name in Construction 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 CM/GC 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 CM/GC 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 4.1.4.3, and with regard to CCO Work or Work under the GMP, defined in Section 4.1.2.

#### *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 CM/GC 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. CM/GC 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. CM/GC 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 CM/GC does not achieve Material Completion by the Material Completion Date and CM/GC shall therefore compensate Owner (for itself and on behalf of Using Agency) for the delay as provided herein.

#### Time is Fair and Reasonable. CM/GC 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. CM/GC 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 CM/GC as a basis for an extension of Contract Time or increase in Contract Sum.

#### Liquidated Damages for Delay. If CM/GC 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 CM/GC, CM/GC 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 CM/GC’s sole remedy for any delays not the fault of CM/GC or its Subcontractors, except those delays specifically listed in Section 1.4.2.3. Extensions of Contract Time will be granted for Abnormal Weather Delay Days and Other Noncompensable Delay Events that delay the critical path of Work based on the Overall Project Schedule, subject to the provisions below. Except as expressly provided in this Section, CM/GC shall not be entitled to an extension of Contract Time or increase in Contract Sum, and CM/GC waives any right to assert a Claim therefor.

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

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

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

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

#### Exception to General Rule – Compensable Delay. CM/GC 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, Design Professional, or Separate Contractor, and for unanticipated Hazardous Materials subject to the provisions of Section 2.2.8, and for Differing Site Conditions subject to the provisions of Section 2.2.9, on the condition that it submits a Notice of Claim in conformance with, and by the time set forth in, Section 5.2.2. As an additional condition precedent to such extension of Contract Time and adjustment to the Contract Sum, CM/GC must prove that (i) such delays extended the critical path of Work based on the Overall Project Schedule; (ii) CM/GC has taken all reasonable actions to mitigate the effects of the delay events; (iii) the fault or negligence of CM/GC or CM/GC’s Subcontractors did not contribute to such delay events; and (iv) CM/GC shall have provided Notice to Owner of the cause or causes of such delay within seven (7) days from the date on which CM/GC first becomes aware, or should have become aware, of such delay, for all delays except for Differing Site Conditions, in which case Notice shall be provided in accordance with Section 2.2.9.1. Additionally, any Claim for failure of Design Professional to timely respond to submittals shall be made while the failure to respond continues, or within seven (7) days after such failure to respond has been cured. Design Professional shall have the time set forth in Section 2.2.7 to review and respond to submittals.

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

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

#### Time Extension Administration. If CM/GC 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 the CM/GC 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, the CM/GC shall only be entitled to an extension of Contract Time if CM/GC 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.

# CM/GC’S SERVICES

## Pre-Construction Phase Basic Services

### Pre-Construction Phase Design Review and Consulting Services. During the Pre-Construction Phase, CM/GC 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 Review and Consulting Services. CM/GC 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. CM/GC 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. CM/GC 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. CM/GC shall continuously review the Construction Documents for consistency, errors, omissions, and non-conformance with applicable laws, statutes, regulations, and building codes. CM/GC shall give Notice upon the discovery of any such inconsistency, error, omission or non-compliance.

##### Recommendations for Selection of Materials. CM/GC shall provide advice regarding Site use and improvements and the selection of materials, building systems, and equipment. CM/GC 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. CM/GC shall make recommendations to Owner and to Design Professional to facilitate the development of Components of the Work. In recommending phasing of components, CM/GC 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 CM/GC or by Trade Contractors.

##### Utilities & Environmental Review. CM/GC 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.

#### CM/GC’s Design Review Report. CM/GC shall submit a Design Review Report summarizing the Design Review and Consulting Services provided above. CM/GC shall submit a Design Review Report along with each Construction Cost Estimate required in Section 2.1.2.1 and with any Component Change Order. CM/GC shall submit a Final Executive Summary of CM/GC’s Design Review Services which shall summarize the Design Review and Consulting Services provided and detail the material changes made and the impact to the Project as a result of the Services. The Final Executive Summary shall be provided within thirty days after execution of the Construction Documents Change Order, or within thirty days after execution of the GMP Change Order if the 100% Construction Documents are incorporated into the GMP Change Order.

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

##### Requests for Information (RFI). In the event the Construction Documents are not complete, definite, and clear to CM/GC, or appear to have conflicting information, CM/GC 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. CM/GC shall maintain a log of RFIs and the responses received from Design Professional.

##### Design Coordination Meetings for Material Design Issues. CM/GC 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.

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

### Pre-Construction Cost Estimating Services. CM/GC shall prepare Construction Cost Estimates setting forth in detail CM/GC's estimate of construction costs which shall be broken down by CSI Category. CM/GC shall also provide reconciled Construction Cost Estimates, consisting of a composite of the separately derived Design Professional's current Statement of Probable Construction Cost and CM/GC's Construction Cost Estimate.

#### Timing of Construction Cost Estimates and Reconciled Construction Costs Estimates. Construction Cost Estimates and Reconciled Construction Cost Estimates shall be provided to Owner, Using Agency, and Design Professional at the intervals below:

##### - Within twenty-one (21) days of the completion of the Schematic Design Documents

##### - Within twenty-eight (28) days of the completion of the Design Development Documents

##### - Prior to submission of the Guaranteed Maximum Price Proposal

#### Cost Exceeds Previous Estimate. If Design Professional's current Statement of Probable Construction Cost and CM/GC’s Construction Cost Estimate are not reconcilable or exceed corresponding components of the Project Budget, then Owner, Design Professional, and CM/GC shall confer to resolve such differences. If such differences cannot be resolved, CM/GC shall make recommendations to Owner as CM/GC deems necessary or appropriate to resolve such differences.

#### Extent of Responsibility. CM/GC does not warrant or guarantee estimates, except with regard to the CCO Maximum Price, Guaranteed Maximum Price, or as otherwise provided herein.

### Pre-Construction Phase Scheduling Services. CM/GC shall prepare a Construction Progress Schedule using a CPM (Critical Path Method) process, utilizing a full-featured software package in a form satisfactory to Design Professional and Owner. The Construction Progress Schedule shall have the minimum number of activities required to adequately represent the complete scope of Work and define the Project’s (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. CM/GC 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
* Procurement of materials and equipment requiring long lead-time
* Construction Start
  + Submittal Schedule
  + Fire Alarm Shop Drawings
  + Fire Protection Shop Drawings
* Phase Construction (*if applicable*)
* NPDES Stabilization
* Foundations Completion
* Under-Slab Utilities
* Slab Completion
* Structural Top Out
* Critical Work / Equipment
  + Submittals
  + Procurement Dates
* Dry-In
* Metal Stud Wall Completion
* Rough-In Completion
  + HVAC Duct
  + Plumbing
  + Electrical
  + Fire Sprinkler System
  + Fire Alarm System
* Drywall Completion
* Equipment Installation
* Permanent Power
* Systems Operations
  + Conditioned Air
  + Lighting
  + Audio/Visual
* Finishes
  + Paint
  + Flooring
  + Fixtures
* 80% Completion Inspection
  + Fire Sprinkler System - GSFIC/DP
  + Fire Alarm System - GSFIC/DP
  + Life Safety – Fire Marshal
* Commissioning
  + Major Equipment Startup & Operational Testing
  + Initial Test & Balance
* 100% Completion Inspection
  + Fire Sprinkler System - GSFIC/DP
  + Fire Alarm System - GSFIC/DP
  + Life Safety – Fire Marshal
* Equipment Training
* Material Completion Date
  + Punchlist Inspection Date
  + Occupancy Date
* Interim Punchlist Completion
* Final Completion Date

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

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

### Pre-Construction Phase Construction Supervision & Planning Services. During the Pre-Construction Phase, CM/GC shall provide the following Construction Supervision Services.

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

##### CM/GC’s Staffing Plan. The Construction Management Plan shall include CM/GC’s staffing plan, an estimate of the manpower requirements for each trade and the anticipated availability of such manpower. CM/GC 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 CM/GC 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. CM/GC shall establish and require all Trade Contractors to establish reasonable safety programs. No imposition of responsibility on CM/GC 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, CM/GC shall submit to Owner and Design Professional the certificate of competency of the fire protection sprinkler system Trade Contractor and, if applicable, Subcontractor as required by State of Georgia Fire Protection and Safety Code. The certificate of competency shall be provided prior to any work being performed on the fire protection sprinkler system.

#### Quality Control Program. CM/GC 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 CM/GC 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.

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

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

### Submission of Rental Rates and Unit Prices. Prior to the issuance of the first Proceed Order, CM/GC 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.

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

#### Unit Prices for Stormwater Management BMPs. CM/GC 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. CM/GC shall submit unit prices for excavating unsuitable soil and rock and importing suitable soil and rock in excess of the amount specified in the Contract Documents. If the Contract Documents specify an estimated amount of excavation of rock or unsuitable fill material, or importation of additional fill, and if Design Professional determines that CM/GC 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. CM/GC 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 CM/GC 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. CM/GC 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, CM/GC shall update, supplement, or amend all documents previously submitted. CM/GC 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 1.4.2.3.1 if such delay is caused by the CM/GC’s failure to submit Documents necessary for Issuance of Proceed Order.

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

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

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

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

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

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

#### Construction Management Plan, which includes the CM/GC’s Staffing Plan, Security Program and Safety Program (required for GMP Change Order) as required by Section 2.1.4.1

#### Quality Control Program (required for GMP Change Order) as required by Section 2.1.4.2

#### Construction Progress Schedule, including Submittal Schedule (required for GMP Change Order) as required by Section 2.1.3

#### 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 CM/GC and Design Professional

## Construction Phase Basic Services & Other Construction Phase Requirements

### Construction Phase Design Review and Consulting Services. CM/GC 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 CM/GC or its Subcontractors may discover before proceeding with the affected Work. CM/GC shall review and compare all newly issued Construction Documents to the documents previously issued by Design Professional. CM/GC 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 CM/GC of the continuing duties imposed hereby.

#### Contract Documents at Site and Recording Changes. CM/GC 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. CM/GC 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. CM/GC shall revise and refine the Construction Budget to aid Owner and Design Professional in monitoring the progress of the Work and evaluating any Claims by CM/GC. CM/GC shall revise and refine the Construction Budget at appropriate intervals as required by the conditions of the Work. CM/GC shall identify variances between actual and budgeted costs and shall advise Owner and Design Professional promptly whenever projected costs may exceed the budgeted cost. CM/GC shall maintain cost accounting record of all Work in compliance with GASB 34 accounting requirements.

### Construction Phase Scheduling Services. During the Construction Phase, CM/GC 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. CM/GC shall schedule and conduct Construction Progress Meetings with Owner, Design Professional, Separate Contractors, and appropriate Subcontractors for the purpose of discussing the status and progress of the Work. Such meetings shall be held not less than biweekly (i.e., every other week). CM/GC 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. CM/GC shall maintain a daily log of construction activities, approved as to form and type of entries by Design Professional. The daily construction log shall be accessible to Owner and Design Professional at all times during normal business hours.

#### Monthly Progress Reports and Updated Overall Project Schedules. CM/GC 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. CM/GC 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.

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

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

### Construction Phase Construction Supervision & Planning Services. CM/GC 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. CM/GC shall be responsible for and shall coordinate all construction means, methods, techniques, sequences, and procedures.

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

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

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

#### Responsibility to Coordinate Work of Separate Contractors. CM/GC 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. CM/GC 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, CM/GC 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, CM/GC shall re-install BMPs at established unit prices under Section 2.1.5.2.

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

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

#### Dust Control and Cleaning. CM/GC 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, CM/GC 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, CM/GC 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 CM/GC.

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

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

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

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

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

### Hazardous Materials. CM/GC 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 CM/GC encounters unanticipated Hazardous Materials on the Site, then CM/GC 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. CM/GC 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 CM/GC 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 the CM/GC 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. CM/GC 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. CM/GC 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) CM/GC 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) CM/GC 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 CM/GC to be inadequate to prevent foreseeable personal injury to persons encountering the hazardous condition, CM/GC 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 CM/GC or contract with a Separate Contractor, to resolve the condition.

### Differing Site Conditions. CM/GC acknowledges, warrants, and represents that it has visited the premises and has taken into consideration all conditions that might affect the Work. In addition, CM/GC acknowledges, warrants, and represents that it has reviewed all Contract Documents before execution by CM/GC, 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. No Claim arising out of or related to one or more differences between the existing conditions and the conditions identified in Contract Documents or Construction Documents shall be asserted or allowed unless the existing physical conditions differ materially from (i) conditions explicitly identified in the Contract Documents or Construction Documents (“Type I Conditions”) and (ii) conditions reasonably anticipated or expected by reasonably observant and prudent construction contractor, construction manager, or trade contractor (“Type II Conditions”). No Claim arising out of or related to CM/GC’s lack of knowledge of existing 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. Collectively, Type I Conditions and Type II Conditions shall be referred to as “Differing Site Conditions.”

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

#### Investigation of Differing Conditions; Adjustments to Contract Sum and Contract Time. Upon receipt of the Notice set forth above, Design Professional shall promptly investigate such conditions. If Design Professional determines that the conditions encountered by CM/GC are Differing Site Conditions and will result in an increase or decrease in the Allowable Cost or Allowable Change Order Costs or time required for the performance of Work, then Owner will issue a Change Order and the provisions of Section 3.4 will apply. In such case, if Unit Prices have previously agreed upon and are applicable to the Differing Site Conditions, then the Change Order Sum and any adjustment in the Contract Sum will be determined by such Unit Prices. If Design Professional determines that the conditions are not Differing Site Conditions, or no change in the Contract Sum or Contract Time is justified, or if CM/GC has not complied with Section 5.2.2, then Design Professional shall so notify Owner and CM/GC in writing, providing the basis therefor. Protest by either party of Design Professional’s Decision shall be in accordance with 5.2.2.5.

### Office for Contract Compliance Specialist (CCS). CM/GC 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 CM/GC’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, Taxes & Utilities. CM/GC shall obtain and pay for all permits and licenses of a temporary nature necessary for the prosecution of the Work. CM/GC 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, CM/GC shall pay for all utilities services until Material Completion has been achieved.

### Effect of Approval. Design Professional’s or 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 CM/GC shall make its own independent judgment thereof. CM/GC 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. CM/GC shall contract for performance of all Work, except Basic Services and the General Requirements, through Trade Contractors. CM/GC shall not directly perform any Work, other than Basic Services and General Requirements, except as provided below. 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.

#### Direct Performance with Owner Approval Prior to Execution of GMP. CM/GC may identify certain Trade Contract Work that it wishes to self-perform. CM/GC 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 CM/GC’s proposal provides the best value for Owner. CM/GC 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 the CM/GC’s proposal for such Work.

#### Direct Performance by CM/GC When Trade Contractors are Over Budget. After execution of the GMP Change Order, if the lowest responsible Trade Contractor proposal received by CM/GC exceeds CM/GC'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 CM/GC 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.

#### Direct Performance After Default of Trade Contractor. CM/GC may directly perform Work encompassed within any Trade Contract upon the default and termination of such Trade Contractor. CM/GC 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.

#### Direct Performance of Change Order Work. If CM/GC is directly performing the Work of a Trade Contractor under Section 2.3.1.1, Section 2.3.1.2, or Section 2.3.1.3, then CM/GC may directly perform any Change Order Work associated with such self-performed work.

#### CM/GC Supplied Equipment or Supplies. With the prior written approval of Owner, CM/GC 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 CM/GC for the procurement of such equipment or supplies under a competitive proposal procurement, or (ii) the applicable amounts referenced in Section 3.4.5.

### Selection of Trade Contractors. Trade Contractors shall be selected by CM/GC after completion of the selection process outlined below. CM/GC 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, CM/GC 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. CM/GC may require prospective Trade Contractors to undergo a pre-qualification process to permit CM/GC 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 CM/GC, have the ability to obtain the insurance required by the Contract Documents and CM/GC, 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. CM/GC, 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. CM/GC shall develop Trade Contractor packages that describe the Work using CM/GC’s own forms and procedures. Proposers shall be required to submit a proposal encompassing the full contract price for the Work to be procured. CM/GC shall submit proposals from not less than three (3) proposers. If the CM/GC is unable to obtain three proposals for a Trade Contract, the CM/GC 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, CM/GC shall prepare a thorough analysis of the Trade Contractor proposals for Owner’s review. The analysis shall clearly indicate the Trade Contractors preferred by CM/GC and shall be accompanied by a copy of each proposal received. If the preferred Trade Contractor is not the lowest in price, CM/GC’s analysis shall include a justification for selecting the preferred Trade Contractor over the lowest-price Trade Contractor. CM/GC 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 CM/GC to reject any Trade Contractor. If Owner exercises its right to require CM/GC to reject a Trade Contractor, CM/GC 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 CM/GC may seek an extension of Contract Time under Section 1.4.2. As a condition to any adjustment provided in this Section, CM/GC shall comply with Section 5.2.2.

##### No Award to CM/GC Affiliate. CM/GC shall not award any Trade Contract to any Affiliate of CM/GC unless CM/GC first notifies Owner that the proposed Trade Contractor is an Affiliate and Owner approves of the award in writing.

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

#### Trade Contractor Procurement Schedule. CM/GC 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
* CM/GC Estimate
* Variance

### Contract Provisions Required in All Trade Contracts. CM/GC 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.

#### CM/GC shall require its Trade Contractors to:

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

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

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

#### CM/GC shall be required to incorporate the following requirements into all Trade Contracts:

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

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

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

#### CM/GC shall expressly name Owner as an intended third-party beneficiary of the Trade Contract.

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

### Effect of Owner’s Discretionary Decisions. Owner’s decision, approval, or rejection related to (i) CM/GC’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 2.3 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. CM/GC 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, CM/GC 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. CM/GC shall provide a Five Year Bond on Roofs and Walls as required by Section 6.1.1.12.

#### 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 CM/GC hereunder, including but not limited to the obligation correct the Work as set forth in Section 2.4.4. The remedies stated in this Section are in addition to the remedies otherwise available to Owner, do not exclude such other remedies, and are without prejudice to any other remedies.

### Inspection of the Work. Both CM/GC 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 CM/GC to ensure that all Work complies with the Contract Documents. The failure of Owner, Design Professional, or other third-parties to discover or notify CM/GC of the existence of Non-Compliant Work shall not relieve CM/GC 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 CM/GC of responsibility to ensure that all Work complies with the Contract Documents.

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

#### Fire Marshal’s Inspection of the Work. The State Fire Marshal may make inspections at any time. CM/GC 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 CM/GC has completed all of the items noted on the Eighty Percent (80%) Inspection report and the building is ready for issuance of the Certificate of Occupancy.

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

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

##### False Starts. In the event CM/GC shall have issued Notice of Readiness prematurely, its action shall be deemed to be a "false start.” CM/GC 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.

##### 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 CM/GC shall uncover such Work for inspection by Design Professional. CM/GC 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 CM/GC. 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 CM/GC satisfies all requirements and conditions thereunder, CM/GC 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) CM/GC 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) CM/GC shall not be entitled to assert a Claim for increase in Contract Time or Contract Sum.

### Notice of Non-Compliant Work. If Design Professional identifies an instance of Non-Compliant Work, Design Professional shall issue a Notice of Non-Compliant Work. The Notice of Non-Compliant Work shall be in writing, dated, signed by Design Professional, and addressed to CM/GC with a copy to Owner. The Notice of Non-Compliant Work shall include a description of the Non-Compliant Work, a citation to the provision of the Contract Documents (or incorporated document or standard) that has been violated, and a reasonable period to correct the Non-Compliant Work (“Cure Period”). If CM/GC 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, the CM/GC 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. CM/GC 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. CM/GC 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. CM/GC 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. CM/GC 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, CM/GC shall deliver to Design Professional and Owner a written plan explaining how CM/GC 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. CM/GC's plan must provide sufficient detail to allow Design Professional and Owner to determine the proposal's feasibility. The obligations of this Section are without limitation on Owner’s right to require acceleration pursuant to Section 2.2.3.4

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

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

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

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

#### Owner’s Remedy Upon CM/GC’s Failure to Remedy Warranty Complaints. If CM/GC 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 CM/GC.

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

### No Limitation. Nothing contained in this Section 2.4 shall be construed to establish a period of limitation with respect to CM/GC's liability for defective or Non-Compliant Work under this Contract, at law, or in equity. The remedies stated in this Section 2.4 are in addition to the remedies otherwise available to Owner and are without prejudice to any other remedies.

# Change Orders

## Component Change Orders

### Component Change Order Proposal. CM/GC 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. Such CCO Cost Categories shall have the same meaning as provided under Section 4.1.

##### 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.

#### CM/GC’s Acknowledgement of Component Construction Documents. By executing the proposed Component Change Order, CM/GC 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 CM/GC and subject to the provisions of Section 2.1.1.4, has found them to be generally complete, accurate, adequate, consistent, coordinated, and sufficient for construction of the Work.

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

#### Rejection of Component Change Order. If Owner rejects CM/GC's proposed Component Change Order, CM/GC may revise and resubmit same but shall not be obligated to do so. If Owner rejects CM/GC'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 CM/GC 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 CM/GC to determine such equitable reduction.

#### Acceptance of a Component Change Order. If Owner accepts CM/GC'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 CM/GC 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, the CM/GC shall be compensated for its Allowable Costs (as defined in Section 4.1) 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. CM/GC 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 CM/GC agree that the Construction Documents are sufficiently developed to allow detailed pricing. If CM/GC 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 CM/GC 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 CM/GC to allow detailed pricing.

#### GMP Change Order Proposal Requirements. CM/GC'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. The CM/GC 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, CM/GC 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 2.1.6, 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 CM/GC's submission of the proposed GMP Change Order and prior to its acceptance, Owner and Design Professional shall meet with CM/GC to review the proposed GMP Change Order. Owner and Design Professional shall promptly notify CM/GC 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, CM/GC 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 CM/GC.

#### 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 Owner rejects the proposed GMP Change Order, then CM/GC may, but shall not be obligated to, revise and resubmit same. In the event no proposed GMP Change Order can be agreed upon, CM/GC 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 CM/GC 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. CM/GC shall promptly accept or reject the proposed Construction Document Change Order, but no later than thirty (30) days after its receipt. If CM/GC accepts the proposed Construction Document Change Order, then the proposed Construction Documents Change Order will be forwarded to Owner for acceptance or rejection.

#### CM/GC’s Final Construction Documents Coordination Review. Prior to its acceptance of the proposed Construction Document Change Order, CM/GC shall promptly conduct a final review of the Construction Documents. In addition to the review described in Section 2.1.1, CM/GC 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 or identified under Section 4.1.

#### Effect of Failure to Give Notice. If CM/GC accepts any proposed Construction Documents Change Order without such Notice as required in Section 3.3.1.1, then CM/GC 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 3.2.1.2.3.

#### CM/GC’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, CM/GC 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 CM/GC and subject to the provisions of Section 2.1.1.4, 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. CM/GC 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 3.2.1.2.3, 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, CM/GC 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 CM/GC rejects the proposed Construction Documents Change Order, CM/GC 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 3.2.1.2.3 that CM/GC 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 CM/GC 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 CM/GC’s Rejection of Construction Documents. If CM/GC rejects the proposed Construction Documents Change Order, Owner shall consult with CM/GC and Design Professional to investigate CM/GC’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 3.2.1.2.3 or (ii) accept CM/GC'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, CM/GC's failure to reject the proposed Construction Documents Change Order within the time limitations stated herein shall be deemed CM/GC's acceptance of the Construction Documents Change Order without any exceptions or variance. CM/GC’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 3.2.1.2.3.

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

#### CM/GC Requests for Change Orders. If CM/GC believes that any act or omission of Owner or Design Professional results in a change in the Work as required by the Contract Documents, then it shall submit a Notice of Claim in the form and within the time set forth in Section 5.2.2. If Design Professional determines that the Work has been so changed and that CM/GC has complied with Section 5.2.2, it shall provide Notice to Owner and Owner will issue a Change Order under this Section 3.4. CM/GC or Owner may protest Design Professional’s Decision as provided in Section 5.2.2.5.

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

#### CM/GC’s Response to Proposed Change Order. CM/GC shall respond to the proposed Change Order within fourteen (14) calendar days, or within such other reasonable time as Owner may direct. CM/GC’s response shall state the estimated impact, if any, of the Change Order on the Contract Time and Contract Sum and shall include a justification for any proposed increase in Contract Time and Contract Sum, including an itemized breakdown as provided in Section 3.4.2.1.2. CM/GC’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.

##### CM/GC’s Justification for Increase in Contract Time. As a condition to Owner’s approval of an increase in Contract Time for Change Order Work, CM/GC 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, CM/GC 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, CM/GC 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, CM/GC 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 CM/GC 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. CM/GC 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. The breakdown shall be accompanied by the following declaration:

*I do solemnly swear to the best of my knowledge, information, and belief, that the costs shown hereinabove do not exceed current costs for like services or materials in the locality of the Project and, in the case of a Force Account, the costs represented do not exceed the actual costs to CM/GC; and that the quantities shown do not exceed actual requirements*.

#### Sole Source Change Orders. If a proposed Change Order designates a Sole Source from which CM/GC 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 CM/GC the warranties, bonds, terms or schedule required under the Contract Documents, then CM/GC 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 CM/GC'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 CM/GC cannot acquire the full contractually required warranties from the Sole Source, CM/GC 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 CM/GC shall provide all information required under Section 3.4.2.1 that would apply to increases in Contract Sum or Contract Time. CM/GC’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 CM/GC’s response and shall agree or disagree with any proposed changes in Contract Time, Contract Sum, and any other adjustments proposed by CM/GC 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 CM/GC shall be deemed rejected by Owner.

##### Disagreement as to Change in Contract Sum. If Design Professional or Owner disagree with CM/GC 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 CM/GC’s response under 3.4.2.1, 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 3.4.5. In no event shall any increase in the Contract Sum for such Change Order Work exceed the increase identified in CM/GC’s response under Section 3.4.2.1.

##### Disagreement as to Change in Contract Time or Other Disagreements. If Design Professional or Owner disagree with CM/GC 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 CM/GC’s response under 3.4.2.1, 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 5.2. In no event shall any increase in the Contract Time exceed the increase identified in CM/GC’s response under Section 3.4.2.1.

### Acceptance of Proposed Change Order. If Owner agrees with the CM/GC’s proposed changes submitted pursuant to Section 3.4.2.1, then the Owner shall execute the Change Order and provide Notice of acceptance thereof by issuing a Notice to Proceed. 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 CM/GC shall be entitled to no adjustment to the Material Completion Date. CM/GC shall proceed with the Change Order Work either (a) if no time is stated in the Change Order, upon receipt of Owner’s Notice to Proceed or (b) if a time is stated in the Change Order or Notice to Proceed, at such time.

### Effect of Acceptance. The acceptance or execution of a proposed Change Order by CM/GC shall constitute conclusive evidence of the CM/GC’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. CM/GC, 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 CM/GC for the Change Order Work and accounts for all delays and impacts related thereto.” Any changes or reservations by CM/GC 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) CM/GC 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, or (iii) the Owner and CM/GC have agreed to Unit Prices for the Work but cannot determine the number of Units involved in the Change Order (“Unit Price Change Order”).

#### 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 4.1.4 and shall set forth the maximum amount that the CM/GC shall be paid for the Change Order Work. It shall be the sole responsibility of CM/GC 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, CM/GC 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, CM/GC 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, CM/GC 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, CM/GC 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 the CM/GC may include the Force Account Work on a Payment Application.

# Compensation

## Basis of Compensation

### Compensation. During the Pre-Construction Phase, Owner will pay the Pre-Construction Sum in the amount stated in Section 6 of the Form of Contract. During the Construction Phase, Owner will pay Trade Contractor and General Requirements Costs, General Conditions Costs, the Change Order Sum for each Change Order, and Contingency Costs (collectively, “Allowable Costs”), plus the Construction Phase Fee as each are defined and limited in this Section 4, 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. CM/GC’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 CM/GC’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 CM/GC as a result of such change in tax rate. A Notice of Claim shall be made promptly after CM/GC 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 the CM/GC self performs any Work pursuant to Section 2.3.1, CM/GC 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 C, in which case those items shall not be reimbursable as General Requirements Costs. General Requirements Costs exclude the costs of any CM/GC employee performing Basic Services, but may include the costs of any CM/GC employee performing General Requirements Work.

### General Conditions Costs. General Conditions Costs include those Overhead Costs and Expenses and Labor items listed on Exhibit C, 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 CM/GC’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.

##### Utility Costs. Overhead Costs and Expenses include the costs of utilities such as water, power, gas, sewer, and fuel required for CM/GC’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 CM/GC is responsible, but not including any fines or interest due to CM/GC’s failure to meet legal requirements associated with such items

##### Travel Expenses. Overhead Costs and Expenses may include travel costs. If the CM/GC 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. CM/GC’s Labor Costs include the wages or salaries of their personnel only as listed on Exhibit C 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 C. Such costs may also include costs incurred by CM/GC for taxes, insurance contributions, pensions, and other benefits for such personnel.

##### Additional Personnel After Contract Execution. If the CM/GC determines that it needs staffing to perform the Basic Services in addition to those persons listed on Exhibit C (Construction Phase Labor Costs), the CM/GC 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 CM/GC’s request. If Owner approves the request, CM/GC shall be compensated for the additional staff from its General Conditions Costs, but in no event shall CM/GC’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 CM/GC 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 4.1.4.8 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 4.1.4 that CM/GC incurs in performing the Force Account Work, but such Change Order Sum shall not exceed Stipulated Maximum Sum established pursuant to Section 3.4.5.1.

#### Allowable Trade Contractor Costs. Allowable Trade Contractor Costs for Change Order Work shall exclusively include the costs identified in this Section 4.1.4.3.

##### 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 4.1.4.3 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 4.1.4.3.

#### CM/GC’s Payment and Performance Bond and Insurance Costs. Allowable Change Order Costs include the increases in premiums for CM/GC’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 CM/GC’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 CM/GC is not awarded its General Conditions Costs pursuant to Section 4.1.4.7, CM/GC shall be allowed a mark-up on the Allowable Change Order Costs set forth above as compensation for CM/GC’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 CM/GC is awarded General Conditions Costs under Section 4.1.4.7, CM/GC’s Mark-Up shall be equal to the Construction Phase Fee Percentage (defined in Section 7 of the Form of Contract) of the Allowable Change Order Costs without any additional Mark-Up.

### Contingency Costs; Contingency Fund. Contingency Costs are costs incurred by CM/GC 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, CM/GC may be reimbursed from the Contingency Fund for the following costs, unless such costs are otherwise reimbursed or recovered by CM/GC as another Allowable Cost or are attributable to CM/GC's gross negligence or willful misconduct. Contingency Funds are specifically not to be used for CM/GC’s rework caused by the performance of Non-Compliant Work or improper covering of Work under Section 2.4.2.3.3, unforeseen conditions, or to correct errors or omissions in the Construction Documents. Contingency Funds cannot be used to pay for any General Conditions Costs.

##### Trade Contractor Defaults. If a Trade Contractor defaults under a written Trade Contract, then CM/GC 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 CM/GC 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 CM/GC 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 2.4.5.1.

##### 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 CM/GC 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 CM/GC can use Contingency Funds to pay the difference in cost.

##### Other. CM/GC 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. CM/GC and Owner shall monitor funds in the Contingency Fund. The Contingency Fund, once established, shall fluctuate as CM/GC enters into Trade Contracts. If the actual price of a Trade Contract is less than the projected amount, then the Contingency Funds 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. CM/GC shall notify Owner of its use of the Contingency Fund at each OAC Meeting. CM/GC 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.

#### Release of Construction Contingency Funds. Any funds remaining in the Contingency Fund upon Material Completion shall be returned to Owner. Additionally, as the Work progresses and the Cost of the Work becomes more certain, CM/GC 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.

### CM/GC’s Construction Phase Fee. During the Construction Phase, the CM/GC shall be paid the portion of the Construction Phase Fee (stated in Section 7 of the Form of Contract) equal to the percentage completion of the Project.

### Proper Costs and Documentation. To the extent compensation to CM/GC 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 CM/GC in the proper performance of the Work. Except as explicitly provided in Section 4.1.5.1, 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 CM/GC or any of its Subcontractors. Such costs shall also not include those costs for which CM/GC has failed to maintain documentation as required under Section 4.1.8. 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 CM/GC shall remit any payment associated with such costs, including any associated markup or fee, to Owner within five (5) days.

### Documentation of Costs. CM/GC 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, CM/GC’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. CM/GC shall preserve such records for a period of three (3) years after final payment, or for such longer period as may be required by law.

## Retainage

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

#### 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, CM/GC 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 4.2.1.1, 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 CM/GC 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 the CM/GC with the payment for Material Completion in accordance with the terms of Section 6.

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

## Payment

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

#### Payment for Pre-Construction Phase Services. CM/GC shall be paid for its Pre-Construction Phase Services upon completion of the following Pre-Construction Phase Work, in accordance with the schedule below. CM/GC shall submit a Payment Application upon completion of each of the following milestones.

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

Forty percent (40%) of Pre-Construction Sum

* Completion of Design Review and Construction Cost Estimates for Construction Documents

Thirty percent (30%) of Pre-Construction Sum

* Submission of Executive Summary of Design Review Report:

Ten percent (10%) of Pre-Construction Sum

#### Timing of Payment Application for Construction Phase Services. During the Construction Phase, the CM/GC 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. CM/GC 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. CM/GC 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. CM/GC 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. The CM/GC 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. The CM/GC 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 the CM/GC to obtain the Surety’s consent for payment whenever the CM/GC submits a Payment Application and there are outstanding claims for payment against the CM/GC for Work on this Project.

#### Representations of CM/GC. The Payment Application constitutes a representation by CM/GC to Owner that (i) the CM/GC 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) CM/GC is entitled to payment in the amount requested; (iv) all Work covered by any previously approved Payment Application, for which the CM/GC 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.

#### Schedule of Values. Before submitting its first Payment Application during the Construction Phase, CM/GC 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, CM/GC 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’s Representative.

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

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

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

### 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 CM/GC no later than thirty (30) days after receipt of a properly completed Payment Application.

#### Disputed Payments. Owner and CM/GC 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, CM/GC shall provide Notice to Owner in writing by certified mail. If Owner fails to pay within seven (7) days of receipt of the Notice, CM/GC 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 CM/GC expressly agree to payment periods for Owner’s Payment to CM/GC and interest rates on late payments that become due to CM/GC 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 CM/GC 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 CM/GC; (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.

### 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. CM/GC shall provide Owner an opportunity to provide funds for CM/GC 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.

# CONTRACT SUSPENSION, TERMINATION AND CLAIMS

## Suspension of Work, Termination

### Right to Suspend Work.

#### Owner and Design Professional’s Right to Suspend Work. Owner and Design Professional may stop the Work upon observation of apparent Non-Compliant Work or whenever such stoppage may be necessary to protect the Work or protect the interests of Owner. The stop work order may be given orally, with Notice to be provided to CM/GC within seventy-two (72) hours. If the Work is later determined by Design Professional to be conforming Work, and the CM/GC then complies with Section 5.2.2, CM/GC shall be entitled to a compensable time extension in accordance with Section 1.4.2.3. If the Work is determined by Design Professional to be Non-Compliant Work, then CM/GC 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 CM/GC five (5) days’ Notice thereof. Upon resumption of the Work, if CM/GC complies with Section 5.2.2, CM/GC 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 CM/GC 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 CM/GC, in accordance with the applicable provisions of Section 4, for all Work properly executed and installed prior to termination and for the costs incurred by CM/GC 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 CM/GC’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 under Section 2.1.

#### 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 CM/GC, in accordance with the applicable provisions of Section 4 for all Work executed prior to termination, and for the costs incurred by CM/GC 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 CM/GC and its Surety fifteen (15) days’ Notice of Owner’s intent to terminate for cause.

#### Causes for Termination. Owner may terminate the Contract if CM/GC is in breach of a Notice of Non-Compliance; if CM/GC makes a general assignment for the benefit of its creditors or if a receiver is appointed on account of its insolvency; if CM/GC persistently disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction over the Project; if CM/GC abandons the Project for a period of fourteen (14) or more days; if CM/GC 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 CM/GC the percentage of the Pre-Construction Phase Sum in proportion to the quantity of Work performed to the total amount of Work required under Section 2.1, 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, CM/GC shall not be entitled to receive any further payment until the Work is completed. Upon completion, CM/GC 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 CM/GC shall be the contractual treatment of the termination pursuant to Section 5.1.2 without any other damages, relief, or compensation.

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

#### Termination for Project Delay. CM/GC may terminate the Project if the Work is stopped for a period of thirty (30) days or more, through no fault of CM/GC, 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 5.1.1.2.

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

#### Payment Due Upon Termination. If CM/GC terminates the Contract for cause as provided in Section 5.1.4, upon providing Owner with all releases and waivers of liens in the same manner as would be required upon Final Completion, Owner will pay CM/GC, as provided in the applicable provisions of Section 4, for the Work properly executed, and, only if CM/GC submits a Claim in the manner and time provided in Section 5.2.2, for any proven damages sustained or cost incurred for any materials, equipment, tools, construction equipment and machinery, and cancellation charges on obligations of CM/GC outstanding as of the termination. The remedies provided in this Section shall be the sole remedies of CM/GC 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 5.1, then the terminating party will issue a written Notice of Termination that shall be sent by Certified Mail, Return Receipt Requested.

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

## 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, CM/GC 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 CM/GC 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 CM/GC. The requirement of CM/GC 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 CM/GC. If any other provision of the Contract Documents limits or precludes additional compensation to CM/GC 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, CM/GC shall retain contemporaneous documentation of all costs supporting such increase and shall submit copies thereof to Owner along with the Notice of Claim or, for continuing Claims, on a daily basis after submitting the Notice of Claim.

#### Claims for Extension of Contract Time. The provisions of 1.4 shall govern CM/GC’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, CM/GC shall further comply with this Section 5.2.2.

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

### Dispute Resolution.

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

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

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

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

# Project completion

## Material Completion

### Pre-Requisites to Material Completion. To achieve Material Completion, the Work shall be materially complete so that the Using Agency can use and occupy the entire Project for its intended purpose. Additionally, CM/GC 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, CM/GC 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. CM/GC 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, CM/GC 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. CM/GC 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, CM/GC 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, CM/GC shall perform an initial test and balance on the heating, ventilating and air conditioning system. CM/GC 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, CM/GC 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. CM/GC 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, CM/GC shall remove from the Site all waste and perform a thorough cleaning of the Work. CM/GC 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. CM/GC 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. CM/GC may leave equipment at the Site as necessary to achieve Final Completion of the Project. To achieve Material Completion, CM/GC shall have fully cleaned the Site.

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

#### Final Certification of Costs. CM/GC 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. CM/GC 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. CM/GC 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 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, CM/GC 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. CM/GC 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. CM/GC shall submit its Material Completion Checklist in the format set forth in GSFIC Forms Packet at the inspection Material Completion.

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

#### Liability of CM/GC for False Starts. If CM/GC requests inspection for Material Completion and it is determined by Design Professional that the Project has not reached Material Completion, referred to as a "false start," then CM/GC shall be liable for the costs and damages resulting therefrom, including but not limited to those costs and damages identified in Section 2.4.2.2.2. Such costs shall not constitute Allowable Costs.

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

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

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

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

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

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

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

### Payment for Material Completion. Upon Material Completion, CM/GC shall submit a Payment Application. CM/GC 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. CM/GC 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 CM/GC 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, CM/GC 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 10 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 CM/GC fails to achieve Material Completion by the Material Completion Date, CM/GC 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, CM/GC’s ineligibility requires that its bid be rejected.

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

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

#### Liability of CM/GC for False Starts. If CM/GC issues a Notice of Readiness for Inspection for Interim Punchlist Completion and Design Professional determines that all Minor Items are not complete, referred to as a "false start," then CM/GC shall be liable for the costs and damages resulting therefrom, including but not limited to those costs and damages identified in Section 2.4.2.3.2. Such costs shall not constitute Allowable Costs.

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

#### Ineligibility to Bid or Propose on State Contracts. If CM/GC fails to achieve Interim Punchlist Completion within thirty (30) days of the Material Completion Date, CM/GC 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, CM/GC’s ineligibility requires that its bid be rejected.

##### Automatic Restoration of Eligibility to Bid. CM/GC’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 Final Completion.

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

## Final Completion

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

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

#### Inspection of All Permitted Incomplete Work. In order to achieve Final Completion, all Permitted Incomplete Work must be completed and inspected for Final Completion. If Permitted Incomplete Work remains after the Interim Inspection for Punchlist Completion, CM/GC 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, CM/GC shall submit a Payment Application. CM/GC shall certify, by its signature on the Payment Application, that the Work has been completed as provided for by the Contract Documents. CM/GC 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 CM/GC 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 CM/GC 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, CM/GC is in breach of the covenant of time and is subject to termination. Owner may pursue all remedies available for CM/GC’s failure to timely complete the Work.

#### Ineligibility to Bid or Propose on State Contracts. If CM/GC fails to achieve Final Completion within one year of the Material Completion Date, CM/GC 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, CM/GC’s ineligibility requires that its bid be rejected.

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

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

### GSFIC FORMS PACKET

The GSFIC Forms Packet is available on the GSFIC website at [www.gsfic.ga.gov](http://www.gsfic.ga.gov).

**EXHIBITS**

Exhibit A. Using Agency’s Project Development Information

Exhibit B. Preliminary Design and Construction Schedule

Exhibit C. CM/GC’s General Conditions Costs and Fees

**EXHIBIT A**

**USING AGENCY’S PROJECT DEVELOPMENT INFORMATION**

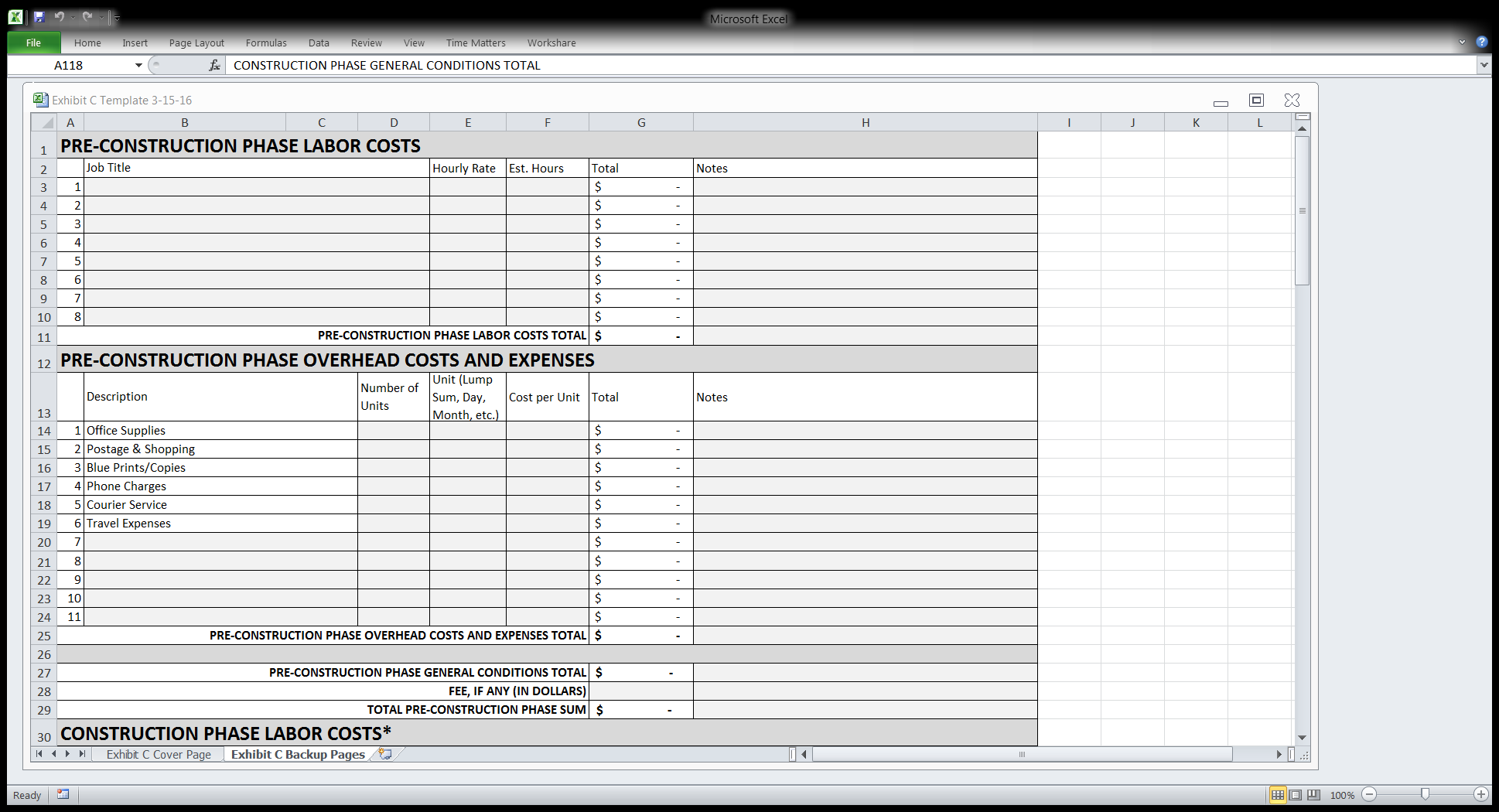
**EXHIBIT B**

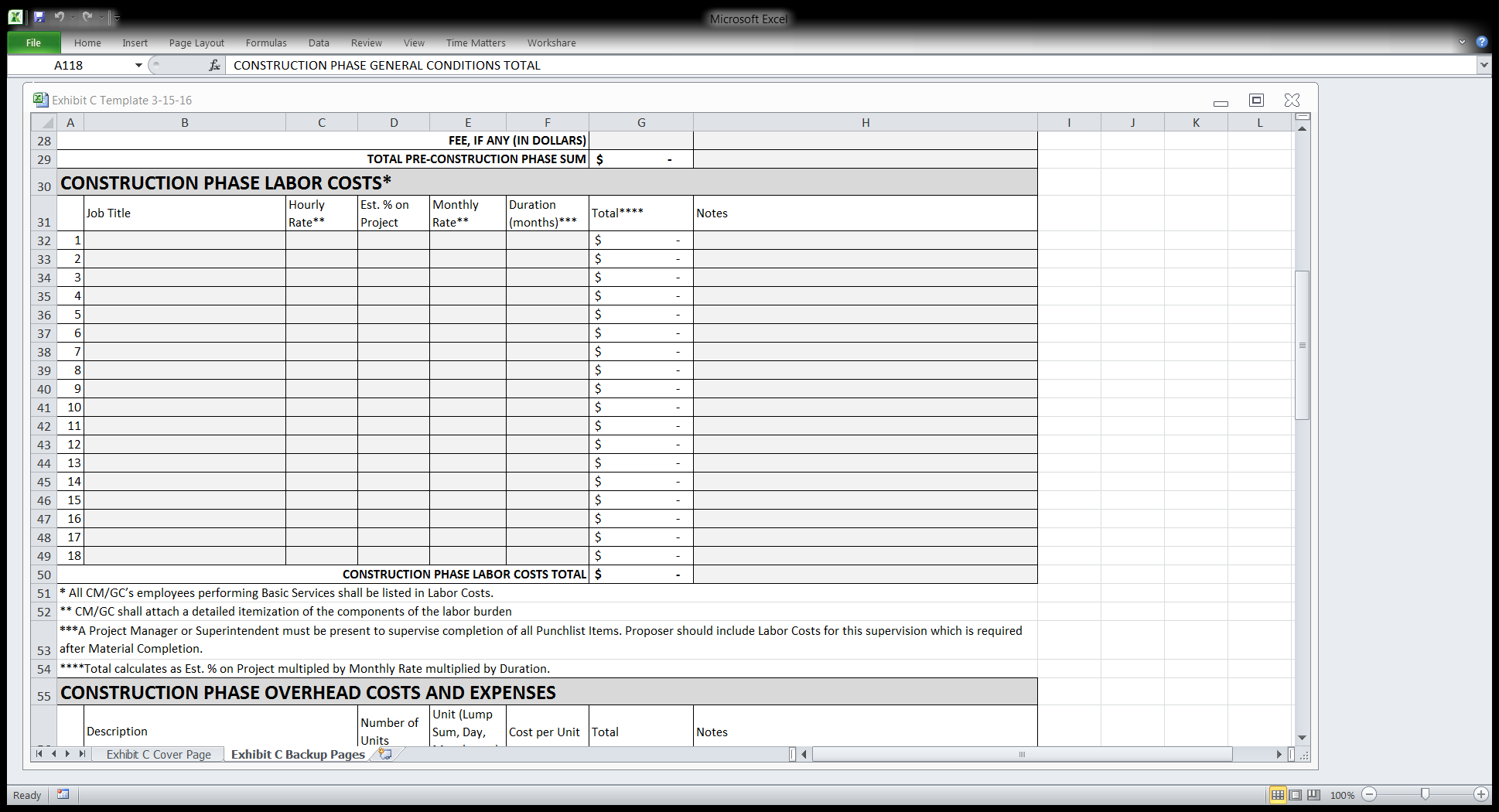
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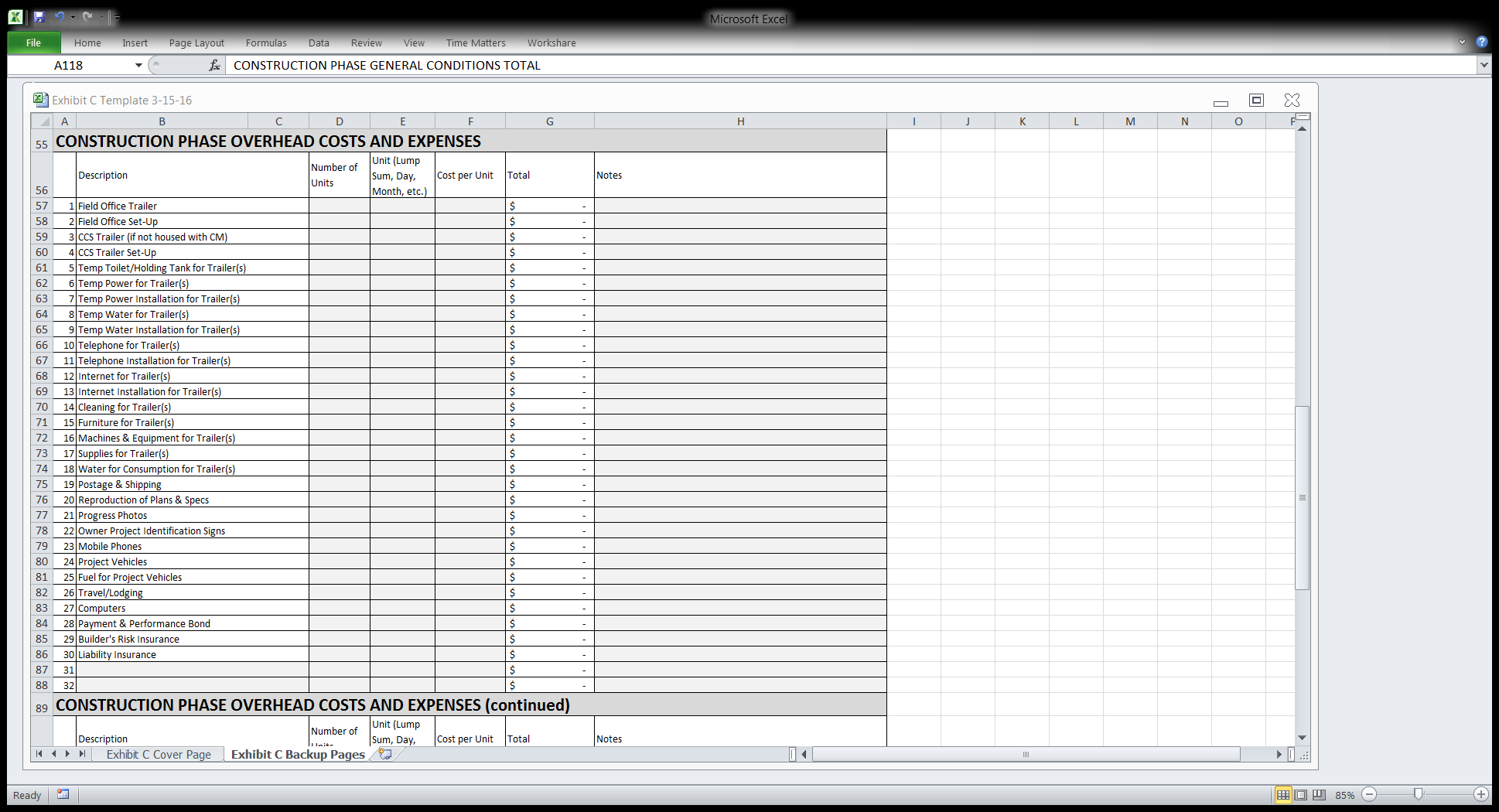
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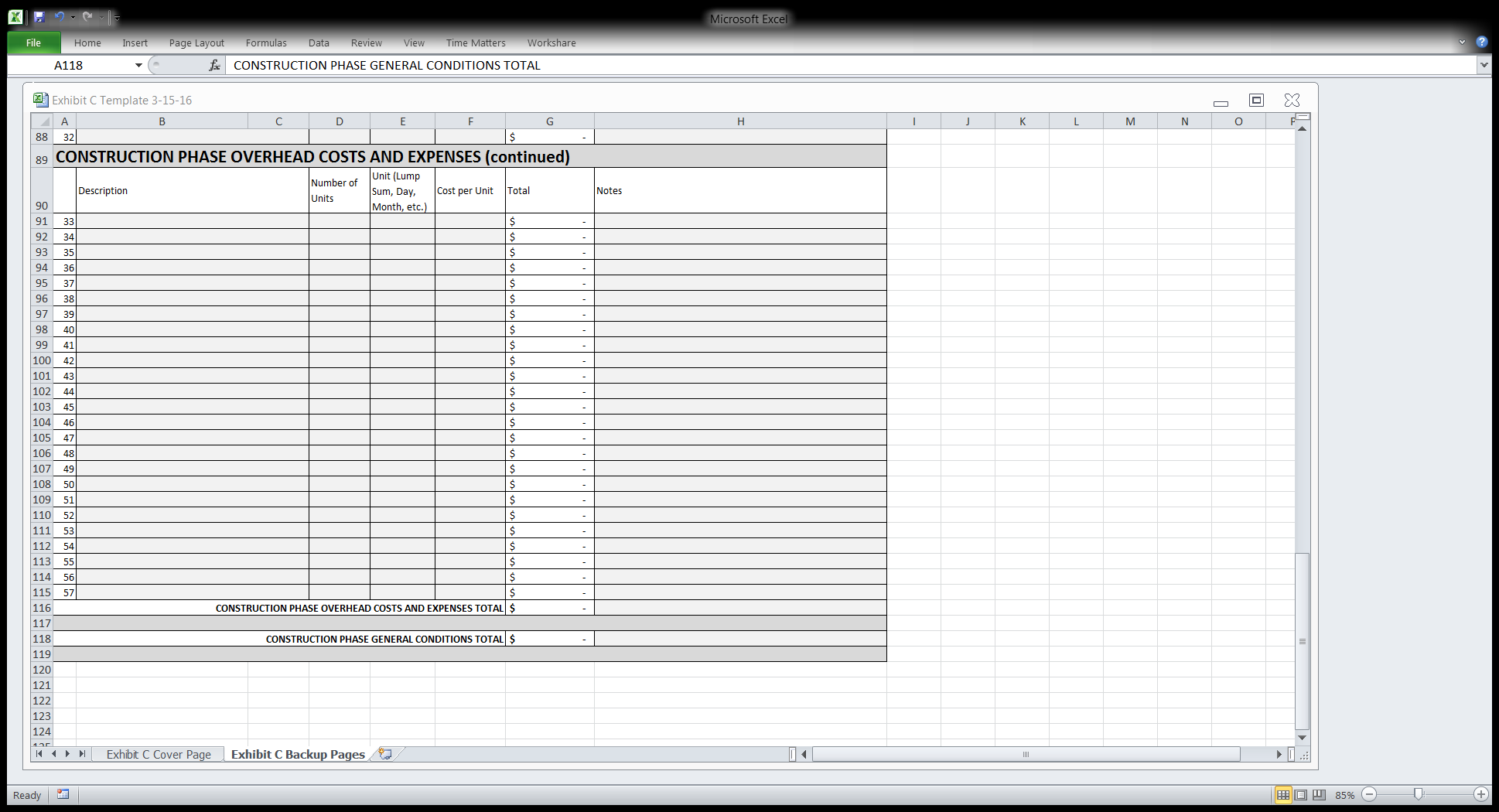
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| Proposer (Company) |  |
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**SUPPLEMENTARY GENERAL REQUIREMENTS**

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