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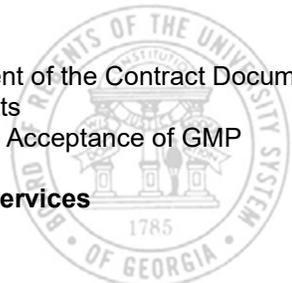
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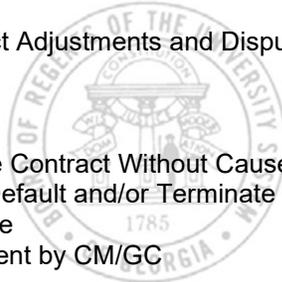
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**SUPPLEMENTARY GENERAL REQUIREMENTS**

## GENERAL REQUIREMENTS OF THE CONSTRUCTION MANAGEMENT CONTRACT

### SECTION 1 – GENERAL

#### PART 1 GENERAL PROVISIONS

##### 1.1.1 General Matters.

1.1.1.1 This Contract and Affiliated Agreements – Requirement for Written Agreements. Affiliated Agreements are any agreement required by this Contract or deemed necessary, efficient, or expedient by CM/GC, between the CM/GC and any party other than the Owner. All Affiliated Agreements, including any subsequent modifications, must be in writing, dated, and executed by the parties. Affiliated Agreements, including financial arrangements with respect to this Project, must be promptly and fully disclosed to the Owner upon their execution or modification. The Affiliated Agreements shall be executed in conformance with the requirements in Section 3, Part 7.

1.1.1.2 Basic Statement of Owner Objectives. The Owner's basic objectives are to develop Construction Documents based on the Documents listed in Exhibit A incorporated herein by reference so as to permit construction of the Project within the limits of the funds available to Owner for construction of the Project as established by the Owner (but in no event in excess of the GMP Cost Limitation set forth on Exhibit B) and to construct the Project in accordance with the approved Construction Documents. The basic tenets of this Contract, which shall form the basis of interpretation of this Contract, are set forth in the Preface and incorporated by reference herein.

1.1.1.3 Project Team. To accomplish Owner's objectives, Owner intends to employ a team concept in connection with the development of Construction Documents and construction of the Project. The basic roles and general responsibilities of team members are set forth in general terms below but are more fully set forth in the Architectural Contract with respect to the Design Professional, in the Program Management Contract with any Program Manager, and in this Contract with respect to the CM/GC.

1.1.1.3.1 Relationship of Parties. The Owner and the CM/GC agree to proceed with the Project on the basis of trust, good faith, and fair dealing, to cooperate fully with each other and shall do all things reasonably necessary to perform this Contract in an economical and timely manner, including without limitation, consideration of design modifications and alternative materials or equipment, if considered necessary or convenient by the Owner. The CM/GC agrees to procure or furnish, as permitted by the laws of Georgia, all preconstruction phase services and construction phase services as set forth herein. The Owner shall endeavor to promote harmony and cooperation among the Owner, Program Manager, Design Professional, the Using Agency, CM/GC and other persons or entities employed by the Owner for the Project.

1.1.1.3.2 Design Professional. The Design Professional is retained in accordance with the Architectural Contract (i) for the design and preparation of Construction Documents that are necessary to implement the Program governing the construction of the Project or Components thereof, and the design and preparation of any necessary documents antecedent to preparation of such Construction Documents, or (ii) for supervision or architectural administration of the Work under Contract Documents, or (iii) for both. The term "*Design Professional*" includes engineers, surveyors, designers and the other consultants retained by the Design Professional. The CM/GC acknowledges and agrees that the Contract Documents are addressed to skilled tradesmen in the construction profession who shall be required to use their special skills and experience, through submittals and shop drawings, to translate the Design Professional's design intent as expressed in the Contract Documents into a completed structure. The Contract Documents shall specify when shop drawings or submittals require the seal of a specialty consultant.

1.1.1.3.2.1 The basis of the Owner's engagement of the Design Professional is the "Design Professional Contract." The CM/GC acknowledges that both the Owner and the Design Professional have on file, at their respective places of business, copies of that executed agreement, and that both the Owner and the Design Professional will make available for review by CM/GC those copies at the CM/GC's request. The Design Professional is not the agent of the Owner, except to the extent so specified in writing,

but is employed as a consultant to the Owner to assist the Owner in determining if the conditions of the contract have been met. All decisions of the Design Professional on matters of aesthetics are final, conclusive, and binding on all parties if consistent with the requirements of the Contract Documents.

1.1.1.3.2.2 The CM/GC shall promptly request and review a copy of the Design Professional Contract prior to the commencement of preconstruction services and shall become familiar with the respective services, authorities, obligations, and responsibilities of the parties therein. CM/GC agrees to coordinate, assist, and develop a working relationship with the Design Professional to effect the purposes of the Project in accordance with the terms of this Contract and the Architectural Contract.

1.1.1.3.2.3 The CM/GC also acknowledges that the Design Professional will consult with and assist the Owner in developing and implementing the Owner's objectives, including budgeting and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements. Furthermore, the CM/GC acknowledges that the Owner and the Design Professional are proceeding with the Project on the basis of trust, good faith, and fair dealing, and they will take all actions reasonably necessary to ensure the Project proceeds to completion within the Owner's time and budgeting constraints. The CM/GC further acknowledges that in order for the Design Professional to perform its obligations under the Design Professional Contract, the Design Professional requires certain materials, information or other submissions as per the Contract Documents, from the CM/GC. The CM/GC agrees to provide the Design Professional with the submittals required by the Construction Documents. The CM/GC further agrees to cooperate with the Design Professional to ensure timely completion of all obligations under this Contract and the entire Project.

1.1.1.3.2.4 CM/GC agrees that the services provided by the Design Professional under the Architectural Contract are intended to coordinate and complement, but not to diminish, alter or substitute for any of the services, authority, obligations, or responsibilities of the CM/GC under this Contract. CM/GC further agrees that the performance of services by the Design Professional in connection with the Project shall in no way relieve CM/GC from any of its services, authority, obligations, or responsibilities under this Contract, and shall not alter or diminish those services, authority, obligations, or responsibilities in any way whatsoever.

1.1.1.3.3 Program Manager. Owner may designate a Program Manager to administer the Project and this Contract. In lieu of a Program Manager, Design Professional may be designated to perform the role of Program Manager. The Program Manager may also be designated as the Owner's Representative, and if no Owner's Representative is designated, the Program Manager shall be the Owner's Representative.

1.1.1.3.4 Owner's Representative. Owner shall from time to time in writing designate one person as Owner's Representative under this Contract. Owner may designate the Program Manager, if any, as the Owner's Representative. Owner's Representative so designated in writing shall serve as Owner's Representative under this Contract unless or until Owner gives notice in writing of the appointment of his successor. Owner or Owner's Representative may designate in writing assistants to serve as Owner's Representative with respect to the Project governed by this Contract or in different phases or in specific areas of responsibility with respect to the Project. All requests for consents and approvals required of Owner in connection with the Project, whether by Program Manager, Design Professional, or CM/GC, shall be submitted to Owner's Representative, or if the matter is within the written designation of authority of his assistant, to his designated assistant. Design Professional and CM/GC may rely upon written consents and approvals signed by the Owner's Representative, or his designated assistant acting within the scope of his written designation, as the consent and approval of Owner.

1.1.1.3.5 Using Agency, Using Agency's Representative. The Project is intended for the benefit of the Using Agency. A copy of all matters submitted to Owner shall also be submitted to

Using Agency for Using Agency's information. The Using Agency may designate one or more representatives to participate with Owner in Owner's activities under this Contract. Neither the Using Agency nor any representative of Using Agency shall have any authority to act for or in the name of the Owner. Participation in the Project by Using Agency or its representative(s) shall be solely advisory to the Owner. The Program Manager, Design Professional, CM/GC, or any Separate Contractor must not act or rely solely upon any directive, interpretation, decision, act, or omission of Using Agency or the Using Agency's Representative.

1.1.1.3.6 CM/GC. In accordance with this Contract, the CM/GC shall participate in the review and development of the design of the Project set forth in the Program and, in coordination with the Design Professional, shall participate in the scheduling of such design work and of construction of the Project, including Components thereof, construction of the Components of the Project under Component Change Orders, and of the entire Project under a GMP Change Order. Nothing herein shall be deemed to impose upon the CM/GC any responsibilities to provide any services constituting the practice of architecture, engineering, or any related design profession. CM/GC shall exercise the professional skill and judgment of a CM/GC in similar circumstances in Georgia in the performance of its construction management services.

1.1.1.3.7 Owner's Construction Inspector. From time to time, in writing, the Owner may designate an individual or firm as Owner's Construction Inspector under this Contract. The Owner's Construction Inspector may be hired by Owner or hired under the Program Manager's or Design Professional's contract and shall provide up to 100%

inspection services of the work on behalf of the Owner. The presence of an Owner's Construction Inspector does not relieve the CM/GC of any of its responsibilities for quality control and independent testing set forth in the General Requirements. The Owner's Construction Inspector has the authority to report any deviations from the contract documents directly to the CM/GC's superintendent at the job site for immediate action, and also to report same to the Program Manager or Design Professional, and Owner.

1.1.1.3.8 Representatives. The designated representatives of the CM/GC and the Owner shall have full authority to act (other than for the receipt of notices that must be given as specified in Paragraph 1.1.5) in matters relating to this Contract until notice is given that such authority has been revoked. CM/GC and the Owner may each rely upon the written certification of the other as to the appointment of a designated representative or the revocation of his authority. The CM/GC shall designate, in writing, a representative authorized to act on the CM/GC's behalf with respect to the Project. The CM/GC's initial authorized representative shall be the Project Superintendent identified in the CM/GC's proposal. CM/GC shall employ the Project Superintendent and necessary assistants who shall be in attendance at the Site during the progress of the Work. The Project Superintendent shall represent the CM/GC: All written communications given to the Project Superintendent shall be binding upon the CM/GC.

1.1.1.3.9 Separate Contractor. Owner may select one or more Separate Contractors to perform work with respect to the Project or Components thereof. The CM/GC shall afford the Owner's Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall coordinate the Separate Contractors' schedules with those of the CM/GC. The Owner's Separate Contractors shall adhere to the CM/GC's work rules, schedule, laydown areas, and safety requirements.

1.1.1.3.10 Commissioning Authority. Owner may select and employ a Commissioning Authority to perform building commissioning activities and monitor testing activities. The Commissioning Authority shall perform and coordinate and accomplish its work as set forth in Articles 1.3.4 and 2.1.6.

## 1.1.2 Project Team, Cooperation, Partnering

1.1.2.1 Concept. It is the Owner's expectation that the Program Manager, Design Professional, Owner, Using Agency, CM/GC, and any Separate Contractor, shall work as a Project Team to effect the commencement of and completion of construction in accordance with the Project Schedule, and to achieve Final Completion of the Project. Each team member shall communicate with all other team

members to assure overall coordination, cooperation, and efficiency. Each team member shall cooperate fully with and coordinate fully with each other team member in order to achieve Project completion in an expeditious and economical manner. The CM/GC shall schedule regular meetings of the key principals of the Project Team in an effort to solve problems in a partnering atmosphere to facilitate the ability of each team member to meet its business objectives, so long as its business objectives are consistent with the successful completion of the Project. It is the Owner's intent that all consensus decisions of the Project Team, where differing from the Contract Documents, be reduced to writing in an appropriate Change Order.

1.1.2.2 Conference. Promptly after the execution of this Contract, CM/GC shall confer with the Program Manager, Design Professional, Owner, and Using Agency to identify personnel and relevant organizational charts of each team member, and to establish working relationships with each team member.

1.1.2.3 Authority of CM/GC. CM/GC is, and at all times during the term of this Contract shall be, an independent CM/GC in the performance of its duties and obligations under this Contract. CM/GC shall have no authority to bind or otherwise obligate Owner, orally, in writing or by any acts, unless specifically authorized by Owner in writing. Nothing contained in this Contract shall constitute or be deemed or construed to create a partnership or joint venture, or any agency relationship, between Owner and CM/GC.

1.1.2.4 Team Evaluation Process, Covenant not to Sue. If Team Evaluation is elected as part of this Contract, all team members agree to participate in good faith in the State of Georgia's formal Team Evaluation Process [copies of which will be made available to any bidder on request]. By executing this agreement for construction services with the Owner, the CM/GC waives any and all legal rights for defamation, libel or slander and covenants not to sue the Board of Regents, the Owner, the Design Professional, the Using Agency, other team members, and their respective representatives and agents for comments, rankings, and results related to the CM/GC's performance posted in good faith as a part of, and in accordance with, said Team Evaluation Process. The Design Professional and other team members, in their agreements with the Owner, have executed, or will execute, a similar agreement.

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

1.1.3.1 Title to Project Site. Title to the Site is vested in the Board of Regents of the University System of Georgia as public property of the State of Georgia, and is not subject to levy or lien.

1.1.3.2 Title to Improvements and Delivered Materials. Title to all improvements constructed at the Site vests *instanter* in the Board of Regents. Title to all materials vests in the Board of Regents upon their delivery without rejection by the CM/GC at the Site, regardless of the status of payment or nonpayment of the costs thereto. Protection of laborers and Suppliers (regarding payment for services and materials) is effected through the provision of payment and performance bonds by the State.

1.1.3.3 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 written changes, modifications, and waivers to this Contract must be specifically executed by the Owner as set forth in the Contract Documents. Accordingly, CM/GC specifically acknowledges the constitutional prohibitions against claims against Owner based solely upon oral statement, course of conduct, customs of the trade, quasi-contract, *quantum meruit*, or O.C.G.A § 13-4-4 (mutual departure from contract terms).

1.1.3.4 Limitations upon Authority of Agents. CM/GC further acknowledges that Owner is an agency or instrumentality of the State of Georgia, and as such acts through specific public officials. The legal concepts of agency applicable to the Owner are solely as set forth in O.C.G.A. §45-6-5 and as further specified in the Contract Documents. CM/GC specifically acknowledges the statutory and contractual requirements that written changes, modifications, and waivers to this contract must be executed only by the identified representatives of Owner as set forth in the Contract Documents. Accordingly, CM/GC specifically acknowledges that any claims against Owner based upon the act of any non-authorized employee or official are invalid.

1.1.3.5 U.C.C. Not Generally Applicable. CM/GC further acknowledges and agrees that Owner, as set forth in subsection (3) above, 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 acknowledges the contractual requirements that written changes, modifications, and waivers to this contract must be specifically executed by the Owner as set forth in the Contract Documents. Accordingly, CM/GC specifically waives and covenants not to make against Owner any claims based upon the Uniform Commercial Code. CM/GC understands, however, that CM/GC's subcontracts with Suppliers and Subcontractors may in fact include sales of goods and therefore be properly governed by the Uniform Commercial Code; nonetheless CM/GC covenants that any such application shall in no way be construed to have any legal effect upon this contract between Owner and CM/GC.

**1.1.4 Third Party Beneficiary.** CM/GC acknowledges, stipulates, and agrees that the Owner is a public department, agency, or commission of the executive branch of government of the State of Georgia performing an essential public and governmental function by means of the Contract. CM/GC acknowledges, stipulates, and agrees that the Using Agency is an express third party beneficiary of this Contract. There are no individual or personal third party beneficiaries of this Contract.

**1.1.5 Notice.**

1.1.5.1 General Requirement. Any notice, election, demand, request, consent, approval, or other communication required or permitted to be given under this Contract shall be in writing signed by an officer or duly authorized representative of the party making same and shall be delivered personally or shall be sent by certified or statutory mail, postage prepaid, return receipt requested, 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, and shall be addressed as shown in the Contract. The persons and addresses to which notices should be given may be changed by notice given in accordance with this Article.

1.1.5.2 Copies of Notices to Owner. Wherever the Contract Documents provide that a copy of any notice, request, or demand filed with the Design Professional by the CM/GC shall be furnished to the Owner, such notice, request, or demand shall not become effective until the Owner has received his copy. No notice in writing or given orally to the Design Professional or to the Contract Compliance Specialist is notice to the Owner unless copy of the aforesaid notice in writing shall have been properly served upon the Owner at the address shown in the Contract.

**1.1.6 Liquidated Damages.**

1.1.6.1 Time of the Essence. Time being of the essence of this Contract, and a material consideration thereof, it is mutually agreed by the parties hereto in case of the CM/GC's failure to complete the construction within the time specified, the Owner will be damaged thereby. The CM/GC shall commence performance of the Work on the Site under this Contract as of the Proceed Order Date. The CM/GC shall complete construction, except for Minor Items and Permitted Incomplete Work (see Article 6.1.1), not later than the Material Completion and Occupancy Date, as adjusted by Change Order.

1.1.6.2 Liquidated Damages. Because it is difficult to definitely ascertain and prove the amount of said damages, inclusive of, but not limited to, expenses for inspection, superintendence, loss of use, and necessary traveling expenses, the Owner, CM/GC, and Using Agency hereby agree that the amount of such damages shall be the daily rate specified in the Contract, beginning upon the contractually required Material Completion and Occupancy Date and ending on the date that the Certificate of Material Completion is issued. The parties agree that the specified Liquidated Damages are not established as a penalty but are calculated and agreed upon in advance as a fair and equitable amount reasonably estimated in advance to cover losses to be incurred by the Owner and Using Agency for such delay or interruption in view of the uncertainty and impossibility of ascertaining actual damages that would be incurred.

1.1.6.2.1 CM/GC Agrees to Pay. The CM/GC agrees to pay the amount, computed by multiplying the Liquidated Damages set forth in the Contract by the number of days between the contractually required Material Completion and Occupancy Date and the date that the Certificate of Material Completion is issued.

1.1.6.2.2 Deducted as They Accrue. Liquidated Damages shall be deducted from periodic payments as they accrue and such deduction shall be in addition to the retainage provided for in the Contract. The remaining balance of any Liquidated Damages shall be deducted from the Payment for Material Completion to the CM/GC or its Surety. If the unpaid balance of the

Contract Sum is less than the total amount to be deducted for Liquidated Damages as herein above provided, the CM/GC shall promptly pay to the Owner, upon the Owner's demand, the amount by which such sum exceeds the unpaid balance of the Contract Sum.

1.1.6.3 Limitation on Owner's Damages. Except as otherwise set forth in the Contract Documents, damages of the Owner and Using Agency for delay shall be limited to the Liquidated Damages as defined herein. Nothing in this Article 1.1.6 shall be construed to limit Owner's right to pursue damages or remedies for claims against the CM/GC for reasons other than delay.

#### 1.1.7 Documents.

1.1.7.1 Precedence of Documents and Changes. In the event of conflict, the Contract takes precedence over the Supplementary Requirements, and the Supplementary Requirements take precedence over the General Requirements. No change to the Contract Documents is effective unless notice shall have been issued by the Owner bearing the imprimatur of the Owner as follows:

*"By order of the Board of Regents of the University System of Georgia, Owner."*

The Design Professional has no authority to amend the Contract Documents, orally or in writing, either expressly or by implication. The Contract Documents are to be taken as a whole and are intended to be complementary with one another. It is also intended that they include all items necessary for the proper execution and completion of the Work. If a conflict exists between or within the Contract Documents, or if they are inconsistent, the provisions of any Change Order added hereto after the date of this Contract shall control over any contrary terms contained in the Contract Documents existing at the time of this Contract. This Contract shall govern in the event of any conflict with any other provisions of the contract documents unless notice to the contrary shall have been issued by the Owner.

1.1.7.2 Copies of Contract Documents to CM/GC. Without charge to the CM/GC the Design Professional shall furnish to the CM/GC up to twenty-five sets of completed Contract Documents 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. The CM/GC may obtain such additional sets of Contract Documents, as the CM/GC deems necessary and shall pay the cost of reproduction of such additional sets to the Design Professional.

1.1.7.3 Marked-Up ("As-Built") Documents. Prior to Final Completion, the CM/GC shall provide one complete set of Marked-Up Documents to the Design Professional. The Marked-Up Documents shall consist of the Contract Documents annotated and changed to reflect the as-built condition of the Project, including all Change Orders, field instructions, answers to RFI's, clarifications, sketches, delegated CM/GC design drawings and locations of utilities and other hidden elements.

1.1.7.4 Copies to the Owner. Upon Owner's request, the CM/GC shall furnish the Owner with copies of Project related correspondence, letters of transmittal, etc.

1.1.8. **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. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents may include references to identified articles and paragraphs, and the titles of other documents or forms.

1.1.8.1 Meaning of Words and Phrases. Unless the context or the Contract Documents taken as a whole indicate to the contrary, 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.

1.1.8.2 Cross-References, Headings, and Citations to the Contract. Cross-references, headings, and citations to the Contract, if any, are for the convenience of the CM/GC and the Owner and are not intended to be plenary or exhaustive nor are they to be considered in interpreting the Contract Documents or any part of the Contract Documents.

1.1.8.3 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 the CM/GC ready for use unless expressly provided to the contrary.

1.1.8.4 Articles Not Plenary. This Article and Article 1.1.9 are not entire, plenary, or exhaustive of all terms used in the Contract and General Conditions that require definition. There may be definitions of other terms under articles to which the terms are related. Terms defined in the Design Professional Contract and any Program Management Contract shall have the meanings set forth in those documents.

### 1.1.9 Basic Definitions.

1.1.9.1 *Addenda*. Written or graphic instruments issued by the Design Professional that clarify, correct, or change any of the component parts of the Contract Documents.

1.1.9.2 *Affiliate*. With respect to CM/GC, any firm, partnership, corporation or other legal entity that is owned by, under common ownership or control with, or having a common principal or shareholder with, the CM/GC, whether such relationship is direct or indirect. In addition, unless the consequences of such relationship for the purposes of this Contract are expressly waived in writing by the Owner after full disclosure by the CM/GC, the term "Affiliate" also includes any entity currently affiliated with CM/GC as a partner or joint venturer with respect to any commercial venture, whether or not such venture includes the Project. See O.C.G.A. §13-10-23.

1.1.9.3 *Affiliated Contract*. Any agreement concerning the Project between the CM/GC and an Affiliate, including all modifications and amendments thereto.

1.1.9.4 *Application for Payment*. The form acceptable to Owner that is to be used by the CM/GC during the course of the Work in requesting payment from the Owner and that is to be accompanied by such supporting documentation as is required by the Contract Documents.

1.1.9.5 *Asbestos*. Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

1.1.9.6 *Authorization for Using Agency to Enter*. The Notice from Owner to the CM/GC and the Using Agency, upon issuance of a Certificate of Material Completion, that the Using Agency is authorized to take possession of the Project.

1.1.9.7 *Basic Services*. The preconstruction, consultation, construction and related services required to be provided by the CM/GC for the construction and completion of the Project or Component thereof in accordance with the Contract Documents. Basic Services does not include the term "Work."

1.1.9.8 *Bulletin* Written or graphic material issued after the award of the contract that clarifies, corrects, or proposes a change in any of the component parts of the Contract Documents.

1.1.9.9 A *Business Day* is each calendar day other than Saturday, Sunday, and any holiday observed by Owner.

1.1.9.10 *Change Order*. A document issued on or after the Effective Date of the Contract, signed by the CM/GC and the Owner and ordinarily certified by the Design Professional, which may authorize a change or changes, including but not limited to a change to the Contract Sum, the Contract Time, or the Contract Documents.

1.1.9.11 *Claim*. A demand or assertion by the Owner or the CM/GC seeking an adjustment of the Contract Sum or Contract Time, or both, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and the CM/GC arising out of or relating to the Contract. The responsibility to substantiate a Claim shall rest with the party making the Claim. A demand for money or services by a third party, including a Trade CM/GC, Supplier, or subcontractor to the CM/GC, is ipso facto not a Claim against the Owner.

1.1.9.12 *Component*. An element of a Project for which the Design Professional agrees to prepare or segregate Construction Documents as a discrete package to permit procurement of the described items

or the commencement of the construction of the described element of the Project.

1.1.9.13 *Component Change Order.* A change order authorizing the CM/GC to proceed to construct a Component pursuant to the Component Construction Documents.

1.1.9.14 *Component Construction Documents.* The Construction Documents issued by the Design Professional with respect to a Component.

1.1.9.15 *Construction Documents.* The architectural and engineering documents setting forth the design for the Project prepared by the Design Professional. Construction Documents include, but are not limited to, the Specifications, the Drawings, the Supplementary General Requirements, the General Requirements, and all Addenda.

1.1.9.16 *Construction Progress Schedule.* A schedule indicating proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, preparation, submittal, and processing of Shop Drawings and Samples, delivery of materials or equipment requiring long-lead time procurement, and proposed date(s) of Material Completion and Occupancy and Final Completion. The schedule will be developed to represent the CSI Specification Divisions. It shall have a minimum number of activities as required to adequately represent to Owner the complete scope of work and define the Project's critical path and associated activities. If the Project is to be phased, then each individual Phase should be identified from start through completion of the overall Project and should be individually scheduled and described, including any Owner's occupancy requirements and showing portions of the Project having occupancy priority. The format of the schedule will have dependencies indicated on a monthly grid identifying milestone dates such as construction start, phase construction, structural top out, dry-in, rough-in completion, metal stud and drywall completion, equipment installation, systems operational, Material Completion and Occupancy Date, final inspection dates, Punchlist, and Final Completion date.

1.1.9.17 *Contract.* The written document that is the evidence of the Contract between the Owner and the CM/GC.

1.1.9.18 *Contract Compliance Specialist.* A person, if so designated by the Owner, to record daily events at the Site, including deliveries of equipment and supplies, and the progress of the Work. The Contract Compliance Specialist is not an inspector, and has no authority or power to act as agent for the Owner or to approve or disapprove any action of the CM/GC. The Contract Compliance Specialist has no authority to and shall not be requested to sign or initial documents such as delivery receipts, drayage or hauling receipts, or time and materials tickets, or other similar documents evidencing transactions among the CM/GC and Subcontractors. (Formally called a Resident Engineer Inspector, "REI.")

1.1.9.19 *Contract Documents.* The Contract Documents include the executed Contract, any Component Construction Documents, the Construction Documents, and all Change Orders.

1.1.9.20 *Contract Time.* The period of time established for completion of the Project by the Contract Documents. Contract Time commences upon the date specified in the Proceed Order and ends upon the Material Completion and Occupancy Date, as it may be amended.

1.1.9.21 *CM/GC.* The person or entity responsible for the proper completion of the activities described in the Contract Documents and who executes the Contract.

1.1.9.22 *Cost of the Work.* The sum of all allowable costs necessarily incurred and paid by CM/GC in the proper performance of the Work.

1.1.9.23 *Day.* Unless otherwise stated, reference to the terms "day," "days," "month," or "months" mean calendar day, calendar days, calendar month, and calendar months, respectively.

1.1.9.24 *Defective Work.* Work that, for any reason, is not in compliance with the Contract Documents. Defective Work is usually identified in a Notice of Non-Compliant Work.

1.1.9.25 *Design Development*. An interim step in the design process. Design Development documents consist of plans, elevations, and other drawings and outline specifications. These documents will 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.

1.1.9.26 *Design Professional Contract*. The Contract between the Owner and the Design Professional for the design of the Project.

1.1.9.27 *Design Professional*. The architect or engineer or architectural or engineering firm selected by Owner (i) for the design and preparation of Contract Documents governing the construction of a Project, or (ii) for construction contract administration under the Contract Documents, or (iii) for both, all such services and the scope thereof to be set forth in the Design Professional Contract. The Design Professional is not an employee of the Owner but is engaged or retained by it for the purpose of performing design and construction administration services for the project. The term "Design Professional" includes architects, engineers, surveyors, designers, and other consultants retained by the Design Professional.

1.1.9.28 *Drawings*. That part of the Contract Documents prepared or approved by the Design Professional that graphically show the scope, extent, and character of the Work to be performed by CM/GC. Shop Drawings and other CM/GC submittals are not Drawings as so defined.

1.1.9.29 *Effective Date of the Contract*. The date indicated on the Contract or as otherwise specified therein.

1.1.9.30 *Final Certificate, Design Professional's Certificate of Final Completion*. The Certificate issued by the Design Professional stating that all work has been completed in accordance with the terms of the Contract Documents. See Section 6, Project Completion.

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

1.1.9.32 *Final Notice of Non-Compliant Work*. The Final Notice of Non-Compliant Work issued as a result of the Inspection for Material Completion, also known as the Final Punch List. Upon the completion or correction of this Non-Compliant Work ("punch list" work) the Design Professional will issue the Final Certificate.

1.1.9.33 *Guaranteed Maximum Price (GMP)*. The maximum amount that Owner is obligated to pay CM/GC for construction of the Project under the GMP Change Order and includes all costs and fees to be paid to CM/GC in connection with the Work and the Project.

1.1.9.34 *Guaranteed Maximum Price (GMP) Change Order*. The change order setting the Guaranteed Maximum Price and authorizing the CM/GC to proceed to construct the Project pursuant to the Construction Documents. The GMP Change order supersedes all prior Component Change Orders unless specific provisions in the GMP Change Order express otherwise.

1.1.9.35 *Hazardous Substances*. See Section 1 Part 6.

1.1.9.36 *Material Completion and "Material Completion and Occupancy Date"*. See Section 6 Part 1.

1.1.9.37 *Milestone*. A principal event specified in the Contract Documents including the Material Completion and Occupancy Date and other events relating to an intermediate completion date or time.

1.1.9.38 *Notice*. Written notice. See Article 1.1.5.

1.1.9.39 *Notice of Non-Compliant Work*. A Notice of Non-Compliant Work shall be in writing, shall be dated, shall be signed by the Design Professional, and shall be addressed to the CM/GC with a copy to the Owner, as set forth in Section 3, Part 6 (Correcting the Work) and Section 6, Part 6 (Correcting the Work after Final Payment).

1.1.9.40 *Owner*. The Board of Regents, or a Unit of the University System of Georgia, identified as such in this Contract with whom CM/GC has entered into the Contract and for whom the Work is to be completed.

1.1.9.41 *Owner's Representative*. Owner may from time to time in writing designate one individual as Owner's Representative under this Contract. Owner's Representative so designated in writing shall serve as Owner's Representative unless and until Owner gives notice in writing of the appointment of his successor. All requests for consents and approvals required of Owner in connection with the Project, whether by the Program Manager, Design Professional, CM/GC, Owner's Construction Inspector, and or Separate Contractor, shall be submitted to Owner's Representative. The Program Manager, Design Professional, CM/GC, Owner's Construction Inspector, and Separate Contractor may rely upon written consents and approvals signed by the Owner's Representative, as the consent and approval of Owner.

1.1.9.42 *Overall Project Schedule*. The combined Preliminary Design and Construction Schedule and the Construction Progress Schedule that is approved by the Owner.

1.1.9.43 *Pre-Commencement Phase Services*. The services required to be provided by the CM/GC for the Pre- Commencement Phase of the Project in accordance with the Contract Documents.

1.1.9.44 *Proceed Order*. The Proceed Order is a written notice from the Owner that includes a specified date (i.e. the *Proceed Order Date*) upon which the CM/GC is authorized to commence physical work on the Site. Unless the Proceed Order states otherwise, the Proceed Order Date shall be the date upon which the Proceed Order is actually signed and dated by the Owner's authorized representative. A Proceed Order is a condition precedent to the execution of any Work on the site by the CM/GC. The Proceed Order was formerly referred to as the "Notice to Proceed."

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

1.1.9.46 *Project Manual*. A bound manual prepared by the Design Professional. It includes the Request for Proposals, the Specifications, the General Requirements and Supplementary General Requirements, and Addenda.

1.1.9.47 *Reasonable Termination Expenses*. The (i) salary cost for CM/GC's staff during a period not exceeding two weeks from the date of termination and (ii) the cost to CM/GC to terminate any lease of equipment (other than motor vehicles) required specifically for the purposes of providing services under this Contract provided that prior notice of such acquisition was given to Owner. See also Paragraph 1.7.2.1.3, Record Documents.

1.1.9.48 *Samples*. Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged. The CM/GC shall furnish for approval all samples required by the Contract Documents. The Work shall be in accordance with approved samples.

1.1.9.49 *Schematic Design*. The beginning of the design process, sometimes commonly known as Preliminary Design. Schematic Design Documents are the schematic design plans and elevations showing the scale and relationship of Project or its Components. Schematic Design documents consist of written and graphic (drawings, sketches, etc.) presentations that will enable the Owner (through the advice of the Executive Administrator) to determine if the intent of the project, as set forth in the Program provided by the Owner, is being addressed, and shall consist of at least the following: (a) Schematic Site Plan; (b) Floor Plans; and (c) Elevations.

1.1.9.50 *Separate Contractor*. Any person or entity other than CM/GC that enters into an agreement with Owner to perform the construction of all or any portion of the construction on a Project.

1.1.9.51 *Site*. Lands or areas indicated in the Contract Documents as being furnished by the Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by the Owner that are designated for the use of the CM/GC. Also referred to as Project Site, Job Site and Premises.

1.1.9.52 *Specifications.* That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto. The term "Specifications" shall also include all written matter in the Project Manual or on the drawings and any Addenda or Change Orders thereto.

1.1.9.53 *Subcontractor.* The generic term subcontractor as employed herein includes only those having a direct contract with the CM/GC.

1.1.9.54 *Submittals.* Shop Drawings, schedules, data, catalogue cuts, manufacturers' published recommendations, charts, bulletins, brochures, illustrations, circulars, roughing drawings or formulae, etc., that are specifically prepared, distributed, or assembled by or for CM/GC or by Subcontractors, manufacturers, or Suppliers and submitted by CM/GC to illustrate some portion of the Work or for use in installing the Work. The Contract Documents shall specify when shop drawings or submittals require the seal of a specialty consultant.

1.1.9.55 *Supplier.* A manufacturer, fabricator, distributor, supplier, or vendor of goods or equipment in connection with the Work, or any other party having a Contract or Purchase Order with the CM/GC or with a Subcontractor to furnish materials or equipment to be incorporated in the Work by the CM/GC or a Subcontractor.

1.1.9.56 *Trade Contractor.* A Subcontractor who furnishes and installs materials according to the plans and specifications of this Project but does not include one who merely furnishes materials. See 1.1.9.51.

1.1.9.57 *Underground Facilities.* All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including without limitation those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

1.1.9.58 *Unit Price Work.* Work to be paid for on the basis of unit prices as defined and described in the Contract Documents. A percentage markup for overhead or profit shall be included in all unit prices.

1.1.9.59 *Using Agency.* The State entity for which the Project is being constructed. The term may include an institution (e.g., Georgia State University) that is a part of the Board of Regents of the University System of Georgia.

1.1.9.60 *Using Agency's Representative.* The Using Agency may designate from time to time a Using Agency's Representative, who shall work with the Design Professional and the Owner's Representative as a liaison with the Using Agency.

1.1.9.61 *Work.* All labor, materials, and services necessary to produce the construction of the Project in accordance with the Contract Documents, including the entire construction or the various separately identifiable parts thereof. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all equipment, fixtures, and supplies into such construction, all as required by the Contract Documents.

## **PART 2 CM/GC'S GENERAL RESPONSIBILITIES AND DUTIES**

### **1.2.1 General Responsibilities.**

#### **1.2.1.1 Representations of CM/GC**

1.2.1.1.1 Independent Contractor; Fiduciary Role. The CM/GC represents that it is an independent contractor, competent, knowledgeable, and familiar with the type of work contemplated by this Contract. The CM/GC agrees and understands that neither it nor any of its agents or employees may act in the name of the Owner except and unless specifically authorized in writing by the Owner to do so. The CM/GC further represents that it accepts a fiduciary role and responsibility with respect to the Owner and that it owes the Owner the duties of good faith, trust, confidence, and candor, and that it must exercise a high standard of care in managing money and property. The CM/GC will, to its best abilities, act in the best interests of the Owner and the timely completion of the Work. The CM/GC shall furnish design review, construction

administration and management services and use the CM/GC's best efforts to construct the Project in an expeditious and economical manner consistent with the interests of the Owner.

1.2.1.1.2 Familiarity with Project. CM/GC represents that it has: (a) visited the Project Site(s), (b) taken such other steps as may be necessary to ascertain the nature and location of the Project work and the general and local conditions that affect the Project work or the cost thereof, (c) investigated the labor situation as regards to the Project, (d) examined the Property(ies), the obstacles that may be encountered and all other conditions having a bearing upon the performance of the Project work, the superintendence of the Project work, the time of completion and all other relevant matters, and (e) reported to Owner the results of all of the foregoing.

1.2.1.1.2 Responsibility to Coordinate. CM/GC acknowledges its responsibility to coordinate the Project work with that of separate contractors to be selected for the installation of 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 Project work with such separate contractors in order to assist them and permit each phase of the Project to be completed on schedule.

1.2.1.1.3 Definition of Project Criteria. Owner shall be responsible for defining Project criteria as to expectations for program design, cost, and construction schedule. CM/GC shall be responsible for delivering all construction services necessary to complete improvements that satisfy the Project criteria promulgated by Owner. Additionally, CM/GC shall be responsible for providing timely feedback to Owner relating to Project design, budget, and schedule to allow Owner to make value- based judgments throughout the development and construction process.

1.2.1.1.4 CM/GC's Review of the Construction Documents and Participation in Design Coordination Meetings. The CM/GC shall review the Construction Documents, including without limitation, the Owner's program to understand the requirements of the Project. The CM/GC shall actively participate in Design Coordination Meetings with the Design Professional, Owner, and Using Agency, for the purpose of collaborating and coordinating the final design and Construction Documents. The CM/GC is responsible to cooperate and assist in the coordination of the development of the design of the Project within the budgeted cost and schedule. The objective of the coordination is to assure that the design meets the Using Agency Program in all respects, including but not limited to the following areas:

- Cost containment and cost monitoring;
- Cost-effective decisions;
- Compatibility with Owner's and Using Agency's architectural standards.
- Consistency with the Owner's, Using Agency's and Tenant's expectations in the Using Agency's Program;
- The appropriate provision of all necessary services and utilities;
- The necessary level of environmental review and documentation;
- That the Owner and Using Agency are kept fully aware of the progress of the Project;
- That the project schedule is maintained;
- That construction quality assurance complies with the Using Agency's Program;
- That the Construction Documents are reviewed for constructability; and
- That all permits and approvals are obtained for the Using Agency to occupy the Project.

1.2.1.1.5 Project Delivery. The CMGC shall commence the Basic Services immediately upon the Effective Date of the Contract and shall commence physical work at the Site as of the Proceed Order Date specified in the Proceed Order issued by the Owner. CM/GC shall construct the Project in accordance with the Contract Documents, and shall diligently perform all the Work required by the Contract Documents or reasonably inferable from industry standards and code requirements. CM/GC shall deliver the Project completed in accordance with the Contract Documents, substantially free from defects, and within the Contract Time.

1.2.1.1.6 CM/GC's Consultation concerning Replacement of Work. The CM/GC shall provide consultation concerning replacement of Work damaged by fire or other cause during construction, and furnish all Basic Services required in connection with the replacement of such Work. Such consultation will be considered an additional service and will be provided pursuant to a Change Order unless the fire or other

damage was caused as a result of the negligence of the CM/GC or its subcontractors. If the cost of the replacement or repair of the damage is reimbursable under the terms of any insurance policy, the full amount of any such insurance recovery shall be applied to the Project for the benefit of the Owner.

**1.2.2 General Duties.** The CM/GC accepts the relationship of trust and confidence established between it and the Owner by this Contract. The CM/GC agrees to furnish all services that are necessary or appropriate to complete fully all required Basic Services as defined in the Contract Documents. The CM/GC also agrees to furnish efficient business administration and superintendence to complete fully all required Basic Services and Work.

1.2.2.1 Provision and Payment for Basic Services and the Work. Unless otherwise provided in the Contract Documents, the CM/GC shall provide and pay for all labor, materials, equipment, transportation, construction, resources, work, and services necessary or incidental to completing the Work for each phase or Component of the Project in a proper and timely manner in accordance with the Contract Documents and applicable laws, whether temporary or permanent and whether or not incorporated or to be incorporated in the Project.

1.2.2.2 Supervision and Direction. CM/GC shall supervise and direct the Work using diligent skill and attention. CM/GC shall be responsible for and shall coordinate all construction means, methods, techniques, sequences, and procedures. (See *also* Section 3.)

1.2.2.3 Enforce Discipline. CM/GC shall at all times enforce strict discipline and good order among its employees, Subcontractors, and others performing the Work, and shall not employ or permit the employment of unfit persons or persons not skilled in the task assigned to them.

1.2.2.4 Security Clearances. Where work is required within a specially secured controlled access environment, work shall be performed by personnel who have passed a security screening.

1.2.2.5 Maintain Records. CM/GC shall keep Owner informed of the progress of the Work. CM/GC shall maintain records of the cost for the Work pursuant to and in compliance with GASB 34 accounting requirements and such other methods as Owner may require, including complete backup documentation for all pay applications.

1.2.2.6 Answer Questions. CM/GC, with reasonable promptness and in accordance with time limits set by Owner, shall answer Owner's questions and provide Owner with requested Project information.

1.2.2.7 Acts and Omissions. Employees of or Subcontractors to the CM/GC shall perform the Work required by this Contract. The CM/GC is responsible to the Owner for acts and omissions of the CM/GC's employees, Subcontractors and their agents and employees, and other persons.

**1.2.3 General Consultation Services.** As a part of Basic Services, CM/GC shall provide the following consultation services to Owner:

1.2.3.1 Job Coordination Meetings. CM/GC shall schedule and conduct meetings with the Owner, Design Professional, Separate Contractors, and appropriate Subcontractors, not less than biweekly, for the purpose of discussing the status and progress of the Work. Such meetings shall be held as often as Owner determines.

1.2.3.2 Advice Concerning Revisions. Advise the Owner, Design Professional and Using Agency regarding revisions in connection with Site use and improvements, selection of materials, building systems and equipment, construction feasibility, availability of materials and labor, time requirements for installation and construction, other factors related to costs (including costs of alternative designs or materials, preliminary budgets and possible economies), and scheduling of design and construction services and perform and provide life-cycle costs and value engineering analyses and other studies for such purposes.

1.2.3.3 Advice and Assistance with Utilities. CM/GC shall advise and assist the Owner and Design Professional with the preparation of all applications for water, sewer, electrical, gas, telephone, and other utility services necessary for the completion and operation of the Project.

1.2.3.4 Advice on Market Conditions. The CM/GC shall consult with the Design Professional and provide advice as to construction market conditions and scheduling factors.

1.2.3.5 Names of Trade Contractors. The CM/GC, as soon as practicable after the commencement of this Contract shall furnish to the Design Professional the written names of the persons or entities the CM/GC proposes to engage as Trade Contractors for the Project subject to such persons or entities being approved or deemed approved in accordance with provisions of the Contract Documents.

1.2.3.6 Names of Vendors. The CM/GC shall provide the Design Professional a list of contractors, and vendors whose services may be required in the purchasing of materials and services for the construction of the Project.

1.2.3.7 Tests, Studies, etc. The CM/GC shall notify the Design Professional of any tests, analyses, studies, or reports that may be required.

1.2.3.8 Easements, etc. If the CM/GC knows or learns of the need to obtain easements, or legal authorizations regarding site utilization, the CM/GC shall promptly notify the Owner where essential to the execution of the Owner's program.

**1.2.4 Other Actions.** CM/GC shall perform all other actions required in the supervision of the Work and the completion of the construction of the Project. Owner and CM/GC acknowledge that, in anticipation of the execution and delivery of this Contract, CM/GC has to date performed services and functions that fall within the duties and obligations of CM/GC pursuant to this Contract. CM/GC acknowledges and agrees that all such services and functions shall be deemed to have been performed pursuant to the terms and provisions of this Contract, and shall be subject to all duties and obligations of CM/GC to Owner under this Contract, and subject to the standard of care owing by CM/GC to Owner pursuant to this Contract.

**1.2.5 Existing Documents.** CM/GC recognizes the existence of existing contract documents, if any, prepared on behalf of the Owner and identified in Exhibit A. The CM/GC has carefully reviewed these documents, if any, and has determined them to be, at the time of execution of this Contract, complete and sufficient for the construction of the portion of the project for which they were produced. The CM/GC has made, or will make within 15 days, with the assistance of the Owner and Design Professional, any correction or adjustments necessary to their use prior to beginning any construction of the Work identified on such documents.

**1.2.6 Duty to Give Notice to Owner.** If the Owner, the Design Professional, or any other person with whom the Owner or Design Professional respectively has a direct contractual relationship shall, in the judgment of the CM/GC, acts or fails to act in such a manner as to (i) delay the progress of the construction of the Project or (ii) increase the cost of the Project, CM/GC shall give prompt notice to Owner so as to permit Owner to take corrective action.

### **PART 3 OWNER'S RESPONSIBILITIES AND RIGHTS**

#### **1.3.1 Owner's Representative.**

1.3.1.1 Written Designation. The Owner shall designate, in writing, a representative authorized to act on the Owner's behalf with respect to the Project. The Owner hereby designates the party identified in Exhibit A as its initial authorized representative and reserves the right to designate additional or replacement representatives by written notice to the CM/GC.

1.3.1.2 Accessibility. The Owner's Representative shall be readily accessible (either on site or by computer, phone or fax or otherwise) shall be fully acquainted with the Project, and shall have authority promptly to render decisions, approve Construction Documents, Budgets, Schedules and Change Orders and to furnish information required of or to be provided by the Owner hereunder.

1.3.1.3 Independent Review and Inspection. The Owner may obtain independent review of the Contract Documents by a separate architect, engineer, contractor, or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work. The Owner may undertake independent inspection of the installation of the construction. Such independent inspector shall operate as the agent of the Owner and shall have the authority to stop the work in order to protect the best interests of the Project or the

Owner.

### 1.3.2 Design Professional.

1.3.2.1 Design Professional to Design Work. The Design Professional Contract requires the Design Professional to design and to prepare the Contract Documents, a copy of which shall be furnished to the CM/GC upon request. The Design Professional Contract requires the Design Professional to designate a readily accessible representative (either on Site or by computer, phone or fax or otherwise) who shall have authority promptly to render decisions and to furnish information required of the Design Professional.

1.3.2.2 Copies of Contract Documents to CM/GC. The Design Professional Contract requires that the CM/GC be furnished, free of charge, up to twenty-five sets of completed Contract Documents in hard copy, one full set of reproducible drawings and electronic background floor and reflected ceiling plan drawings and, if requested, one complete copy in read- only electronic format. The CM/GC may obtain such additional sets of Contract Documents as the CM/GC deems necessary and shall pay the cost of reproduction of such additional sets to the Design Professional.

1.3.2.3 Contract Administration. The Design Professional shall provide periodic review of the Work to assess compliance with the Contract Documents. The Design Professional shall not review any Work in respect to safety. The Design Professional is not the agent of the Owner, but is engaged as a consultant to the Owner to assist the Owner in determining if the conditions of the contract have been met. He is the agent of the Owner only when in special instances he is authorized in writing by the Owner so to act, and in such instances he shall, upon request, show the Contract written authority. He has authority to stop the Work whenever such stoppage may be necessary to enforce the proper execution of the Contract.

1.3.2.4 Impartial Decisions. The Design Professional is the interpreter of the conditions of the CM/GC Contract and the judge of its performance, in the first instance. The Design Professional shall side neither with the Owner nor with the CM/GC, but shall use its powers to enforce performance by both.

1.3.2.5 Design Professional Decisions. Design Professional's decisions must be in writing and signed by the Design Professional of Record.

1.3.2.5.1 Promptness. The Design Professional shall make decisions within fourteen calendar days after proper presentation of evidence on (1) any issue, claim, or dispute of the Owner or CM/GC, or (2) a demand of the Owner or CM/GC for a decision on any matter relating to the execution or progress of the Work.

1.3.2.5.2 Additional Time. If because of events beyond the Design Professional's reasonable control, it is not able to meet the specified time period, then it should be entitled to ask the Owner for additional time, which request shall not be unreasonably denied.

1.3.2.5.3 Protests of Design Professional's Decisions. All decisions of the Design Professional on any claim, dispute, or demand shall be final and binding on the Contract in the absence of written notice of protest from the Contract received by the Owner within fourteen calendar days of the date of the decision of the Design Professional is received by the contractor. See Section 5 Part 2.

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

1.3.2.7 Succession. In case of the termination of the employment of the Design Professional, the Owner shall appoint a capable and reputable Design Professional against whom the Contract makes no reasonable objection and whose status under the Contract shall be that of the former Design Professional.

**1.3.3 Permits, Licenses, and Inspections.** The Owner shall cooperate with the CM/GC as the CM/GC secures building and other permits, licenses and inspections.

**1.3.4 Testing.** The Owner shall provide and pay for initial and subsequent independent construction testing

as required by the Contract Documents. Laboratories for testing services shall be selected by, engaged by, and responsible to the Design Professional. In the case of tests (a) prescribed in the Contract Documents or any part thereof, or (b) requested by the Design Professional, the CM/GC must give notice to the selected testing agency stating the date and the hour when he will be ready for the test to be made. In the event the test fails or the CM/GC is not ready for the test, the expense of the services of the testing laboratory shall be deducted from the Contract Sum, upon notice to the CM/GC by the Owner accompanied by a copy of the invoice for the testing services for the test that failed or for which the CM/GC was not ready. The notice and readiness provisions of this article do not apply to verification of design mix on concrete.

**1.3.5 No Partial Occupancy.** There shall be no partial occupancy by the Using Agency of the Project prior to the achievement of Material Completion. This provision may be modified in the Supplementary General Conditions only for phased construction projects with stand-alone components, or may be modified by Change Order.

**1.3.6 Disqualification of Potential "Pre-Qualified" Subcontractors.** The Owner may disqualify for just cause any pre-qualified potential subcontractors identified in the Bidding Documents. Owner shall pay any difference in the cost of the Work resulting from such disqualification.

**1.3.7 Owner's Right to Perform Work.** The Owner reserves the right to perform construction or operations related to the Project with Separate Contractors on the Site. If the CM/GC claims that delay or additional cost is because of such action by the Owner, the CM/GC shall assert such claims as provided in Section 5, Part 2 of the General Requirements.

#### **PART 4 PROTECTION OF PERSONS AND PROPERTY**

**1.4.1 Reasonable Precautions.** The CM/GC shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (a) employees performing the Work and other persons, including without limitation the General Public, who may be affected thereby; (b) the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody, or control of the CM/GC or the CM/GC's Subcontractors; or (c) other property at or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, replacement or other rearrangement in the course of construction.

**1.4.2 Duty to Protect Property.** The CM/GC shall continuously maintain adequate protection of the Work from damage and shall protect all other property on the Site from damage, injury, or loss regardless of who may be the owner of said property. He shall make good any such damage, injury, or loss.

**1.4.3 Safety Precautions.** The CM/GC shall comply with the rules and regulations of OSHA and the Department of Labor (O.C.G.A. Section §34-2-6), and, where not inconsistent with the foregoing, the "Manual of Accident Prevention in Construction" issued by the Associated General CM/GCs of America, Inc., for safety and prevention of accidents, and shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work arising out of and in the course of employment on work under the Contract. The CM/GC alone shall be responsible for the safety, efficiency, and adequacy of his plant, appliances, and methods, and for any damage that may result from their improper construction, maintenance, or operations. He 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. The CM/GC shall designate a responsible member of his organization, normally the superintendent, whose duty shall be the prevention of accidents.

**1.4.4 Emergencies.** In an emergency affecting the safety of persons or property or the Work or of adjoining property, the CM/GC shall take reasonable precautions to prevent imminent damage, injury, or loss.

**1.4.5 Fire Protection.** CM/GC shall take adequate and reasonable precautions to protect the Work against damage by fire and smoke. For example, without limitation, CM/GC shall do the following:

- (a) Provide fire extinguishers or fire hoses in readily accessible locations;
- (b) Periodically inspect fire extinguishers, remove discharged extinguishers immediately, and replace with new or recharged extinguishers;
- (c) Keep fire extinguishers or fire hoses within five (5) feet of any welding or open flame operations;

- (d) Remove oil-soaked and paint-soaked materials, including paper and rags, from the Site daily, and more frequently as necessary, to eliminate danger of fire.
- (e) Prohibit workers from smoking during operations involving combustible adhesives, solvents, mastics, or other fire hazard materials.

**1.4.6 Remedy Damages.** The CM/GC shall promptly remedy damages and loss to property at the Site caused by the CM/GC, by any Subcontractor, by anyone directly or indirectly employed by the CM/GC or any such Subcontractor, or by anyone for whose acts the CM/GC or any such Subcontractor may be liable. Should the CM/GC cause damage to any Separate CM/GC's work, the CM/GC agrees, upon due notice, to settle with the Separate CM/GC.

**1.4.7 Written Programs.** CM/GC shall have written environmental, quality control, crisis/emergency management, health and safety programs in place with a designated (qualified) coordinator as the point of contact during the project. Such plans shall be on the Site and the superintendent and the project management team shall be familiar with and utilize such programs.

## **PART 5 BONDS, INDEMNITY AND INSURANCE**

### **1.5.1 Bonds.**

**1.5.1.1 Performance Bond and Payment Bond.** The CM/GC shall furnish both a performance bond and a payment bond in the exact form set forth in Section 7, (Forms) of these General Conditions.

**1.5.1.2 Required Qualifications for Surety.** The Contract provides that the surety and insurance companies must be acceptable to the Owner. Only those sureties listed in the Department of Treasury's Listing of Approved Sureties (Department Circular 570) are acceptable to the 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 a Best Policyholders Rating of "A-" or better and with a financial size rating of Class V or larger.

**1.5.1.3 Penal Amount of Bonds, State Law.** The CM/GC acknowledges and agrees that, pursuant to O.C.G.A.

§§13-10-2, 13-10-20, 13-10-40 and 13-10-60, the performance bond and the payment bond must be in a penal amount equal to at least 100% of the GMP Cost Limitation or GMP when established. Accordingly, the CM/GC warrants and agrees that, for any Change Order increasing the GMP by five percent or more or when the total cost of the work has increased by five percent or more, it shall obtain a written amendment to the payment bond and the performance bond increasing the penal amounts of both bonds to 100% of the GMP, effective as of the date of the Change Order. The premium increase, if any, may be properly included in the cost of the Change Order. The Design Professional shall approve no payment for the work provided by the Change Order until the CM/GC has provided the written amendment to the Owner.

### **1.5.2 Liability and Indemnification.**

**1.5.2.1 General Liability.** The CM/GC shall be responsible to the Owner from the time of the signing of the agreement or the beginning of the first work, whichever shall be earlier, for all injury or damage of any kind resulting from any negligent act or omission or breach, failure or other default regarding the Work by the CM/GC, or any of its Subcontractors, its agents, employees or others working at the direction of the CM/GC or on its behalf, regardless of who may be the owner of the property.

**1.5.2.2 Indemnification Agreement.** CM/GC hereby agrees to indemnify and hold harmless the 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, demands, liabilities, losses, costs or expenses, including attorneys' fees, due to liability to a third party or parties, for any loss due to 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 the CM/GC, 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 the CM/GC, or due to the application or violation of any pertinent Federal, State or local law, rule or regulation. This indemnification extends to the successors and assigns of the CM/GC. This indemnification obligation survives the termination of the Contract and the dissolution or, to the extent allowed by law, the bankruptcy of the CM/GC. If and to the extent such damage or loss (including costs and expenses) as covered by this indemnification 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, and other self-insured funds (all such funds hereinafter collectively referred to as the "Funds") established and maintained by the State of Georgia Department of Administrative Services Risk Management Division (hereinafter "DOAS") the CM/GC agrees to reimburse the Funds for such monies paid out by the Funds.

1.5.2.2.1 This indemnification does not extend beyond the scope of this Contract and the work undertaken thereunder. Nor does this indemnification extend to claims for loses or injuries or damages incurred directly by the Indemnitees due to breach, negligence or default by the Indemnitor under the terms and conditions of this Contract.

1.5.2.2.2 This indemnification does not extend to claims for loses or injuries or damages incurred by the Indemnitees due to any negligent act, error, or omission of a design professional in the performance of professional services that fails to meet the applicable professional standard of care, skill and ability as employed by others in their profession.

1.5.2.3 DOAS Role. DOAS Risk Management Division will endeavor to notify affected insurers of claims made against the State that fall within this indemnity. In the event of litigation, the Attorney General will endeavor to keep the CM/GC and its general liability insurer as named on the insurance certificate informed regarding the claims and settlement.

1.5.2.4 Suits or Claims for Infringement. The CM/GC shall indemnify and hold the Owner harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems used by the CM/GC.

### 1.5.3 Insurance Requirements.

1.5.3.1 Insurance Certificates. The CM/GC shall, in accordance with 2.1.2.2, procure the insurance coverages identified below at the CM/GC's expense (e.g. within the bid price and Contract Sum) and shall furnish the Owner an insurance certificate listing the Owner as the certificate holder and as an additional insured. Evidence of insurance coverages shall be provided on the form shown in Section 7 or on a form acceptable to the Owner. The insurance certificate must provide the following:

- (a) Name and address of authorized agent
- (b) Name and address of insured
- (c) Name of insurance company(ies)
- (d) Description of policies
- (e) Policy Number(s)
- (f) Policy Period(s)
- (g) Limits of liability
- (h) Name and address of Owner as certificate holder
- (i) Project Name and Number
- (j) Signature of authorized agent
- (k) Telephone number of authorized agent
- (l) Mandatory thirty day notice of cancellation or non-renewal (except ten days for non-payment).

1.5.3.2 Insurer Qualifications, Insurance Requirements. Each of the insurance coverages required below (i) shall be issued by a company licensed by the Insurance Commissioner to transact the business of insurance in the State of Georgia for the applicable line of insurance, and (ii) shall be an insurer (or, for qualified self-insureds or group self-insureds, a specific excess insurer providing statutory limits) with a Best Policyholders Rating of "A" or better and with a financial size rating of Class V or larger. Each such policy shall contain the following provisions:

1.5.3.2.1 The insurance company agrees that the policy shall not be canceled, changed, allowed to lapse or allowed to expire until thirty days after the Owner has received written notice thereof, as evidenced by return receipt of certified mail or statutory mail, or until such time as other insurance coverage providing protection equal to protection called for in this Contract shall have been received, accepted and acknowledged by the Owner. Such notice shall be valid only as to the Project as shall have been designated by Project Number and Name in said notice.

1.5.3.2.2 The policy shall not be subject to invalidation as to any insured by reason of any act or omission of another insured or any of its officers, employees, agents or other representatives ("Separation of Insureds").

1.5.3.2.3 Each Insurer is hereby notified that the statutory requirement that the Attorney General of Georgia shall represent and defend the Indemnities remains in full force and effect and is not waived by issuance of any policy of insurance. In the event of litigation, any settlement on behalf of the indemnities must be expressly approved by the Attorney General. The CM/GC and its insurance carrier may retain, but are not obligated to retain, counsel to assist with the defense of the Indemnities, in which case there will be mutual cooperation between the Attorney General and such counsel. See O.C.G.A. § 45-15-12.

1.5.3.2.4 All deductibles shall be paid for by the CM/GC.

1.5.3.2.5 Self-insured retention, except for qualified self-insurers or group self-insurers, in any policy shall not exceed \$100,000.00.

1.5.3.3 Required Insurance Coverages. The CM/GC also agrees to purchase insurance and have the authorized agent state on the insurance certificate that the CM/GC has purchased the following types of insurance coverages, consistent with the policies and requirements of O.C.G.A. §50-21-37. The minimum required coverages and liability limits are as follows:

1.5.3.3.1 Workers' Compensation Insurance. The CM/GC agrees to provide at a minimum Workers' Compensation coverage in accordance with the statutory limits as established by the General Assembly of the State of Georgia. A group insurer must submit a certificate of authority from the Insurance Commissioner approving the group insurance plan. A self-insurer must submit a certificate from the Georgia Board of Workers' Compensation stating the CM/GC qualifies to pay its own workers' compensation claims. The CM/GC shall require all Subcontractors performing work under this Contract to obtain an insurance certificate showing proof of Workers' Compensation Coverage and shall submit a certificate on the letterhead of the CM/GC in the following language:

*This is to certify that all subcontractors performing work on this Project are covered by their own workers' compensation insurance or are covered by the CM/GC's workers' compensation insurance.*

1.5.3.3.2 Employers' Liability Insurance. The CM/GC shall also maintain Employer's Liability Insurance Coverage with limits of at least:

- |       |                                 |                                |
|-------|---------------------------------|--------------------------------|
| (i)   | Bodily Injury by Accident       | \$1,000,000 each accident;     |
| (ii)  | Bodily Injury by Disease        | \$1,000,000 each employee; and |
| (iii) | Bodily Injury/Disease Aggregate | \$1,000,000 each accident.     |

The CM/GC shall require all Subcontractors performing work under this Contract to obtain an insurance certificate showing proof of Employers Liability Insurance Coverage and shall submit a certificate on the letterhead of the CM/GC in the following language:

*This is to certify that all subcontractors performing work on this Project are covered by their own Employers Liability Insurance Coverage or are covered by the CM/GC's Employers Liability Insurance Coverage.*

1.5.3.3.3 Commercial General Liability Insurance. The CM/GC shall provide Commercial General Liability Insurance (2001 ISO Occurrence Form or equivalent) that shall include, but need not be limited to, coverage for bodily injury and property damage arising from premises and operations liability, products and completed operations liability, blasting and explosion, collapse of structures, underground damage, personal injury liability and contractual liability. The CGL policy must include separate aggregate limits per Project and shall provide at a minimum the following limits:

	<i>Coverage</i>	<i>Limit</i>
1.	Premises and Operations	\$ 1,000,000.00 per Occurrence
2.	Products and Completed Operations	\$ 2,000,000.00 per Occurrence
3.	Personal Injury	\$ 1,000,000.00 per Occurrence
4.	Contractual	\$ 1,000,000.00 per Occurrence
5.	General Aggregate	\$ 2,000,000.00 per Project

Additional Requirements for Commercial General Liability Insurance are shown below at Paragraph 1.5.3.3.6.

1.5.3.3.4 Commercial Business Automobile Liability Insurance. The CM/GC shall provide Commercial Business Automobile Liability Insurance that shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned, or hired automobile. The Commercial Business Automobile Liability Insurance Policy shall provide not less than \$1,000,000 Combined Single Limits for each accident. Additional Requirements for Commercial Business Automobile Liability Insurance are shown below at Paragraph 1.5.3.3.6.

1.5.3.3.5 Commercial Umbrella Liability Insurance. The CM/GC shall provide a Commercial Umbrella Liability Insurance to provide excess coverage above the Commercial General Liability, Commercial Business Automobile Liability and the Workers' Compensation and Employers' Liability to satisfy the minimum limits set forth herein. The umbrella coverage shall follow form with the Umbrella limits required as follows:

<i>For Contract Amounts Less Than \$5,000,000.00:</i>	<i>For Contract Amounts Equal to or Greater than \$5,000,000:</i>
\$ 2,000,000 per Occurrence	\$2,000,000 per Occurrence
\$ 4,000,000 Aggregate	\$10,000,000 Aggregate

Additional Requirements for Commercial Umbrella Liability Insurance are shown below at Paragraph 1.5.3.3.6.

1.5.3.3.6 Additional Requirements for Commercial Policies in Paragraphs 1.5.3.3.3 through 1.5.3.3.5

- (a) The policy shall name as additional Insureds the officers, members, and employees of the Owner and the Using Agency.
- (b) The policy must be on an "occurrence" basis.

1.5.3.3.7 Builders Risk Insurance. CM/GC shall provide a Builder's Risk Policy to be made payable to the Owner and CM/GC, as their interests may appear. The policy amount should be equal to 100% of the Contract Sum, written on a Builder's Risk "All Risk", or its equivalent. 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; and
- (ii) Partial or complete occupancy by Owner; and
- (iii) Performance of work in connection with construction operations insured by the Owner, by agents or lessees or other CM/GCs of the Owner or Using Agency
- (iv) Equipment, materials, and/or work stored on site, off site, or in transit.

In the event that the Contract is for renovation, addition or modification of an existing structure and Builders Risk Insurance is not available, the 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.

1.5.3.3.8 Disposition of Insurance Documents. One original certificate of insurance with all endorsements attached must be deposited with Owner for each insurance policy required.

1.5.3.4 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.

1.5.3.5 Termination of Obligation to Insure. Unless otherwise expressly provided to the contrary, the obligation to insure as provided herein shall not terminate until the Design Professional shall have executed the Certificate of Material Completion.

1.5.3.6 Failure of Insurers. The CM/GC is responsible for any delay resulting from the failure of his insurance carriers to furnish proof of proper coverage in the prescribed form.

## **Part 6 Hazardous Conditions and Materials**

### **1.6.1 Hazardous Materials.**

#### 1.6.1.1 Definition

1.6.1.1.1 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.

1.6.1.1.2 The term "Hazardous Materials" does not include those materials that are expressly and specifically required to be installed under the Contract Documents.

1.6.1.1.3 The term "Hazardous Materials" does not include products or materials that are commonly used in construction or industrial practice 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 Article 1.6.3 below.)

1.6.1.2 Obligation to Notify Owner of Existing Hazardous Materials. The CM/GC shall immediately notify the Owner and the Design Professional, both orally and in writing, of the presence and location of any physical evidence of, or information regarding the presence of Hazardous Materials at the Project Site of which it becomes aware. If the CM/GC encounters Hazardous Materials on the Project Site the CM/GC shall (i) immediately stop performance of Work or that portion of the Work affected by or affecting such Hazardous Materials; (ii) secure the contaminated area against intrusion; (iii) not disturb or remove the Hazardous Materials; (iv) not proceed, or allow any subcontractor or supplier to proceed, with any Work or other activities in the area affected by such Hazardous Materials until such materials have been properly remediated and until directed in writing to do so by the Owner; and, (v) take any other steps necessary to protect life and health and the surrounding environment. The CM/GC shall be entitled to adjustment of the Contract Time and the Contract Sum pursuant to the General Requirements in order to compensate for the impact of any required demolition, re-work, shutdown, delay, protection of work,

disruption, and start-up resulting from the encountering of such Hazardous Materials on the Project site for which the CM/GC is not responsible.

**1.6.1.3 Prohibition Against Selecting and Installing Products Containing Hazardous Materials.** The CM/GC shall not select, install or otherwise incorporate any products or materials containing Hazardous Materials within the boundaries of the Project Site unless the products and materials are specifically required in the Contract Documents. Should the CM/GC or his subcontractors or material suppliers have knowledge that, or believe that, an item, component, material, substance, or accessory within a product or assembly selected by the CM/GC may contain Hazardous Materials, not in accordance with the definition set forth 1.6.1.1 above, it is the CM/GC's responsibility to secure a written certification from the manufacturer of any suspected material which identifies the specific Hazardous Material(s) contained, together with the Material Safety Data Sheets (MSDS) for such materials. A copy of the written certification shall be submitted to the Owner and Design Professional.

**1.6.1.4 Fill, Backfill and Landscaping.** No soil found on site, or transported to the site from remote locations, which contains debris or waste or Hazardous Materials shall be used for fill, backfill or landscaping topsoil.

**1.6.2 Responsibility and Warranty of Trade Contractors, Trade Suppliers, and Subcontractors.** Products that are specified by reference standards or in descriptive manner without a manufacturer's name, model number or trade name, to be selected by the CM/GC, shall not contain Hazardous Materials in any form, except as and to the extent permitted in 1.6.1, above, and 1.6.3, below. The CM/GC shall require that each of his subcontractors and material suppliers warrants to the 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. This warranty shall also include all materials, components, and accessories not specifically enumerated or detailed in the Contract Documents but which are required by performance specifications or recommended by manufacturers for complete installation of materials, products and assemblies.

**1.6.3 Hazardous Materials and Substances Used On the Job Site.** Products containing Hazardous Materials may be employed in the performance of work by the CM/GC and its subcontractors, as allowed by subparagraph 1.6.1.1.3 above, as a means and methods application or as part of its performance of the Work, such as chemicals used on the job site, 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, including the ultimate users of the completed Work; (iv) the CM/GC shall make available to the Owner and the Design Professional copies of Material Safety Data Sheets (MSDS) for any such products used on the job site, and (v), the 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 job site that exceeds State or Federal reportable limits.

**1.6.4 Hazardous Conditions.** The CM/GC and Owner acknowledge that previously unknown hazardous conditions may be uncovered at any job site, and in particular where existing structures are being demolished and/or remodeled to accommodate new construction or to reutilize existing facilities. Should a hazardous condition not involving Hazardous Materials as set forth above be encountered on the project site, and should reasonable safety precautions be deemed by the CM/GC in good faith to be inadequate to prevent foreseeable personal injury to persons encountering the hazardous condition, the CM/GC shall, upon recognizing the hazardous condition, stop Work in the affected area and immediately report the hazardous condition to the Design Professional and Owner in writing. The Owner shall undertake, or shall contract (by Change Order) with the CM/GC or contract with a Separate CM/GC, to resolve the condition. So long as the hazardous condition did not result from activities or substances brought on the site by the CM/GC, the CM/GC is entitled to adjustments in the Contract Time and the Contract Sum as set forth in Paragraph 1.6.1.2 above.

## **PART 7 MISCELLANEOUS PROVISIONS**

### **1.7.1 Legal Compliance.**

**1.7.1.1 General.** This Contract shall be governed by the law of Georgia. The CM/GC shall comply with all laws, rules, regulations, ordinances, and orders of any government agency having jurisdiction in the performance of the Basic Services and the Work and shall ensure the compliance of its Subcontractors.

1.7.1.2 Specific Laws. Without limiting the generality of the foregoing Paragraph, the following laws are specifically referenced:

- 1.7.1.2.1 The Drug-Free Workplace Act, O.C.G.A. § 50-24-1, et seq.
- 1.7.1.2.2 Preference for Georgia Supplies, materials, equipment, and agricultural products, O.C.G.A. §§50-5-60 through 61.
- 1.7.1.2.3 Preference for Georgia forest products, O.C.G.A. § 50-5-63.
- 1.7.1.2.4 Preference for local sellers of Georgia products, O.C.G.A. § 50-5-62.
- 1.7.1.2.5 Standards and Requirements for Construction, Alterations, etc., O.C.G.A. § 8-2-1 et seq.
- 1.7.1.2.6 Control of Soil Erosion and Sedimentation, O.C.G.A. § 12-7.1, et seq.
- 1.7.1.2.7 Regulation of Fire and other Hazards, O.C.G.A. § 25-2-1 et seq.
- 1.7.1.2.8 Regulation of Blasting Operations, O.C.G.A. § 25-2-1 et seq. and 25-9-1 et seq.
- 1.7.1.2.9 Providing safe workplace, O.C.G.A. §§ 34-2-10 and 34-7-20
- 1.7.1.2.10 Georgia Facility Protection Act, O.C.G.A. § 25-9-1 et seq. (See Article E-12(f))
- 1.7.1.2.11 High Voltage Safety Act, O.C.G.A. § 46-3-30 et seq.
- 1.7.1.2.12 Access and Use by Physically Handicapped Persons, O.C.G.A. § 30-3-1 et seq.
- 1.7.1.2.13 Small and Minority Business Enterprises, O.C.G.A. §§ 50-5-120 et seq. and 50-5-130, et seq.
- 1.7.1.2.14 Trading with the State or State Officials, O.C.G.A. §§ 45-10-20 to 45-10-71.
- 1.7.1.2.15 Title VII of the Civil Rights Act, 42 U.S.C. § 2000a through 2000h-6
- 1.7.1.2.16 Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq.; 42 U.S.C. § 6101 et seq.
- 1.7.1.2.17 Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.
- 1.7.1.2.18 Federal Occupational Safety and Health Act, 29 U. S. C. § 651 et seq.
- 1.7.1.2.19 Federal Emergency Planning and Community Right-to-Know Act, 42 U. S. C. § 11001, et seq.
- 1.7.1.2.20 Georgia Open Records Act, O.C.G.A. §50-18-70 et seq.
- 1.7.1.2.21 Georgia Blasting Standards Act, O.C.G.A. § 25-8-1 et seq. and Blasting, Excavating Nearby Underground Gas Pipes and Utilities, 25-9-1 et. seq.
- 1.7.1.2.22 Scaffolding and Staging Statute, O.C.G.A. §34-1-1 et seq.
- 1.7.1.2.23 Department of Labor Rules and Regulations, O.C.G.A. § 34-2-6 et seq.
- 1.7.1.2.24 Hazardous Chemical Protection and Right to Know Act, O.C.G.A. § 45-22-2 et seq.
- 1.7.1.2.25 Retainage on Public Works Contracts, O.C.G.A. §13-10-80 et seq.

- 1.7.1.2.26 Compliance with “federal work authorization programs” and federal Immigration Reform and Control Act of 1986 by Georgia Public Employers, contractors and subcontractors, O.C.G.A. §13-10-90 *et seq.*
- 1.7.1.2.27 State Purchasing, O.C.G.A. § 50-5-85 *et seq.*
- 1.7.1.2.28 *Boycott of Israel Prohibited, O.C.G.A. § 50-5-85.*

1.7.1.3 Building Codes. The following Building Codes, in the latest editions approved by the Georgia Department of Community Affairs, shall be used. (See O.C.G.A. §8-2-20.) The Design Professional will designate any additional codes or special modifications in the Supplementary General Conditions. As of the year 2000, these codes are published jointly by the Southern Building Code Congress International, the International Code Council, the Building Officials and Code Administrators, International, and the International Conference of Building Officials, and are commonly referred to as the International Building Codes.

- 1.7.1.3.1 Georgia State Minimum Standard Building Code (International Building Code, 2000 Edition) with Georgia Amendments.
- 1.7.1.3.2 Georgia State Minimum Standard Mechanical Code (International Mechanical Code, 2000 Edition), with Georgia Amendments.
- 1.7.1.3.3 Georgia State Minimum Standard Gas Code (International Fuel Gas Code, 2000 Edition), with Georgia Amendments.
- 1.7.1.3.4 Georgia State Minimum Standard Plumbing Code (International Plumbing Code, 2000 Edition), with Georgia Amendments.
- 1.7.1.3.5 Georgia State Minimum Standard Electric Code (National Electrical Code, 2002 Edition), with Georgia Amendments.
- 1.7.1.3.6 Georgia State Minimum Standard Energy Code (International Energy Conservation Code, 2000 Edition), with Georgia Amendments.
- 1.7.1.3.7 Georgia State Minimum Standard Fire Prevention Code (International Fire Code, 2003 Edition), with Georgia Amendments.

1.7.1.4 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. The Design Professional will designate any additional codes or special modifications in the Supplementary General Conditions.

- 1.7.1.4.1 Georgia State Life Safety Code (NFPA 101)
- 1.7.1.4.2 State Accessibility Codes (See O.C.G.A. §30-3-3)
- 1.7.1.4.3 Rules and Regulations of the Georgia Safety Fire Commissioner (See O.C.G.A. §§25-2-4,12.)
- 1.7.1.4.4 Swimming Pool Permits and Regulations (See O.C.G.A. §31-45-3, Rules and Regulations Chapter 290-5-57)

1.7.1.5 Latest Edition. The latest edition approved by the implementing agency of the regulations, rules, and codes listed in Paragraphs 1.7.1.3 and 1.7.1.4 above, with all amendments as of the date of the opening of bids, shall govern the installation of all Work and is adopted and incorporated into the Contract Documents and made a part thereof by reference, Provided, however that the drawings and specifications shall be adhered to in all cases 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 above stated codes and Provided also: That there may be no variances from the drawings and specifications except to the extent that the said variances shall be necessary in order to comply with the above stated codes. It shall be the responsibility of the CM/GC to familiarize himself with the requirements of the above stated codes. If there are any express requirements in the drawings or specifications that are at variance to the above stated codes, all changes in the Work necessary to eliminate or add to the said requirements and make the Work conform to the above stated codes shall be adjusted as provided in the Contract for changes in the Work.

1.7.1.6 Compliance with Executive Orders Concerning Ethics. The CM/GC warrants that he and his firm have complied in all respects with the Governor's Executive Orders concerning ethics matters, including, but not limited to, Executive Order dated January 13, 2003 (establishing Code of Ethics for Executive Branch Officers and Employees, including provisions governing former officers and employees); Executive Order dated October 1, 2003 (governing vendors to state agencies and disclosure and registration of lobbyists); and O.C.G.A. Sections 21-5-70(5), 21-5-71 and 21-5-73, all as amended effective January 9, 2006 (requiring registration and disclosure filings by state agency vendor lobbyists). In this regard, the CM/GC certifies that any lobbyist employed or retained by the CM/GC or his firm has both registered and made the required disclosures required by the Executive Orders, as amended.

1.7.1.7 Compliance with Federal and State Work Authorization and Immigration Laws. The CM/GC, all subcontracted design professionals, and all consultants must comply with all federal and state work authorization and immigration laws, and must certify compliance using the form set forth in Section 7 attached hereto. Upon contracting with a subcontractor or consultant, the CM/GC shall provide the Owner notice of the identity of any and all subcontractors or consultants. CM/GC shall provide the Owner with notice of the identity of any and all subcontractors or consultants within five days of entering into the subcontract. The notice shall include an affidavit from the subcontractor or consultant attesting to the subcontractor or consultant's name, address, user identification number, date of authorization to use the federal work authorization program and certification that the subcontractor or consultant shall verify the information of all newly hired employees. State officials, including officials of the Georgia Department of Audits and Accounts and officials of the Owner, retain the right to inspect and audit the Project Site and employment records of the CM/GC, all subcontracted design professionals, and all consultants without notice during normal working hours until Final Completion, and as otherwise specified by law and by Rules and Regulations of the Georgia Department of Audits and Accounts. See, e.g. O.C.G.A §13-10-90, 91.

1.7.1.8 Compliance with the Board of Regents of the University System of Georgia's (the "Board") Policy Regarding Background Checks. Pursuant to Board policy number 7.7.5.2 or any successor Board policy regarding background checks, the CM/GC must determine whether background checks are required by law or policy to be completed on the CM/GC's employees and/or the CM/GC subcontractors' employees providing on-site construction services. Any required background checks shall be conducted by the CM/GC, and the CM/GC must take appropriate action on any required background checks. Generally, the Board will not require additional background checks. However, in certain circumstances on a specific project basis, the Board's chief administrative officer or his/her designee may require additional background checks or that certain individuals be disqualified from working on-site for that particular project. The GM/GC shall defend, indemnify, and hold harmless the Board for any failure of the CM/GC to obtain and take action on background checks as required. The CM/GC shall also defend, indemnify, and hold harmless the Board from the actions of the CM/GC's employees and subcontractors' employees.

**1.7.2 Surveys, Permits, and Regulations.** The Owner shall furnish all surveys unless otherwise specified. Permits and licenses of a temporary nature necessary for the prosecution of the Work shall be obtained and paid for by the CM/GC. Permits, licenses, and easements for permanent structures or permanent changes in existing facilities shall be obtained and paid for by the Owner unless otherwise specified. The CM/GC and its Subcontractors must pay any municipal or county occupational licenses, taxes, or fees, if any. The CM/GC shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on the conduct of the Work. If the CM/GC observes that the drawings or specifications are at variance with any such laws, ordinances, rules or regulations, he shall promptly notify the Owner in writing, and any necessary changes shall be adjusted as provided in the Contract for changes in the Work. If the CM/GC performs any Work knowing it to be contrary to such laws, ordinances, rules or regulations without such notice to the Owner, he shall bear all costs arising therefrom. Nothing in this paragraph shall be construed to impose design responsibility on the CM/GC except as noted in the Contract Documents.

**1.7.3 Open Records Act.** Owner and Design Professional and CM/GC acknowledge and agree that all 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 entity engaged in performance of services or functions on behalf of a state agency, public agency or public office.

**1.7.4 Use of Site.** The CM/GC has a revocable license to come on, use, and perform Work upon the Premises, shall confine thereto his plant, his apparatus, the staging and storage of materials, the operations of his forces and the Work to limits indicated by law, ordinances, permits, or the Contract Documents, and shall not unreasonably encumber the Premises with his materials. The CM/GC shall not load or permit any part of the Work to be loaded with weight that will endanger its safety. The CM/GC shall enforce Contract requirements regarding signs, advertisements, fires, and smoking and shall remove from the Premises and properly dispose all trash and debris.

**1.7.5 Office for Contract Compliance Specialist (CCS).** The CM/GC shall provide at his 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 100square feet in size; weather-tight; and shall be provided with heat, ventilation, cooling, electric lights, adequate windows, and securable access. The following services shall be provided: at least four dual-plug 110 v. electrical outlets, two private telephone connections and local telephone service. The following equipment for the CCS's exclusive use shall be provided: a desk with drawers, two chairs, a four drawer metal file cabinet, a plan table and rack, a telephone with messaging capability, and connection, cables/electrical surge protection for the electronic equipment and for the CCS's computer. The following items, which may be used in common with the 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. At the completion of the project, all of the equipment provided will be returned to the CM/GC. The CM/GC is not responsible for providing the following items for the CCS: computer equipment, internet access, long distance, stationery supplies, and personal safety equipment.

**1.7.6 Utilities.** Pending the extension and connection of permanent water, permanent gas, permanent sewer taps, and permanent electric power, the CM/GC shall obtain temporary water, temporary gas, temporary electric power, and provide sewage disposal at his own expense. In the absence of provisions to the contrary, the CM/GC shall pay for all utilities services until Material Completion has been achieved.

**1.7.7 Royalties and Patents.** The CM/GC shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof. The Owner shall defend and be responsible for all such loss when a particular process or the product of a particular manufacturer or manufacturers is specified.

**1.7.8 Separate Contracts.** The Owner reserves the right at any time and from time to time upon notice to CM/GC to perform, or cause to be performed by other CM/GCs, other work at the Site in connection with the development of the Project that is not contemplated hereby or that is contemplated hereby if the CM/GC and the Owner shall be unable to agree upon a Change Order incorporating such work as Work of the CM/GC under this Contract. In either case, the Owner shall assure that such personnel or CM/GCs do not cause any conflict with the Work of CM/GC. CM/GC shall afford the Owner and other CM/GCs reasonable opportunity for the introduction, protection, and storage of material and equipment at the Site and the execution of work, and shall properly connect, if required by Contract Documents, and coordinate its work with theirs. If any work by the Owner or its other CM/GCs increases CM/GC's costs or extends the time of performance, CM/GC shall be entitled upon timely claim to a Change Order for payment by Owner of any reasonable costs actually incurred by CM/GC as a result thereof and to an extension of time for performance for such reasonable time as the Design Professional shall determine. CM/GC has no responsibility hereunder to certify the suitability or correctness of any work performed by Owner's own personnel or other CM/GCs under direct contract with the Owner. This Article also applies to installation of loose equipment and fixtures by the Owner, Using Agency, or a Separate CM/GC.

**1.7.9 Women, and Disadvantaged Business Participation.**

1.7.9.1 Good Faith Efforts. CM/GC shall, to the extent consistent with quality, price, risk and other lawful and relevant considerations, use its good faith efforts to achieve participation by minority, women, and

disadvantaged business enterprise participation in Work and services contracted to CM/GC under this Contract.

1.7.9.2 Policy of the State of Georgia. It is the policy of the State of Georgia that minority business enterprises shall have the maximum opportunity to participate in the State purchasing process. Therefore, the State of Georgia encourages all minority business enterprises to compete for, win, and receive Contracts for goods, services, and construction. In addition, the State encourages all companies to sub-contract portions of any State Contract to minority business enterprises. It is the wish of the Owner that minority businesses be given the opportunity to propose on the various parts of the Work. This desire on the part of the Owner is not intended to restrict or limit competitive selection or to increase the cost of the Work. The Owner supports a healthy free market system that seeks to include responsible businesses and provides ample opportunity for business growth and development.

1.7.9.3 Minority Vendor Designee. The minority vendor designee of the Owner shall be specified in the Supplementary General Conditions or the Instructions to Bidders.

**1.7.10 Employment of Georgia Citizens and Use of Georgia Products and Georgia Forest Products.**

Given that the Work provided for in this Contract is to be performed in Georgia, it is the wish of the Owner that materials and equipment manufactured or produced in Georgia shall be used in the Work and that Georgia citizens shall be employed in the Work at wages consistent with those being paid in the general area in which the Work is to be performed. This desire on the part of the Owner is not intended to restrict or limit competitive bidding nor to increase the cost of the Work; nor shall the fulfillment of this desire be asserted by the CM/GC as an excuse for any noncompliance or omission to fulfill any obligation under the Contract. O.C.G.A. §§50-5-60 to 63 are further incorporated into the General Conditions of the Contract as expressed below:

- (a) No contract for the construction of, addition to, or repair of any facility, the cost of which is borne by the State, or any department, agency, commission, authority, or political subdivision thereof shall be let, unless said contract contains a stipulation therein providing that the CM/GC, Construction Manager or Subcontractor shall use exclusively Georgia forest products in construction thereof, when forest products are to be used in such construction, addition or repair, and if Georgia forest products are available.
- (b) These provisions shall not apply when in conflict with Federal law, rules, and regulations concerning interstate commerce or construction

**1.7.11 Interpretation of Contract Documents.** The Contract Documents shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

**1.7.12 Counterparts.** This Contract may be executed in multiple counterparts. All counterparts shall constitute one and the same instrument. One (1) counterpart of this Contract shall be delivered to the Owner and one (1) counterpart to the CM/GC.

**1.7.13 Forms and Specimens.** The forms and specimens in Section 7 are incorporated by reference herein and shall be executed in substantial conformance as required or convenient in describing obligations under the Contract Documents.

**1.7.14 Entire Contract.** The Contract Documents referenced herein constitute the entire Contract between the Owner and the CM/GC with respect to the Project and supersedes all prior negotiations, representations, and agreements. Except as set forth herein, there are no other promises, understandings, agreements, representations or warranties, oral or written, expressed or implied between the parties. This Contract may not be changed, modified, or terminated, in whole or in part, nor any provision waived except by Change Order.

**1.7.15 Energy Efficiency and Sustainable Construction Act of 2008.** The following services are to be provided by the Design Professional if this project is subject to the Georgia Energy Efficiency and Sustainable Construction Act of 2008 ("Energy Act"). See paragraph 9 of the Contract to determine if the Energy Act is applicable.

1.7.15.1 Georgia Based Materials and Products. The project is required to be designed so that not less than 10 percent of all building materials used in the project are materials that are harvested, extracted, or manufactured in the State of Georgia where such products are commercially available. The Contractor

shall track the value of all Georgia based materials installed in the project. Contractor shall provide documentation to ensure compliance with the requirement and shall complete the Georgia-Based Materials and Products Checklist, attached as Exhibit G to certify compliance with the requirement.

## SECTION 2 – PRECONSTRUCTION PHASE

### PART 1 PRECONSTRUCTION PHASE SERVICES.

**2.1.1 General.** The Basic Services to be provided during the Preconstruction Phase constitute the Preconstruction Phase services. Upon issuance of a Component Change Order, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases shall proceed concurrently. In any event, however, the Preconstruction Phase cannot extend beyond the execution of the GMP Change Order. By definition, all services provided after the execution of the GMP Change Order are Construction Phase Services and are included in the GMP.

#### 2.1.2 Construction Preparation Period

**2.1.2.1 Requirement for Project Planning.** The performance of Basic Services and the Construction Preparation Period commences immediately upon the Effective Date of the Contract. No physical work, however, will begin on the construction site until the receipt of a Proceed Order issued by the Owner. The Contract assumes that a Proceed Order will be issued in conjunction with a Component Change Order. Failure of the CM/GC to provide the necessary documentation for the issuance of a Proceed Order shall not entitle the CM/GC to any extension of time. If a Proceed Order is not issued within sixty days from the award of the Contract and non-issuance is due to nonperformance by the CM/GC, the CM/GC may be in default.

**2.1.2.2 Timing of Submission of Documents.** No Proceed Order shall be issued until the Owner has received, in good and proper order, the following documents. The documents shall be submitted in accordance with the following schedule:

2.1.2.2.1 Prior to commencement of Preconstruction Services:

- (a) Proof of Insurance as required by the Contract Documents
- (b) Payment bond for preconstruction services (See Article 2.1.12)

2.1.2.2.2 Prior to acceptance of the initial Component Change Order by Owner:

- (a) The Component Change Order executed by CM/GC and Design Professional
- (b) Payment and Performance Bonds in accordance with the Contract Documents
- (c) Construction Management Plan as required in Article 2.1.3
- (d) Documentation necessary for receiving all land disturbance permits
- (e) CM/GC's Quality Control Program as required in Article 2.1.4
- (f) Written Safety Program
- (g) CM/GC's Schedule of Rental Rates and Wage/Salary Rates
- (h) List of intended Subcontractors

2.1.2.2.3 Prior to the issuance of the Proceed Order, but in any event, within 10 days of each Component Change Order, for the Work planned to be completed by the Component Change Order, or within 10 days of the GMP Change Order for all Work to complete the Project:

- (a) Submittal and Shop Drawing Schedule as required in Article 2.2.5
- (b) Construction Progress Schedule as required in Article 2.1.5
- (c) Documents Review Report as required in paragraph 2.1.2.3

**2.1.2.3 Document Review and Verification.** Within one business day of receipt of the Effective Date of the Contract CM/GC shall commence a review of the plans and Specifications, to identify conflicts, omissions, or constructability issues in the documents. CM/GC shall prepare a report containing a list of issues and suggested modifications identified. He shall provide a copy of the report to the Design Professional and the Owner in the first design coordination meeting, but in no event later than the end of the Construction Preparation Period. If a fire protection sprinkler system is required, the CM/GC shall submit to the Design Professional the certificate of competency of the fire protection sprinkler system

Trade CM/GC as required by State of Georgia Fire Protection and Safety Code. The certificate of competency shall be provided to the Design Professional prior to any work being performed on the fire protection sprinkler system. Nothing in this paragraph shall be construed to impose design responsibility on the CM/GC except as noted in the Contract Documents.

**2.1.3 Construction Management Plan.** CM/GC shall prepare and furnish to the Owner a thorough and complete plan for the management of the Project from issuance of the Proceed Order under the initial Component Change Order through the issuance of the Design Professional's Certificate of Material Completion. Such plan shall include, without limitation, the CM/GC's staffing plan, an estimate of the manpower requirements for each trade and the anticipated availability of such manpower, a schedule prepared using the critical path method that will amplify and support the schedule required in Article 2.1.5 below, and the Submittal Schedule as required in Article 2.2.3. The CM/GC shall include in his plan the names and resumés of the Project Superintendent, Project Manager and the person in charge of Safety. The plan shall include, without limitation, the following:

2.1.3.1 Security Program. Develop and implement an effective security program for the Project Site, which program shall require the CM/GC and the Trade Contractors to take measures for the protection of their tools, materials, equipment, and structures. As between CM/GC and Owner, CM/GC shall be solely responsible for security against theft of and damage to all tools and equipment of every kind and nature used in connection with the Work, regardless of by whom owned.

2.1.3.2 Safety Program. The CM/GC shall design and submit to the Owner a specific safety program for the Work for the site(s). The CM/GC shall establish and require all Trade Contractors or Trade Suppliers to establish reasonable safety programs. The CM/GC shall also submit its standard monthly safety reports to the Design Professional. No imposition of responsibility on the 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 Project Site.

**2.1.4 Quality Control Program.**

2.1.4.1 Responsibility for Quality of Materials and Installation. CM/GC acknowledges that he has full, total, and complete responsibility for providing materials, labor, and all other items necessary for providing the level of quality specified in the Contract Documents. He agrees that this responsibility is indivisible, non-delegable, non-transferable, and not diminished by any inspections provided by the Design Professional or his consulting engineers, nor by any inspections provided by the Owner. In recognition of this, CM/GC will prepare for submission and review by the Design Professional, a written program describing the efforts that will be taken to insure the proper quality level is achieved. The program shall be submitted prior to the issuance of a Proceed Order.

2.1.4.2 Written Program. CM/GC's written Quality Control Program shall describe in detail the steps the CM/GC will take to ensure quality and will include, without limitation, those personnel, in addition to the Superintendent, who will provide review and verification of the proper installation of the Work. Each Subcontractor having responsibility for more than \$100,000 of the contract cost shall be addressed in the plan. The written program shall include affidavits from each of the involved Subcontractors acknowledging their responsibilities under the Contract in general and the Quality Control Program specifically.

**2.1.5 Scheduling Requirements.**

2.1.5.1 Scheduling Objectives Relative to Design. With the Design Professional, coordinate and integrate the Design Professional's design efforts with CM/GC's anticipated preconstruction services. The coordination shall include identification of (i) the Components of the Project (a) for which existing portions will be separated for incorporation into a Component Change Order or (b) for the description of specific components of the Work by a Component Change Order so as to permit the immediate commencement of construction services or to facilitate the sequence of construction to further and without affecting the Owner's basic objectives, (ii) the sequence in which such Component Construction Documents will be prepared or separated, and (iii) a schedule for completion of such Component Construction Documents that includes the necessary timing for the release of drawings and specifications as needed to support anticipated construction.

2.1.5.2 Construction Progress Schedule; Overall Project Schedule. The CM/GC shall submit for review by the Design Professional and approval by the Owner a Construction Progress Schedule based upon

the Design Professional's Preliminary Design and Construction Schedule and prepared using a CPM (Critical Path Method) process, within sixty days after the Effective Date of the Contract, utilizing a full-featured software package in a form satisfactory to the Design Professional and Owner, showing milestone dates for receipt and approval of pertinent information relative to design, dates of design coordination meetings, submittal of Component Change Orders, submittal of the GMP Change Order, preparation and processing of shop drawings and samples, and delivery of materials or equipment requiring long lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Final Completion. It should also include the dates for commencement and completion of the Work required by the Contract Documents, including coordination of mechanical, plumbing, and electrical disciplines, as well as coordination of the various subdivisions of the Work within the Contract. Milestones must be clearly indicated and sequentially organized to identify the critical path of the Project. The Construction Schedule will be developed to represent the CSI specification divisions. It shall have the minimum number of activities required to adequately represent to the Owner 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 will have dependencies indicated on a monthly grid identifying milestone dates such as construction start, phase construction, structural top out, dry-in, rough-in completion, metal stud and drywall completion, equipment installation, systems operational, inspections for Material Completion and Occupancy Date, and Final Completion Date. The CM/GC shall submit, along with the Construction Progress Schedule, the Submittal Schedule for approval by the Design Professional, correlating the associated approval dates for the documents with the Construction Progress Schedule. Upon recommendation by the Design Professional and approval by the Owner, the Construction Progress Schedule shall become the Overall Project Schedule, which shall be utilized by the Design Professional, Owner and CM/GC. The CM/GC must provide the Design Professional and the Owner with monthly updates of the Overall Project Schedule indicating completed activities and any changes in sequencing or activity durations, including approved change orders. See *also* Article 3.3.5.

**2.1.5.3 Progress Reports and Information.** When required, the CM/GC shall submit to the Design Professional and Owner such schedule of quantities and costs, payrolls, bills, vouchers, correct copies of all subcontracts, statements, reports, correct copies of all agreements, correspondence, and written transactions with the surety on the performance bond that have any relevance to the Work, estimates, records, and other data as the Owner may request that concerns the Work performed or to be performed under this Contract. When requested by the Owner, the CM/GC shall give the Owner access to its records relating to the foregoing. (See *also* Article 4.1.2, Audits.) The above reports shall include, but are not limited to, (a) written notice of dates by which specified Work will have been completed, (b) written notice of dates by which Non-Compliant Work will be made good, (c) written notice that Non-Compliant Work has been made good, (d) written notice as to the date or dates by which Work that has not been performed with equal steps and at the same rate required by the Overall Project Schedule shall have been brought into conformity with the Overall Project Schedule, (e) date by which any undisputed claim of a Subcontractor supplier, or laborer shall have been paid, (f) written advice regarding the nature and amount of any disputed claim of a Subcontractor, supplier, or laborer, and (g) information regarding Work performed under Change Orders.

## **2.1.6 CM/GC Design Coordination Activities.**

**2.1.6.1 Local Conditions.** The CM/GC shall visit the site(s), become familiar with the local conditions, and correlate observable conditions with the requirements of the Contract Documents.

**2.1.6.2 Design Coordination Meetings and Review.** Utilizing its own review and matters discussed at Design Coordination Meetings, CM/GC shall continuously review the Program and construction documents in accordance with the schedule as they are being prepared and are made available by the Design Professional until the Construction Document Change Order is approved. (See also Article 2.2.2.) The principle objectives of the construction document review process are the recommending of alternative solutions whenever such matters affect cost, construction feasibility or schedule without the CM/GC, however, assuming any of the Design Professional's responsibilities for design. The CM/GC should consider life-cycle costs, value engineering analyses and other studies to recommend changes or modifications thereof that will reduce the cost of the Project without reducing quality, or will expedite its completion, or that, in the judgment of the CM/GC, may otherwise be in the best interest of the Owner. As the Construction Documents progress to completion, the CM/GC is the principle Project Team member positioned to identify conflicts, omissions, or constructability issues in the documents.

2.1.6.3 Recommendations on Phasing of Components. Make recommendations to the Owner and to the Design Professional regarding the division of the Work in the design documents and revisions to facilitate the development of Components of the Work related to the Project, the selection and awarding of Trade Contracts, taking into consideration such factors as time of performance, the availability of labor, 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.

2.1.6.4 Additional Activities. The CM/GC shall consult with the Owner and Design Professional regarding site use and improvements, as well as the selection of materials, building systems and equipment. The CM/GC shall provide recommendations designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation of equipment, and factors related to construction cost, including estimates of alternative designs or materials, and other possible economies.

**2.1.7 Building Commissioning Services.** The Owner shall provide as a part of its testing services the Building Commissioning services involving the project's HVAC and exhaust systems, temperature control systems, fire detection and alarm systems, emergency power and lighting system, fire suppression system, security locks and security locking control systems, food service equipment (if applicable), and laundry equipment (if applicable). In the event the Using Agency's Program specifies additional commissioning services, the Owner shall procure such services as well. The Owner, through its Executive Administrator, may engage an independent Commissioning Authority. It is the intent of this Article that the Commissioning Authority enforce the requirements mentioned herein and certify that the systems and equipment listed all function properly prior to the initiation of each final inspection.

2.1.7.1 Initial Building Commissioning Plan. The Owner shall develop with its Commissioning Authority, the CM/GC and the Design Professional, an initial Building Commissioning plan to consist of the following:

2.1.7.1.1 The Building Commissioning Plan shall include a summary of understanding of the design intent for each of the relevant building systems and equipment. Each design intent summary shall establish critical performance criteria that indicates whether a system is properly functioning.

2.1.7.1.2 The Building Commissioning Plan shall include a commissioning schedule listing the duration of each commissioning activity such as system and equipment manual submittal and approval, equipment start-up, and system and equipment training, and combining all such activities in a manner reflecting the inherent subsidiary relationships between activities. This schedule shall be used as a basis for accomplishing the commissioning portion of the Overall Progress Schedule.

2.1.7.2 Define Duties. The CM/GC, in coordination with the Commissioning Authority and the Design Professional, shall during preparation of the Contract Documents clearly define all duties and activities required of the various Trade Contractors relating to Building Commissioning, any necessary order in which these activities and duties must take place, and define all critical performance criteria to be achieved.

2.1.7.3 Inspect, Review and Monitor. The Commissioning Authority shall inspect, review and monitor all Building Commissioning related construction activities for timeliness, completeness and conformance with the criteria established by the contract documents, and report same to the CM/GC, Owner and the Design Professional. The CM/GC and Commissioning Authority shall coordinate and supervise the training activities of each system.

**2.1.8 CM/GC Cost Responsibilities.**

2.1.8.1 Cost Estimates and Constructability Reviews. When the Owner has sufficiently identified the Project requirements and criteria, and the Project Design Professional has prepared other basic design criteria, CM/GC shall prepare for the review by the Project Design Professional and approval of Owner preliminary construction cost estimates using area and volume or similar conceptual estimating techniques. During the preparation of the design, the CM/GC shall update and refine this estimate at appropriate intervals agreed to by the Owner, Design Professional, and CM/GC.

2.1.8.1.1 Construction Cost Estimates. Prepare Construction Cost Estimates setting forth in detail CM/GC's estimate of construction costs, including all Actual Costs and CM/GC Contingency and Fees, at each stage of the design and for the construction of the Project and each Component thereof. Such estimates shall include the cost of safety factors. Such Construction Cost Estimates shall be prepared and updated continually as construction documents are developed and shall be formally submitted to Owner, to Using Agency, and to Design Professional when each Component Change Order is issued or at such more frequent intervals as Owner may reasonably request.

2.1.8.1.2 Reconciled Construction Cost Estimates. Provide to the Owner and Using Agency reconciled Construction Cost Estimates, consisting of a composite of the separately derived Design Professional's current Statement of Probable Construction Cost and the CM/GC's Construction Cost Estimate, each based upon the Program and design documents prepared by the Design Professional. Reconciled Construction Cost Estimates shall be prepared at the conclusion of the Schematic Design Phase, at the conclusion of the Design Development Phase, when Construction Documents are approximately 50% complete and prior to the submission of the Guaranteed Maximum Price Proposal. If at any time the Design Professional's current Statement of Probable Construction Cost and the Construction Cost Estimate of the CM/GC are, in the CM/GC's judgment, not reconcilable or exceed corresponding components of the Project Budget, the Owner, the Design Professional and the CM/GC shall confer to resolve such differences and, if such differences cannot be resolved, the CM/GC shall make such recommendations to the Owner as CM/GC may deem necessary or appropriate to resolve such differences.

(a) Schematic Design. Within twenty-five (25) calendar days after the Schematic Design documents have been prepared by the Project Design Professional and approved by Owner, CM/GC shall prepare for the review by the Project Design Professional and approval by the Owner of a more detailed construction cost estimate with supporting data. During the preparation of the Design Development documents, CM/GC shall update and refine this estimate at appropriate intervals agreed to by Owner, Design Professional, and CM/GC.

(b) Design Development. Within twenty-five (25) calendar days after the Design Development documents have been prepared by the Design Professional and approved by Owner, CM/GC shall prepare a more detailed construction cost estimate with supporting data for review by the Project Design Professional and approval by Owner.

(c) Construction Documents. During the preparation of the Construction Documents, CM/GC shall update and refine this estimate at appropriate intervals agreed to by Owner, Design Professional, and CM/GC.

(d) Cost Exceeds Previous Estimate. If any estimate submitted to Owner exceeds previously approved estimates or the Construction Cost Estimate in the Development Budget, CM/GC shall make appropriate recommendations to the Owner and Design Professional.

2.1.8.2 Rental Rates and Wage Rates for Change Orders. As soon as is practical, but prior to the completion of the Construction Preparation Period and in any event prior to the commencement of any Work on the Site, the CM/GC shall submit in accordance with the style and format of a specimen to be furnished by the Owner for consideration of the Owner the following: (1) a proposal for rental rates on heavy construction equipment that shall apply in the event Change Order Work is performed, and (2) a proposal for wage rates for the types of project labor that shall apply in the event of the execution of any Change Order Work. Under penalty of false swearing, a principal of the contracting firm shall certify that the proposal for rental rates and proposal for wage rates do not exceed current costs for like services. The Owner will in no event consider a rental rate in excess of eighty percent of the rate set forth in the latest edition of the "Compilation of Nationally Averaged Rental Rates for Construction Equipment" of the Associated Equipment Distributors unless the rates proposed in excess of eighty percent are supported by proof satisfactory to the Owner that the excess rates are reasonable. If the equipment is owned by the CM/GC the costs shall be charged at a maximum of eighty percent of market monthly

rental rates for the amount of time used. If applicable, transportation costs may be included. The decision of the Owner shall be final, binding and conclusive on all parties. Rental rates shall be payable only for the actual time the equipment is required on the Site.

### 2.1.8.3 Unit Prices

2.1.8.3.1 During Preconstruction. Prior to the completion of the Preconstruction phase, the CM/GC shall establish with the Owner Unit Prices not already set. Examples include additional installation of stormwater management BMPs, any other anticipated Change Order Work that can utilize Unit Prices, or for any items of Work considered necessary by the Design Professional and not established in the Contract Documents.

2.1.8.3.2 During Construction. Upon request of the Owner the CM/GC shall submit written proposals for unit prices to be applied in the event Change Order Work is authorized by the Owner to be performed under Case (b).

2.1.8.3.3 Calculation of Unit Prices. Unit Prices include all sums for payment, repayment, reimbursement, remittance, remuneration, compensation, profit, cost, overhead, expense, loss, expenditure, allowance, charge, demand, hire, wages, salary, tax, cash, assessment, price, money, bill, statement, dues, recovery, restitution, benefit, recoupment, exaction, or injury. Unit prices to cover the addition or reinstallation of stormwater management BMPs shall be calculated by type and linear foot. Unit Prices *shall not* include any Time Dependent Overhead Costs, as such costs will be added as appropriate pursuant to Section 3, Part 3. The CM/GC shall certify that the Unit Prices submitted do not exceed current costs in the industry or trade for like services or materials.

**2.1.9 Limitation of Scope.** The CM/GC acknowledges and agrees that the Contract Documents are addressed to skilled tradesmen in the construction profession who shall be required to use their special skills and experience, through submittals and shop drawings, to translate the Design Professional's design intent as expressed in the Contract Documents into a completed structure. The Contract Documents shall specify when shop drawings or submittals require the seal of a specialty consultant. Nothing herein shall be deemed to permit the CM/GC to require of the Design Professional any services that the Owner is not authorized to require under the terms of the Architectural Contract between the Owner and the Design Professional. Nothing herein shall be deemed to impose upon the CM/GC any responsibilities to provide any services constituting the practice of architecture, engineering, or any licensed design profession. CM/GC shall exercise skill and judgment in the performance of its construction management 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 the Design Professional.

**2.1.10 Extent of Responsibility.** The CM/GC does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the CM/GC concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants.

**2.1.11 Long Lead-Time Items.** The CM/GC shall recommend to the Owner and Design Professional a schedule for procurement of long lead-time items that will constitute part of the Work as required to meet the Project schedule. If such long lead-time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the CM/GC. Upon the Owner's acceptance of the CM/GC's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the CM/GC, who shall accept responsibility for such items as if procured by the CM/GC. The CM/GC shall expedite the delivery of long lead-time items.

**2.1.12 Payment Bond for Preconstruction.** If the Preconstruction Fee (Section 4, Part 1) and the Preconstruction Costs and Expenses (Section 4, Part 2) exceed \$100,000.00, the CM/GC will furnish a Payment Bond with a penal sum equal to or greater than the total of the Preconstruction Costs and Expenses and the Preconstruction Fee. The bond will be provided prior to beginning providing any preconstruction services.

## **PART 2 CONSTRUCTION DOCUMENTS AND SITE PLAN**

### **2.2.1 General Provisions Regarding Construction Documents.**

2.2.1.1 Familiarity with Contract Documents. CM/GC represents that it has reviewed or will review and become familiar with the existing Contract Documents, not later than the commencement of the preconstruction phase.

2.2.1.2 Identification of Construction Documents. The Design Professional shall identify the Construction Documents, which shall include, but are not limited to, the Specifications, the Drawings, and all Addenda. The Construction Documents are included within the Contract Documents.

2.2.1.3 Correlation and Intent. It is the intention of the Owner, Design Professional, and CM/GC that the Construction Documents include all items necessary for proper execution and full and final completion of the Work. The Contract and Construction Documents (the Contract Documents) are complementary, and what is required by one is as binding as if required by all. Performance by the CM/GC is required to the extent consistent with and reasonably inferable from the Contract Documents as being necessary to produce the design intent as expressed in the Contract Documents. The intention of the Owner and the Design Professional is that the Contract and Construction Documents include all labor and materials, equipment, and transportation necessary for the proper execution of the work. It is not intended, however, that materials or work not covered by or properly inferable from any heading, branch, class, or trade of the specifications shall be supplied unless noted on the drawings.

2.2.1.4 Arrangement of Specifications. The Specifications are separated into numbered and titled divisions for convenience of reference. Neither the Owner nor the Design Professional shall assume any responsibility for defining the limits of any subcontracts on account of the arrangement of the Specifications. Notwithstanding the appearance of such language in the various divisions of the Specifications as, "The Plumbing Contractor," "The Electrical Contractor," "The Roofing Contractor," etc., the CM/GC is responsible to the Owner for the entire Contract and the execution of all of the Work referred to in the Contract Documents. No partial sets of Construction Documents, other than Component Construction Documents, shall be issued by the Design Professional. Any partial documents issued by the CM/GC shall be the responsibility of the CM/GC.

2.2.1.5 Conflicts. The following general principles shall govern the settlement of disputes that may arise over conflicts in the Contract Documents: (a) as between figures given on drawings and the scaled measurements, the figures shall govern; (b) as between large-scale drawings and small-scale drawings, the larger scale shall govern; (c) as between the Contract and the Specifications, the requirements of the Contract, as executed, shall govern. Conflicts noted shall be reported to the Design Professional. The principles set forth herein shall not alter the provisions of Paragraph 1.1.7.1. Schedules, lists, indexes, tables, inventories, written instructions, written descriptions, summaries, statements, classifications, Specifications, written selections, or written designations, although appearing on the drawings, are deemed to be and are Specifications.

2.2.1.6 Requests for Information (RFI). In the event the Construction Documents are not complete, definite, and clear to skilled tradesmen in the construction professions, or appear to have conflicting information, the CM/GC shall request the Design Professional in writing for additional instructions and shall furnish the Owner or Program Manager a copy of the RFI. With reasonable promptness but not more than five days thereafter, the Design Professional shall furnish complete, definite, and clear instructions in writing, or by means of drawings, or both. In the event such additional instructions are given orally for expediency, they shall be confirmed in writing or by drawings or both within five days following the oral instructions. Any such additional instructions shall be consistent with the Contract Documents and reasonably inferable therefrom. The Work shall be executed in conformity with the aforesaid instructions. The Design Professional shall furnish the Owner a copy of all additional instructions issued to the CM/GC. If, because of events beyond its reasonable control, the Design Professional is not able to meet the specified time period, then it is entitled to ask for additional time from the Owner.

2.2.1.7 Effect of Addenda, Bulletins, and Change Orders. No special implication, interpretation, construction, connotation, denotation, import, or meaning shall be assigned to any provision of the Contract Documents because of changes created by the issuance of any (1) Addendum, (2) Bulletin, or (3) Change Order other than the precise meaning that the Contract Documents would have had if the provision thus created had read originally as it reads subsequent to the (1) Addendum, (2) Bulletin, or (3) Change Order by which it was created.

2.2.1.8 Intellectual Property Rights in Construction Documents, Drawings, and Models. The drawings, Specifications and other documents prepared by the Design Professional pursuant to this Contract (including, without limitation, the Construction Documents), are the property of the Owner, whether or not the Project for which they are made commences or completes construction. Neither the CM/GC nor any Subcontractor or material or equipment supplier 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. The CM/GC must deliver remaining copies of such documents to the Owner upon request or upon completion of the Work, except that the CM/GC may keep one copy of such documents for its files. The CM/GC shall only use such drawings, Specifications and other documents for this Project. Neither the CM/GC nor any Subcontractor or material or equipment supplier may use such drawings, Specifications, and other documents on other projects without the specific written consent of the Owner. All models are the property of the Owner.

## 2.2.2 Documents at the Project Site.

2.2.2.1 Drawings and Specifications at the Project Site. The CM/GC shall keep at the Site at least one copy of the Contract Documents and Change Orders, all in good order and available to the Design Professional and to his representatives.

2.2.2.2 Design Coordination Responsibilities for Construction Documents. The CM/GC shall continue its design coordination activities, as a part of its Basic Services, for the duration of construction activities at the Site. In this regard, the CM/GC is the principal Project Team member in the position to accomplish, and is charged with, the receiving, assembling, and coordinating the construction documents as component construction documents, bulletins, addenda, Change Orders, RFI's, Requests for Interpretation, and responses to Submittals are issued. The CM/GC shall use its best efforts to perform a design documents coordination role with regard to constructability and conflicts, including but not limited to the following:

2.2.2.2.1 Review of Documents Providing or Affecting Design. The CM/GC shall examine all design related documents as they are received from the Design Professional in relation to the documents previously received and maintained on the Site. The review shall encompass the effect upon constructability of the Component or portion of the Project addressed in the new document, and in particular shall look for conflicts and inconsistencies with the previous documents. It is the Owner's desire that this review be accomplished 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.

2.2.2.2.2 Annotation of Potential Conflicts. When potential conflicts affecting constructability are identified, the Construction Documents maintained at the Site shall be annotated, an RFI, Request for Interpretation, or Change Order, as appropriate, shall be promptly prepared and forwarded to the Design Professional, with a copy to the Owner and Program Manager, if retained. The CM/GC shall maintain a log of these activities and the responses received from the Design Professional.

2.2.2.2.3 Identification of Potential Conflicts by Others. When a Subcontractor or Separate Contractor or other person identifies a potential conflict affecting constructability, the CM/GC shall undertake the efforts outlined in Article 2.2.2.2 and its subparts to reach its own conclusion with regard to constructability in the same manner as if the potential conflict had been identified by the CM/GC itself.

2.2.2.2.4 Design Coordination Meetings. The CM/GC shall call for a design coordination meeting when one or more matters of potential conflict materially affect the sequencing or accomplishment of the Work, or may have an adverse impact upon the Overall Project Schedule.

2.2.2.2.5 CM/GC Responsibility. Notwithstanding the foregoing, it is the CM/GC's responsibility to identify potential conflicts and to participate in recommending methods of construction to facilitate a constructable solution, while it remains the Design Professional's responsibility to provide the design or interpretation necessary to resolve any actual conflict.

**2.2.2.2.6 Design Professional Responsibility.** Notwithstanding the foregoing, it remains the Design Professional's responsibility to produce fully coordinated Construction Documents. It is the Owner's strong desire in this subparagraph to utilize all of the design and construction professionals on the Project Team to each's best ability in order to foster effective and accurate communication of the design to the CM/GC and to the skilled tradesmen and subcontractors who are to construct the Project.

**2.2.2.3 Recording Changes.** The CM/GC shall record all changes and shall annotate a copy of the drawings to reflect the as-built condition in order to produce, at Final Completion, the Marked-up Construction Documents required by Section 6, Part 4.

## **2.2.3 Completion of Construction Documents Following Acceptance of the GMP Change Order.**

**2.2.3.1 Construction Documents.** The Owner shall cause the Design Professional to prepare and shall approve Construction Documents (Working drawings and Specifications) in accordance with the assumptions set forth in the GMP Change Order. CM/GC shall provide advice to the Design Professional and the Owner during the development of Construction Documents so they are prepared in accordance with the Construction Documents Schedule as set forth in the GMP Change Order, and reflect the assumptions set forth in the GMP Change Order. The CM/GC shall recommend alternative solutions benefiting the Owner by reducing construction time, saving construction costs without reducing quality, or enhancing the quality of the Project.

**2.2.3.2 Construction Document Change Order.** Upon completion of complete Construction Documents consistent with the Using Agency's Program and compliant with the assumptions stated in the GMP Change Order by the Design Professional and approval thereof by the Owner, the Design Professional shall submit them to the CM/GC along with a proposed Construction Document Change Order for acceptance first by CM/GC and then by Owner for the purpose of adding such approved Construction Documents to this Contract. CM/GC shall promptly accept or reject any such proposed Construction Document Change Order, but in any event within thirty (30) days of its receipt. If CM/GC accepts the proposed Construction Document Change Order, then the Owner shall likewise accept same promptly and in any event within seven (7) business days of CM/GC's acceptance.

**2.2.3.3 CM/GC's Final Construction Documents Coordination Review.** Prior to its acceptance of the Construction Document Change Order, CM/GC shall promptly conduct a final review of the Construction Documents referenced therein for the purposes of recommending to the Owner and the Design Professional any changes or modifications thereof that will reduce the cost of the Project without reducing quality, or will expedite its completion, or that, in the judgment of the CM/GC, may otherwise be in the best interest of the Owner. However, the Owner shall not be required to accept any such recommendations. The CM/GC shall also give notice to the Owner and to the Design Professional of any errors, inconsistencies, or omissions (including non-conformance with applicable laws, statutes, building codes, rules and regulations) it may discover in the Construction Documents prior to acceptance of the proposed Construction Document Change Order. This review function being a part of the Basic Services, the CM/GC will receive no additional payments or compensation for its review and recommendations. After acceptance of the Construction Document Change Order, CM/GC shall be entitled to additional compensation pursuant to Section 3, Part 3 for changes in the work that result from coordination, errors or omissions in the documents, changes due to unforeseen conditions at the site, or changes required by governmental regulatory agencies. CM/GC shall not, however, be liable for any damages resulting from the failure of the Construction Documents to comply with said laws, statutes, building codes, rules, and regulations unless it recognizes same and performs a construction activity knowing it is contrary to same without providing advance written notice of same to the Owner. CM/GC shall also give notice of any inconsistencies, conflicts, or omissions between said Construction Documents and either (i) the Program and revisions thereto by prior Construction Document Change Orders or (ii) the assumptions set forth in the GMP Change Order that were relied upon by CM/GC in the preparation of the GMP Change Order, including observed inconsistencies, conflicts or omissions between the Construction Documents and any proposed design development of such assumptions.

**2.2.3.4 Rejection of the Construction Document Change Order.** If the Construction Documents referenced in a proposed Construction Document Change Order are not true developments of the assumptions set forth in the GMP Change Order relied upon by CM/GC in the preparation of the GMP Change Order, as specified therein (other than variances due solely to differences in Actual Costs versus estimated costs) and as a result of such variance the performance of the Work described therein will

increase the Estimated Cost amount as stated in the GMP Change Order, or will require an extension of the time for Final Completion as stated in the GMP Change Order, the CM/GC may reject the proposed Change Order and give notice of same to the Owner and the Design Professional setting forth the basis for its rejection of same and stating a proposed increase in the GMP Change Order and its various Components, including, if applicable, the Date for Final Completion, under which the CM/GC would accept said Change Order. Following consultations with the Design Professional and CM/GC, the Owner shall (i) require the Design Professional, without charge against the GMP Change Order, or its various Components, to revise the Construction Documents so as to make them true developments of the drawings, specifications and other documents relied upon by CM/GC in the preparation of the GMP Change Order, with said revisions to be completed within ten (10) days; (ii) accept the CM/GC's proposed increase in the GMP Change Order and its specified Component(s), including, if applicable, the Date for Final Completion; or (iii) direct CM/GC to proceed with the Work in accordance with the proposed Construction Documents. In the event CM/GC is directed to proceed with the Work in accordance with the proposed Construction Documents, under (iii) above, CM/GC shall be entitled to assert a claim in accordance with Paragraph 5.2.2.2 against Owner for an increase in the GMP Change Order, including, if applicable, an extension of the Date for Final Completion, provided that such claim by CM/GC is asserted within fourteen (14) days after CM/GC is directed to proceed. If the CM/GC shall accept any proposed Change Order without notice as required by this Paragraph, then no claim shall thereafter be made by CM/GC that the Construction Documents identified therein are not true developments of the assumptions set forth in the GMP Change Order relied upon by CM/GC in the preparation of the GMP Change Order, and as specified therein.

**2.2.3.5 CM/GC's Option for Redesign of Construction Documents.** Prior to its acceptance of any proposed Construction Document Change Order adding Construction Documents to this Contract, if the CM/GC gives notice to the Owner that either (i) the lowest responsible proposal received by the CM/GC from a Trade Contractor to perform the Work described in the Construction Documents exceeds the CM/GC's budget for that Work as set forth in the Construction Budget, or

(i) that no responsible proposal for that Work has been received, then the CM/GC may request a redesign of the Construction Documents pertaining to said Work so long as the redesign is a functional and quality equivalent of the Work forming the basis of the GMP Change Order. The approval of such request for redesign shall be within Owner's sole and absolute discretion. The architectural fees and costs for a requested redesign that is approved by Owner shall be paid by the Owner to the Design Professional and such payment shall be deducted from the Construction Contingency Component of the GMP Change Order. The deduction shall not alter the obligation of CM/GC under the GMP Change Order to perform the construction of the Project within the Guaranteed Maximum Price and any delays resulting therefrom shall not be a basis for an extension of the Date for Final Completion. If such redesign has been made once at the request of the CM/GC pursuant to this Paragraph, the CM/GC shall not request any further redesign with respect to the Construction Documents covered by that proposed Construction Document Change Order.

**2.2.3.6 Failure to Reject within Time Limits.** CM/GC's failure to reject the proposed Construction Document Change Order within the time limitations stated herein shall be deemed to evidence CM/GC's acceptance of same without any claim of variance.

## **2.2.4 Special Situation – New Sole Source Designation.**

**2.2.4.1 Limitations.** This Article 2.2.4 applies only to Construction Documents referenced in a proposed Construction Document Change Order that designate a Sole Source that was not designated in the Program or the documents on which the GMP was based. Except as stated in this Paragraph, CM/GC's inability to obtain payment and performance bonds from Trade Contractors or warranties from Trade Contractor or Trade Suppliers as required under this Contract shall not otherwise excuse CM/GC from its bonding and warranty obligations under this Contract.

**2.2.4.2 Sole Source as Grounds for Rejection of Construction Document Change Order.** If after the acceptance of the GMP Change Order a proposed Construction Document Change Order is submitted to CM/GC for the purposes of adding Construction Documents to this Contract necessary to revise the Program in accordance with the assumptions stated in the GMP Change Order in response to Paragraph 4.1.3.2.2, and said Construction Documents designate a "Sole Source" (as defined herein) from which CM/GC is required to procure goods or services necessary to perform the Work, which sole source has not been designated previously, CM/GC shall, in addition to the grounds enumerated above, be entitled to reject the proposed Construction Document Change Order if (1) the designated Sole Source is a Trade

Contractor and it refuses to provide to CM/GC performance and payment bonds for the Trade Contract Sum in substantially the form set forth in Section 5; or (2) the designated Sole Source is a Trade Contractor or Trade Supplier and it refuses to provide CM/GC warranties required under this Contract, including any warranty required by Construction Documents referenced in the proposed Construction Document Change Order. In such event, CM/GC shall give written notice to the Owner rejecting the proposed Construction Document Change Order and shall accompany said written notice with a proposal from CM/GC for changes or modifications in the referenced Construction Documents so as to eliminate the Sole Source designation but to achieve goods or services equal in quality or function. The Owner shall then require the Design Professional to revise the subject Construction Documents 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 the Design Professional and approval thereof by the Owner, the Owner shall again submit to the CM/GC a proposed Construction Document Change Order for the purpose of adding the revised Construction Documents to this Contract. CM/GC shall be entitled to an extension of the Date of Final Completion but not an increase in any component of the Guaranteed Maximum Price by reason of its rejection of a proposed Construction Document Change Order under this Paragraph or by reason of any redesign by the Design Professional required under this Paragraph.

**2.2.4.3 No Excuse Without Notice.** If CM/GC accepts a proposed Construction Document Change Order adding Construction Documents to this Contract that designate a Sole Source (without putting the Owner on notice under this Article), CM/GC shall not be excused from its obligations with respect to the described Work by reason of the refusal of a designated Sole Source to provide payment or performance bonds to CM/GC or its refusal to provide warranties as required under this Contract.

**2.2.4.4 Meaning of Sole Source.** As used in this Article 2.2.4, "*Sole Source*" means a Trade Contractor or Trade Supplier 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.

**2.2.5 Submittals.** Submittals required by the Contract Documents shall be prepared specifically for the Work by the CM/GC to illustrate some portion of the Work. Submittals are not Contract Documents.

**2.2.5.1 Submittal Schedule.** Within sixty days after the Effective Date of the Contract, the CM/GC shall prepare and submit a Submittal Schedule for review and approval of the Design Professional. In establishing the Submittal Schedule the CM/GC shall take into account large submittal documents that will require longer review times, e.g., submittals with over fifty sheets of drawings. The Design Professional's approval shall be based on conformance of the Submittal Schedule with the Overall Project Schedule, subject to change from time to time in accordance with the progress of the Work.

**2.2.5.2 Submission and Approval.** The CM/GC's Submittals must comply with the Contract Documents. The CM/GC shall review and approve all Submittals prior to submission. The Contract Documents shall specify when shop drawings or submittals require the seal of a specialty consultant. The CM/GC shall submit copies of Submittals as required by the Contract Documents for the Work of the various trades. The Design Professional shall review, approve, or take other appropriate action with respect to shop drawings, samples, or other submissions of the CM/GC, including, but not limited to, confirming conformance with the design concept of the Project and with the Contract Documents. The Design Professional shall respond to and return said items to the CM/GC within fourteen calendar days from receipt provided that the Submittals are submitted by the CM/GC in accordance with the required Submittal schedule. The Design Professional shall review and give comment or approval to Submittal schedule within fourteen calendar days from receipt. Large submittal documents may require longer review times, e.g., submittals with over fifty sheets of drawings. If, because of events beyond its reasonable control, the Design Professional is not able to meet the specified time period, then it is entitled to ask for additional time from the Owner. The CM/GC shall make all corrections required by the Design Professional and furnish such corrected copies as may be needed. If the CM/GC believes that any corrections required by the Design Professional constitute a change to the contract, the CM/GC shall immediately notify the Design Professional and Owner and request instructions. By forwarding the approved Submittals to the Design Professional, the CM/GC represents that the CM/GC has determined and verified materials, field measurements, and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents. The Design Professional's approval of

Submittals shall not relieve the CM/GC from the responsibility for errors of any sort in Submittals or schedules. The CM/GC shall perform no portion of the Work for which the Contract Documents require Submittals until the Design Professional has approved the respective Submittal. The CM/GC shall maintain at the Site one copy of all approved Submittals.

2.2.5.3 Cost of Additional Review. The 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, the CM/GC shall be responsible for payment for the additional time required by the Design Professional to complete the Submittal review. The cost of such additional reviews shall be the responsibility of the CM/GC and may be paid, post- GMP, from the Construction Contingency.

**2.2.6 Manufacturer's Recommendations.** All work or materials shall be installed in accordance with the manufacturer's recommendations and requirements. The CM/GC shall obtain the manufacturer's recommendations and requirements, for its use at the Site in executing the Work, copies of bulletins, circulars, catalogues, or other publications bearing the manufacturer's titles, numbers, editions, dates, etc. If the manufacturer's recommendations and requirements are not available, the CM/GC shall request installation instructions from the Design Professional.

**2.2.7 Site Plan.**

2.2.7.1 General. The Design Professional is responsible for providing the initial sealed Site Plan as a part of the Bidding Documents. During the Pre-Commencement phase, the CM/GC shall review the initial Site Plan and make and submit recommendations for any changes to the initial Site Plan. The CM/GC is required to obtain the land disturbance permit(s) applicable to the Owner that implement the National Pollution Discharge Elimination System (NPDES) requirements for stormwater management for construction activities from the appropriate issuing authority. Compliance requires that there be properly designed Best Management Practices (BMPs), properly installed BMPs, and inspection and maintenance of the installed BMPs.

2.2.7.2 Implementation. The Design Professional will depict upon the Site Plan its initial recommendations as to elements of the erosion, sedimentation, and pollution control plan, specifying his recommended design of BMPs for the Project, including stormwater management facilities, and other like matters. It is the CM/GC's responsibility to review the design of the BMPs and submit any changes to the plan, including the CM/GC's desired use of entrances to the Site, CM/GC's trailer(s) location, laydown areas and other similar matters affecting the design and implementation of the BMPs. The Design Professional and CM/GC shall arrive at a final sealed Site Plan for submission to the permitting officials that enables the land disturbance permitting of the Project. The Design Professional and CM/GC shall resolve with the local permitting official any deficiencies by the end of the Pre-commencement period.

2.2.7.3 Installation, Inspection, and Maintenance. The CM/GC is responsible for installation and maintenance of the BMPs as a part of its Bid. The Design Professional shall obtain the services of a qualified testing laboratory to inspect the BMPs in accordance with the permits, the costs of such inspections to be borne by the Owner. In the event of Abnormal Weather Conditions or *force majeure*, the CM/GC shall be compensated for re-installation of BMPs at established Unit Prices.

**2.2.8 Geological and Archeological Specimens.** If, during the execution of the Work, the CM/GC, any Subcontractor, or any servant, employee, or agent of either should uncover any valuable material or materials, such as, but not limited to, treasure trove, geological specimens, archival material, archeological specimens, or ore, the CM/GC acknowledges that title to the foregoing is vested in the Owner. The CM/GC shall notify the Owner upon the discovery of any of the foregoing, shall take reasonable steps to safeguard it, and seek further instruction from the Design Professional. Any additional cost incurred by the CM/GC shall be addressed under the provision for changed conditions. The CM/GC agrees that the Geological and Water Resources Division and the Historic Preservation Division of the Georgia Department of Natural Resources may inspect the Work at reasonable times.

**SECTION 3 – CONSTRUCTION PHASE**

## **PART 1 CONSTRUCTION SERVICES**

### **3.1.1 Basic Construction Services.**

3.1.1.1 Requirement to Commence Work. The CM/GC shall under all circumstances commence work under this Contract no later than ten days after the Proceed Order Date of a Proceed Order issued subsequent to a Component Change Order or GMP Change Order.

3.1.1.2 Payment for Services and Work. Unless otherwise stipulated, the CM/GC shall provide and pay for all materials, supplies, labor, services, water, tools, equipment, light, power, transportation, and other utilities and facilities necessary for the proper execution and completion of the Work.

3.1.1.2.1 No Obligation of Owner. CM/GC shall not enter into, execute, or deliver any agreement, document, or undertaking, or incur any obligation with any Trade Contractor, Supplier or Subcontractor in the name of the Owner.

3.1.1.2.2 No Conditional Sales Agreements. CM/GC shall not make, cause to be made, or permit, any contract for materials or equipment of any kind or nature whatsoever to be used in connection with the Work on a conditional sales or any other basis whereby the title to the equipment or materials does not pass to the Owner upon delivery to the Site or incorporation in the Project, free and clear of any lien, financing arrangement, or other impediment to title.

3.1.1.2.3 Separate, Distinct, and Independent Covenants. The covenants of this subparagraph are separate, distinct, and independent covenants and no default by the Owner under the terms of this Contract shall relieve or release CM/GC of and from the covenants set forth in this subparagraph.

3.1.1.3 Quality of Materials and Workmanship. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of good quality. The CM/GC shall, if required, furnish satisfactory evidence as to the kind and quality of materials and work. The burden of proof is on the CM/GC.

3.1.1.4 Quality and Discipline of Employees. The CM/GC shall at all times enforce strict discipline and good order among his employees and shall not employ on the work any unfit person or anyone not skilled in the work assigned to him.

3.1.1.5 Failure of the CM/GC to Supply Workmen. A Notice of Non-Compliant Work may be issued for failure of the CM/GC to supply enough workers or enough materials or proper materials.

3.1.1.6 Superintendence and Supervision by CM/GC.

3.1.1.6.1 Supervision by CM/GC. The CM/GC shall give efficient supervision to the work, using his best skill and attention. He shall coordinate the Work with the activities and responsibilities of the Owner, the Design Professional, and CM/GC so as to complete the Project in accordance with the Owner's objectives of quality, cost, and time for completion as set forth in the Construction Documents. He shall carefully study and compare all drawings, specifications, and instructions and shall at once report to the Design Professional any error, inconsistency, or omission that he may discover.

3.1.1.6.2 Superintendent of CM/GC. The CM/GC shall keep on this work during its progress and until the Final Certificate has been executed by the Design Professional a competent Project Superintendent and any necessary assistants, all satisfactory to the Design Professional and Owner. The Project Superintendent shall not be changed except with the consent of the Owner and the Design Professional unless the superintendent proves to be unsatisfactory to the CM/GC and ceases to be in his employ. The superintendent represents the CM/GC and all directions given to the superintendent shall be as binding as if given to the CM/GC.

3.1.1.6.3 Replacement Project Superintendent. If the CM/GC terminates the Project Superintendent or, if the CM/GC, for any reason, engages a Project Superintendent different from the one originally assigned to the Project, CM/GC must ensure that the replacement Project Superintendent has similar qualifications and experience as the originally identified Project Superintendent. Furthermore, the CM/GC must obtain the Owner's prior written approval before

engaging a permanent replacement Project Superintendent.

3.1.1.6.4 Competent Full-Time Staff. The CM/GC shall maintain at the Site a competent, full-time staff with appropriate expertise to coordinate and provide general direction of the Work in order to (i) Maintain adequate control of the Work as to quality and compliance with the Contract Documents, and (ii) Maintain satisfactory progress by the Trade Contractors involved in the performance of the Work.

3.1.1.6.5 Coordination. Establish with the Design Professional procedures for coordination among the Owner, the Design Professional, and the CM/GC. Establish similar procedures for coordination between CM/GC and its Trade Contractors and Trade Suppliers with respect to all aspects of the Project, and implement such procedures.

3.1.1.6.6 Qualified Workforce and Sufficient Staff. CM/GC shall require all Trade Contractors, Subcontractors, and Trade Suppliers to employ, only skilled workmen properly qualified by experience and ability to perform the task assigned to them. In addition, Trade Contractors and Subcontractors shall employ and assign to the Work, at all times, sufficient staff and personnel to perform their subcontracted services in a skilled, professional, and satisfactory manner so as not to delay the progress of the Work. The CM/GC shall immediately replace or cause to be replaced all Workmen whose Work, as determined by the CM/GC, does not meet such requirements.

### 3.1.2 Meetings and Schedule Updates.

3.1.2.1 Meetings. CM/GC shall conduct scheduled meetings on a regular basis at which the Owner, the Design Professional, the CM/GC, and Trade Contractors may discuss jointly such matters as procedures, progress, problems, and scheduling. The CM/GC shall provide and distribute minutes of such meetings, including therein a list of the action items, responsible parties, and action dates to maintain schedules.

3.1.2.2 Updating Schedules. CM/GC shall furnish the Owner with updates to the Overall Project Schedule, which shall be revised as required by the conditions of the Work and Project, showing complete preconstruction, procurement, and construction schedules. Such schedules shall set forth the following:

3.1.2.2.1 Major Elements and Components. Listing of all major elements and Components of the Work, as well as major equipment items to be purchased, with adequate information as to those items requiring long lead-time;

3.1.2.2.2 Analysis. An analysis of the types, quantity, and availability of labor required to perform all of the Work;

3.1.2.2.3 Separate Phases. A report of the separate phases of the Work to be performed by the CM/GC and Trade Contractors, along with a flow chart of the activity sequences, coordination, and duration of each;

3.1.2.2.4 Financial Requirements. A report of monthly and cumulative financial requirements; and

3.1.2.2.5 Status. The status of construction and completion.

3.1.2.3 Joint Development of Procedures. Develop jointly with the Design Professional and Owner procedures for the following items:

3.1.2.3.1 Routing. Routing of correspondence;

3.1.2.3.2 Progress Reports. Progress reports;

3.1.2.3.3 Cost Control. Cost control and reporting;

- 3.1.2.3.4 Lines of Authority. Lines of authority and personnel assignments of CM/GC's organization;
- 3.1.2.3.5 Field Construction Procedures. Field construction procedures including, without limitation, safety, construction means and methods, logistics, and handling of material and equipment at the Site;
- 3.1.2.3.6 Inventory Control. Inventory control and security;
- 3.1.2.3.7 Accounting. Accounting and auditing;
- 3.1.2.3.8 Quality Control. Quality control of materials and the Work;
- 3.1.2.3.9 Other. Such other procedures as may be reasonably required by the Owner.

3.1.2.4 Monitoring. Provide regular monitoring of the Overall Project Schedule as construction progresses; identify potential variances between scheduled and probable completion dates; review the schedule for Work not started or incomplete, and recommend to the Owner and Trade Contractors adjustment in the Construction Progress Schedule to meet the Date for Final Completion; provide written summary reports of each monitoring to all appropriate parties and document accordingly.

3.1.2.5 Record Progress. Record the progress of the Work; submit written progress reports monthly to the Owner and the Design Professional, including information on the percentage of completion; maintain a daily log, approved as to form and type of entries by the Design Professional, which log shall be accessible to the Owner and the Design Professional at all times during normal business hours.

3.1.2.6 Determine Adequacy. Determine the adequacy of the CM/GC's, Trade Contractors', and Trade Suppliers' personnel and equipment, as well as the availability of materials and supplies to meet the Construction Progress Schedule; take appropriate action when requirements of the Trade Contracts are not being met.

3.1.2.7 Provide and Pay For. Provide and pay for all supervision, labor, materials, equipment, utility services (including water, gas, electricity, sewage, or waste water), tools, supplies, transportation, and other items or facilities necessary for the execution and completion of the Work in accordance with the Contract Documents.

### **3.1.3 Construction Budget.**

3.1.3.1 Provide Budget. Prior to the commencement of the Work under a Component Change Order and in the GMP Change Order, The CM/GC shall provide or update the Construction Budget to the Owner and Design Professional, including therein as a line item the estimated cost for each discrete cost of the Work within the Change Order Sum or the Guaranteed Maximum Price, as the case may be. The CM/GC shall revise and refine the Construction Budget at appropriate intervals as required by the conditions of the Work and present the revisions to the Owner. As the projected cost of the Work becomes more determinable; the CM/GC shall incorporate approved changes as they occur; shall develop cash flow reports and forecasts; shall identify variances between actual and budgeted costs and shall advise the Owner and Design Professional promptly whenever projected costs exceed or may exceed the budgeted cost. The Construction Budget, as revised thereafter, is regularly updated and provided by the CM/GC to the Owner and Design Professional for the purpose of permitting the Owner to monitor the progress of the Work and to establish the bases on which claims or requests by the CM/GC, or other matters, may be evaluated. The CM/GC does not guarantee any line item cost stated in the Construction Budget and shall not be bound by the estimated line item amounts stated in the Construction Budget, but shall be bound by the GMP.

#### **3.1.3.2 Cost Control System**

3.1.3.2.1 Develop System. The CM/GC shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes.

3.1.3.2.2 Implement System. The CM/GC shall monitor costs and implement the system of cost control for the Work, revise from time to time the Construction Budget with approved changes, and develop cash flow reports and forecasts as requested by the Owner. The CM/GC shall identify variances between actual and estimated costs and report the variances to the Owner and Design Professional at regular intervals.

3.1.3.3 Cost Accounting Records. Maintain cost accounting records on items of Actual Cost and Contingency Costs, including authorized Work performed under unit costs, Actual Costs and Contingency Costs for labor and materials, and other bases requiring accounting records. The CM/GC shall maintain at the Project Site accounting records for Trade Contracts, this Contract, and other Contracts related to the Project.

3.1.3.4 Payment Procedures. Develop jointly with the Design Professional and Owner procedures for reviewing, processing, recording, and paying Trade Contractors and Trade Suppliers upon their application for payment, and implement same consistent with the Contract Documents. Develop and implement a procedure for the review, processing, and payment of applications by Trade Contractors and Trade Suppliers for progress and final payments, including a retainer release method. Such procedure shall be submitted to the Owner for approval.

### **3.1.4 Coordination of the Work.**

3.1.4.1 Coordination. Establish with Trade Contractors, Suppliers and Subcontractors the on-Site organization and lines of authority in order to carry out the overall progress of the Work. Coordinate the Work of the CM/GC under the Contract Documents with professional consultants retained by the Owner or the Design Professional.

3.1.4.2 Construction Means and Methods. The CM/GC shall be responsible for coordinating all portions of the Work under this Contract. He shall be responsible for construction means, methods, techniques, sequences, and procedures, as well as for safety precautions and programs in connection with the Work. He shall ensure that the foregoing activities are performed in compliance with the Contract Documents. Notwithstanding the foregoing, no Trade Contractor is relieved of its responsibility for taking all reasonable and necessary steps to perform all Work consistent with the Contract Documents.

3.1.4.3 Quality Control. Review the Work of Trade Contractors and Trade Suppliers for defects and deficiencies. Develop and implement a system, including appropriate quality control documentation, for ensuring that all such defects and deficiencies are corrected.

3.1.4.4 Procedures for Change Orders. Coordinate and develop for Trade Contractors and Subcontractors procedures for

- (i) preparation, review, and processing of Change Orders;
- (ii) recommending necessary or desirable changes to the Owner and the Design Professional;
- (iii) reviewing requests for changes by the Owner, Trade Contractors, or Suppliers;
- (iv) submitting recommendations to the Owner and the Design Professional with respect to proposed Change Orders; and
- (v) implementing Change Orders as approved by the Owner.

3.1.4.5 Procedures for Approval of Materials. Develop procedures to ensure that no materials shall be purchased unless and until Component Construction Documents, defining or affecting such materials have been approved by the Owner and then only in conformance with the Component Change Order or Construction Documents Change Order.

**3.1.5 Mobilization.** CM/GC shall mobilize, transport and assemble its equipment, materials, and supplies, as well as construct such temporary systems as are necessary and required at the Site, all in adequate time for satisfactory performance of the Work.

### **3.1.6 Duty to Commence.**

3.1.6.1 Time for Commencement. Within ten (10) days after the Proceed Order Date, the CM/GC shall commence to procure such services, labor, and materials necessary to perform the Work described in

any approved Component Change Order or the GMC Change Order, but only to the extent Construction Documents for said Work or affecting said Work have been approved by Owner.

3.1.6.2 No Direct Performance. The CM/GC shall not directly perform any Work or provide any materials, equipment, or supplies but shall contract for performance of Work or procurement of materials, equipment, or supplies through Trade Contracts and Subcontracts, except as otherwise permitted by the Contract Documents. No fee shall be payable by Owner to CM/GC for self-provided Work or materials except by lump sum as provided in paragraph 3.2.3.2.

3.1.6.3 Responsibility for Proper Performance. Notwithstanding CM/GC's execution of contracts with Trade Contractors, Subcontractors or Suppliers incident to the performance of the whole or any part of the Work, the CM/GC shall be responsible to the Owner for the proper performance of the Work in compliance with the Contract Documents unless the Contract Documents expressly provide to the contrary. Unless caused by the Owner or Design Professional, inefficiency, non-performance, improper performance, or other default by any Trade Contractor or Trade Supplier under contract with CM/GC or employee thereof shall not excuse the CM/GC from its obligation to assure timely performance in compliance with the Contract Documents.

3.1.6.4 Acts and Omissions. The CM/GC shall be fully responsible for the acts and omissions of its officers, employees, agents, licensees, Trade Contractors, Subcontractors, Suppliers, invitees and guests, as well as their respective officers, employees, agents, licensees, suppliers, guests, materialmen, and all other persons performing any of the Work or supplying labor, services, materials, or equipment for or under the Trade Contracts entered into by the CM/GC. The failure of a Trade Contractor, Subcontractor or Supplier under contract with CM/GC or employees thereof to properly perform shall not excuse the CM/GC for any omission from or non-compliance with the requirements of the Contract Documents, nor shall the CM/GC be entitled to an extension of time because of the failure of a Trade Contractor, Subcontractor or unless such failure was a direct result of some delay to the Trade Contractor or Trade Supplier of the kind and character for which the CM/GC is entitled to receive an extension of time.

3.1.6.5 Responsibility for Completion. CM/GC shall complete the Work under Component Change Orders and the Change Order and shall achieve Material Completion of the Project not later than the Material Completion and Occupancy Date.

**3.1.7 Notice of Commencement.** The CM/GC shall, in accordance with Georgia law, record and post a Notice of Commencement for the construction portion of the Work, and shall promptly deliver a stamped-recorded copy of such Notice of Commencement to the Design Professional.

**3.1.8 Measurements and Dimensions.** Before ordering material or doing work that is dependent upon coordination with building conditions, the CM/GC shall verify all dimensions, elevations, grades, and pitch by taking measurements at the building and shall be responsible for the correctness of same. Any discrepancies between the drawings and/or specifications and the existing conditions shall be referred to the Design Professional for additional instructions before any work affected thereby is begun.

**3.1.9 Rain Water, Surface Water, and Back-up.** The 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. The CM/GC shall furnish all labor, pumps, shoring, enclosures, and equipment necessary to protect and to keep the Work free of water.

**3.1.10 Dust Control.** Dust-proof enclosures or partitions for protection wherever dusty or dirty work is performed and dampening of debris to avoid dusting when removed shall be provided and included as a cost of the work.

**3.1.11 Cutting, Patching, and Fitting.** The CM/GC shall do all cutting, patching, and fitting of the Work that may be required to make its several parts come together properly and fit.

**3.1.12 Space Conditions.** All pipes passing through floors, walls, and ceilings shall be installed with sufficient space between them to permit installation of pipe insulation and floor, wall, and ceiling plates without cutting of

insulation or plates. Roughed-in dimensions shall be prepared by the CM/GC to accomplish this requirement. The CM/GC shall locate all equipment that must be serviced, operated, or maintained in fully accessible positions. This provision includes but is not limited to valves, traps, cleanouts, motors, controllers, switchgear, drain points, filter, access doors, and fire dampers. If spaces, dimensions, or other design conditions do not permit compliance with the present article, the CM/GC shall file a request in writing with the Design Professional for additional instructions, furnishing a copy to the Owner.

### 3.1.13 Cleaning.

3.1.13.1 During Construction. At all times, the CM/GC shall keep the premises free from accumulations of waste material or rubbish caused by his employees, Trade Contractors, or work. Periodically during the course of the Work he shall remove all his rubbish from and about the building and all his tools, scaffolding, and surplus materials and shall leave his work "broom-clean" or its equivalent, unless more exactly specified. Prior to Final Completion by a Trade Contractor of any Trade Contract, CM/GC shall require the Trade Contractor to remove from the Work and Site all temporary systems, tools, equipment, machinery, and surplus materials not required for the continued performance of any Work under the Trade Contract or this Contract. In case of dispute, after 48 hours written notice the Owner may remove the rubbish and charge the cost to the CM/GC.

3.1.13.2 Prior to Material Completion. Prior to the inspection for Material Completion of the Project CM/GC shall remove from the Site all wastes and rubbish, clean all tile and glass surfaces, replace broken glass, remove stains, paint spots, and clean and polish all plumbing fixtures and equipment, leave the Work "vacuum clean" or its substantial equivalent, all hard surface floors swept and mopped, all carpeted floors vacuumed, all surfaces other than floors dusted, blower dusted, or wiped (depending on type of surface) and surface blemishes cleaned, all glazing washed [both sides], and all electrical and mechanical equipment and fixtures cleaned, with all ductwork cleaned and filters replaced, if such are dirty, before other cleaning is started, and re-cleaned if any dust or dirt has gotten into the ductwork during the cleaning process. The CM/GC shall restore existing facilities such as roads, other paved surfaces, fencing, curbing and the like at the Site to at least their preconstruction conditions; provided, however, the CM/GC may, in an orderly fashion, leave such equipment and supplies at the Site as necessary to achieve Final Completion of the Project. This cleaning must be completed before the CM/GC can expect the Design Professional to commence the inspection for Material Completion. To achieve Material Completion, the CM/GC shall have fully cleaned the Site – all debris must have been removed from the site and all paved surfaces must have been broom swept and thoroughly hosed down.

**3.1.14 Duty of CM/GC to Report Defects.** If any part of the CM/GC's work depends for proper execution or results upon the work of any Separate CM/GC to the Owner, the CM/GC shall inspect and promptly report to the Design Professional any apparent defects in such work that render it unsuitable for such proper execution and results.

**3.1.15 Duty of CM/GC to Report Conflicts.** To ensure the proper execution of his subsequent work, the CM/GC shall measure work already in place and shall at once report to the Design Professional any discrepancy between the executed Work and the drawings or specifications.

## PART 2 COMPONENT CHANGE ORDERS

**3.2.1 Scope of Part.** This Part shall govern the performance of all construction Work under a Component Change Order unless the provisions of this Contract are modified by Change Order. This Contract shall not apply, and none of the responsibilities of the CM/GC stated herein shall apply, to Work performed by a separate Contractor for which CM/GC is not responsible under this Contract.

### 3.2.2 Component Change Order Proposal.

3.2.1.1 Proposal. If prior to the execution of the GMP Change Order, the CM/GC proposes and the Owner authorizes the commencement of construction or procurement of any Component of the Project for which the Owner has approved Component Construction Documents, the Owner shall request the CM/GC to procure proposals and to submit a proposed Component Change Order to this Contract under which the CM/GC shall offer to contract with a Trade Contractor(s) for the construction of the Component or with a Trade Supplier(s) for procurement of the Component in accordance with the Component Construction Documents. The Owner's request shall identify the specific Component of the Project for which a proposed Change Order is requested.

3.2.1.2 Component Construction Documents. The Design Professional shall issue Component Construction Documents meeting the following minimum criteria:

- a. The Component Construction Documents shall reasonably show the intent of the Work to be accomplished;
- b. The Component Construction Documents shall be sufficient for the CM/GC to price the Work;
- c. The Component Construction Documents shall meet all regulatory and Fire Marshal requirements; and
- d. The Component Construction Documents shall be sufficiently detailed to preclude the necessity for rework as the Construction Documents proceed to 100% completion.

3.2.1.3 Component Change Order Format. The Component Change Order shall state a Change Order Sum as defined in Article 3.2.3 below, shall state a proposed Date for Final Completion of such Work, and shall be substantially in the form set forth in Exhibit G.

### 3.2.3 Component Change Order Sum.

3.2.3.1 Change Order Sum. The Change Order Sum for Work or materials contracted for by the CM/GC under a Component Change Order shall consist of the following:

3.2.3.1.1 Trade Contractors and Trade Suppliers. The Subcontract Sums due the Trade Contractors or Trade Suppliers retained by CM/GC for the performance of the Work;

3.2.3.1.2 CM/GC's Estimated Costs. The CM/GC's Estimated Cost (based on anticipated Actual Costs (as defined in Section 4, Part 4) for the performance of the Work that are not represented by services and that are not included in the services or materials provided by the Trade Contractor or Trade Supplier in subparagraph 3.2.3.1.1 above;

3.2.3.1.3 Construction Contingency. Construction Contingency (as defined in Section 4, Part 4) for the Component's anticipated contingency costs incident to the performance of the Work and procurement of the materials for the Component; and

3.2.3.1.4 CM/GC's Fee. The CM/GC's Fee for the performance of the Work, which shall be stated as a lump sum amount commensurate with the scope of the Component Change Order and paragraph 5 of the Contract.

3.2.3.2 Lump Sum Amount. If CM/GC proposes to perform Work with its own forces, and the Owner approves, the lump sum amount shall be the Change Order Sum and the Change Order Sum proposed shall not include as additions any estimated cost, contingency, overhead, scope of work or CM/GC Fee components in the same manner as set forth in Article 3.7.11.

3.2.3.3 Mobilization Costs.

3.2.3.3.1 Staff. To the extent the CM/GC's Estimated Cost Component of the Change Order Sum includes estimated Actual Costs for CM/GC's staff reimbursable under Section 4, Part 4, incident to mobilization of its own forces for Work under the proposed Component Change Order, CM/GC shall submit as part of its proposed Component Change Order estimated actual costs of staff based upon the initial wage and salary schedule and proposed staffing plans.

3.2.3.3.2 Temporary Structures. To the extent the CM/GC's Estimated Cost Component of the Change Order Sum includes estimated Actual Costs for CM/GC's on-site offices or for other temporary structures and equipment incident to mobilization of its own forces for Work under the proposed Component Change Order, CM/GC shall submit as part of its proposed Component Change Order a proposed budget for such costs and a proposed plan for acquisition of such items. If the Owner approves the provision by CM/GC of on-site office facilities and other temporary structures and equipment from CM/GC's own inventory, then no CM/GC's Fee shall be payable by Owner on account of such self-provided facilities (in excess of any fee included in the approved sales price or rental rate) and the CM/GC's Fee shall be proportionately reduced.

3.2.4 **Unacceptable Proposals**. If prior to its acceptance of a proposed Component Change Order the CM/GC

shall give notice to the Owner that the lowest responsible proposal received by the CM/GC from a Trade Contractor to perform the Work described in the proposed Change Order exceeds the CM/GC's Construction Cost Estimate for that Work, or that no responsible proposal for that Work has been received, then the CM/GC may propose to either

(1) request a redesign of Construction Document governing the Component (so long as the redesign is a functional and quality equivalent); or (2) request that the CM/GC perform the Work with its own forces for the lump sum amount stated in the CM/GC's Construction Cost Estimate, which shall be the lump sum Change Order Sum. Any design fees and costs for a requested redesign approved by Owner shall be paid by CM/GC to the Design Professional through the Owner. The Owner, in its sole and absolute discretion, may reject either or both proposals made by CM/GC.

**3.2.5 Time for Review.** The Owner shall have seven (7) days following its receipt of the CM/GC's proposed Component Change Order under this Article to accept or reject same.

**3.2.6 Rejection.** If the Owner rejects the CM/GC's proposed Component Change Order, CM/GC may revise and resubmit same but shall not be obligated to do so. In the event that no such Component 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 as a Component or GMP Change Order is approved or either party elects to terminate this Contract. If the Owner rejects the CM/GC's proposed Component Change Order, Owner may remove by Change Order from the Contract Documents the Work contemplated by the rejected Component Change Order and may use alternative methods for the construction or procurement of the Work involved and CM/GC shall not be entitled to any Fee or other compensation with respect to such Work. In the event that the Owner uses alternative methods for the construction or procurement of the Work, the CM/GC must cooperate with the Owner in order to get the Work completed.

**3.2.7 Proceed Order for a Component.** If the Owner accepts the CM/GC's proposed Component Change Order, the Owner shall give written notice of same by returning the proposed Component Change Order with its acceptance endorsed thereon and shall issue to CM/GC a Proceed Order to construct the Component. At that time, the Component Change Order shall become a part of the Contract Documents. Thereafter, the Work performed thereunder shall be performed and administered in accordance with the Contract Documents. The date of the Proceed Order shall be the starting date for the Work covered by the Component Change Order.

**3.2.8 Duty to Proceed.** Upon receipt of the Owner's Notice of Acceptance of the proposed Component Change Order, the CM/GC shall, in accordance with Article 2.1.2 of this Contract, furnish Owner with items required thereunder and, the CM/GC shall, as of the Proceed Order Date, commence performance of the Work covered by the Component Change Order.

**3.2.9 Owner's Liability.**

3.2.9.1 Maximum Liability. The Change Order Sum as stated in a Component Change Order shall be the maximum amount that the Owner is required to pay to CM/GC for the performance of the Work under a Component Change Order. The Change Order Sum, however, may be increased or decreased under those circumstances where other Articles of this Contract authorize an increase or decrease in the Contract Price or the payment of additional compensation. This increase or decrease shall be added to or subtracted from the original Change Order Sum to determine the revised Change Order Sum.

3.2.9.2 Maximum Sum Calculated. Where the Change Order Sum is so calculated, the sum of (i) the Contract Sum payable to the Trade Contractor or Trade Supplier plus (ii) the CM/GC's Estimated Costs plus (iii) Construction Contingency plus (iv) CM/GC's Fee shall be the maximum sum that Owner shall be obligated to pay CM/GC for the performance of the Work encompassed by the Component Change Order.

**3.2.10 Completion Date.** The completion date for the Work as stated in a Component Change Order shall be subject to extension or acceleration under those circumstances where other provisions of this Contract authorize an extension or acceleration in the time.

**3.2.11 Effect of GMP Change Order.** At the time CM/GC submits its GMP Change Order proposal under Article 4.1, CM/GC shall incorporate into the Estimated Cost, Contingency, and Fee components of the proposed Guaranteed Maximum Price the corresponding components or lump sum amounts of all Change Order Sums

stated in all Component Change Orders accepted as of that date by the Owner. The Owner shall receive a credit for payments it has made under all Component Change Orders after approval of the GMP Change Order.

**3.2.12 Cumulative Effect of Component Change Orders.** Estimated Costs and Contingency Costs components of the Change Order sums of Component Changes Orders shall be cumulative so that the aggregate of the Estimated Costs and Contingency Costs components of all Component Change Orders that are outstanding at any time shall be available for payment to CM/GC for Actual Costs and Contingency Costs incurred by CM/GC in the performance of any Work governed by the aggregate of such Component Change Orders outstanding.

**3.2.13 Pre-commencement Obligations.** The CM/GC shall complete the pre-commencement obligations set forth in Article 2.1.2, as additionally detailed below:

3.2.13.1 Payment and Performance Bonds

3.2.13.1.1 Component Change Order

(a) In the case of the initial Component Change Order, payment and performance bonds furnished by the CM/GC in conformance with and in the form set forth in the Contract Documents designating the CM/GC as the principal obligor and the Owner as the obligee, in an amount of the Change Order Sum covering the Work under that Component Change Order and, in the case of subsequent Component Change Orders, an endorsement to such bonds increasing the aggregate amount of the bonds to an amount equal to the aggregate of the Change Order Sums of all Component Change Orders to this Contract. See also Article 1.8.8. If in connection with a Component Change Order, the CM/GC has furnished payment and performance bonds in the amount approved by the Owner as the reasonably expected aggregate amount of the Change Order Sums of that and any prior Component Change Order and all subsequent Component Change Orders and covering all such Work, then upon entry of a subsequent Component Change Order, no additional endorsement to payment or performance bonds shall be required provided that the aggregate amount of the Change Order Sums of all Component Change Orders does not exceed the penal sum of each bond. However, Owner may require written confirmation from the surety that the outstanding bonds cover the Work under a subsequent Component Change Order. No election or failure of the Owner to request such confirmation shall affect the rights of Owner or others under the existing bonds covering such Work.

(b) As an alternative, the initial payment and performance bonds may be obtained with the penal amount set as the sum of the total CM/GC fees plus the total estimated construction cost at the time of the initial Component Change Order.

3.2.13.1.2 Effect of GMP Change Order Upon Bonds. Upon approval of the GMP Change Order, payment and performance bonds shall be furnished by the CM/GC and in conformance with and in the form set forth in Contract Documents, in the amount of the Guaranteed Maximum Price, designating CM/GC as the principal obligor and the Owner as the obligee. If in connection with a Component Change Order preceding the GMP Change Order, CM/GC has furnished payment and performance bonds covering the Work under Component Change Orders and under the GMP Change Order, and such bonds are in an amount not less than the Guaranteed Maximum Price, no additional payment or performance bonds shall be required. However, Owner may require written confirmation of the surety that the outstanding bonds cover the Work under the GMP Change Order. No election or failure of the Owner to request such confirmation shall affect the rights of Owner or others under the existing bonds covering such Work.

3.2.13.2 Certificates of Insurance. Certificates of insurance required under of this Contract, including those required under Contract Documents.

3.2.13.3 Construction Progress Schedule. Construction Progress Schedule.

3.2.13.4 Construction Budget. Construction Budget.

3.2.13.5 Rental Rates. Schedules for (i) proposed rental rates on heavy construction equipment, and (ii) proposed wage rates of operating engineers. The CM/GC firm shall certify that the proposal for rental rates and proposal for wage rates comply with the Contract Documents.

### **PART 3 GMP CHANGE ORDER**

#### **3.3.1 Guaranteed Maximum Price.**

3.3.1.1 Guaranteed Maximum Price Proposal. The CM/GC shall propose a Guaranteed Maximum Price (GMP) and shall include in his proposal all services, equipment, labor, and materials required by the Contract Documents. Upon approval, the GMP Change Order, including the CM/GC's proposal, will become a part of the Contract Documents.

3.3.1.2 Submission of Guaranteed Maximum Price Proposal. After the completion of Design Development Documents and when the Project drawings and specifications are sufficiently complete, but not later than thirty (30) days after a Construction Documents Change Order, CM/GC shall submit to the Owner a proposed GMP Change Order to establish the Guaranteed Maximum Price, which shall be inclusive of the Cost of the Work, the Construction Contingency (as defined in Section 4 Part 4) and CM/GC's Fee (as defined in Section 4 Part 1). Under the GMP Change Order the CM/GC shall propose (i) to perform the construction of the entire Project in accordance with the assumptions stated in the GMP Change Order or in accordance with the Construction Documents Change Order, as appropriate, for a Guaranteed Maximum Price, which shall be specified in the proposed GMP Change Order, and (ii) to achieve Material Completion of the Project by the Material Completion and Occupancy Date specified in the proposed GMP Change Order.

3.3.1.2.1 GMP Defined. The Guaranteed Maximum Price shall be inclusive of (i) the CM/GC's Estimated Cost of the Work, (ii) the Construction Contingency, (iii) the CM/GC's Fee, and (iv) the CM/GC's Estimated Overhead costs, to be set forth in the proposed GMP Change Order as follows:

- (a) *Estimated Costs*. The proposed GMP Change Order shall include separately identified dollar amounts, stated as fixed sums, for Actual Costs as estimated by the CM/GC for the complete construction of the Project, which amount shall include all Trade Contract and Subcontract Sums, costs of materials, and any Component Change Order Sums;
- (b) *Construction Contingency*. The proposed GMP Change Order shall include, as a separately identified item, a Construction Contingency sum in an initial amount (subject to increase or decrease) against which CM/GC can draw at its election for the purposes set forth in Section 4 Part 4. The initial Construction Contingency sum shall include the contingency amounts stated in all accepted Component Change Orders.
- (c) *CM/GC's Fee*. The proposed GMP Change Order shall include, as a separately identified item, the total Fee for CM/GC's performance of the Work. The Fee shall be stated as a lump sum amount and shall be not more than the amount shown in Paragraph 5 of the Contract.
- (d) *CM/GC's Overhead Costs and Expenses*. The proposed GMP Change Order shall include, as a separately identified items, a lump sum maximum amount for CM/GC's Overhead Costs and Expenses (Preconstruction and Construction) for performance of the Work and a daily rate for Time Dependent Overhead Costs that shall be used in adjusting the maximum amount for CM/GC's Overhead Costs and Expenses in the event the Contract Time is extended for one of the specified reasons for which such time is compensable.
- (e) *Credit for Payments*. The Owner shall receive a credit for all payments made under the Contract Documents, as against the CM/GC Fee and the cost of Basic Services and the Work.

3.3.1.2.2 CM/GC's Statement. CM/GC shall include, as part of the proposed GMP Change Order, a statement identifying:

- (a) A list of the drawings and specifications, including all addenda and Bulletins thereto including without limitation the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.
- (b) All estimates, noting whether they cover furnish and delivery, or furnish, delivery, and installation. The CM/GC's Fee shall not be reduced because the Actual Cost of the estimated item is less than the estimate and shall not be increased because the Actual Cost of the estimated item is greater than the estimate.
- (c) A listing of any trade, Work categories, or other items that are not included in the Guaranteed Maximum Price.
- (d) A Construction Documents Schedule setting forth the dates assumed by CM/GC for the Design Professional's completion of Construction Documents necessary to effect the Program to satisfy Subparagraph 3.3.1.2.2(l) below that have not been completed and approved by Owner, to which schedule the Design Professional shall have agreed.
- (e) A Shop Drawing Approval Schedule setting forth the schedule assumed by CM/GC for the Design Professional's response to Shop Drawings, submitted by CM/GC, to which schedule the Design Professional shall have agreed.
- (f) A Construction Progress Schedule prepared in accordance with this Contract.
- (g) A Construction Budget prepared in accordance with this Contract.
- (h) A Component Schedule showing any Components of the Project that the CM/GC expects the Design Professional to segregate.
- (i) The Design Professional's concurrence with the Construction Documents Schedule, Shop Drawing Approval Schedule, and the Component Schedule referenced above.
- (j) A staffing plan along with a wage and salary schedule for CM/GC's staffing of the project during the course of the Work, for which CM/GC proposes that the Owner reimburse CM/GC Actual Costs under this Contract.
- (k) A proposed budget for CM/GC's estimated Actual Cost for CM/GC's on-site offices and for other temporary structures and equipment and a proposed plan for acquisition of such items.
- (l) A list of the clarifications and assumptions made by CM/GC in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the drawings and specifications.
- (m) The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items, along with the fee, that compose the Guaranteed Maximum Price.
- (n) The Material Completion and Occupancy Date upon which the proposed Guaranteed Maximum Price is based.

3.3.1.3 No Allowances Permitted in GMP. While allowances may be utilized in the cost calculations for portions of the Project not yet fully designed during the Preconstruction Phase of this Agreement, the CM/GC shall not include any cash allowances in the GMP Change Order proposal. The CM/GC may include within the GMP Change Order proposal such assumptions deemed appropriate concerning costing issues used in developing the proposed GMP. The CM/GC acknowledges and agrees that the GMP includes sums for overhead and CM/GC's Fee on account of all assumptions. No demand for overhead and profit other than those included in the GMP shall be allowed.

### **3.3.2 Submittal of GMP Change Order.**

3.3.2.1 Format for Submittal. The CM/GC's proposed GMP Change Order shall be submitted to the Owner as an offer in substantially the form set forth in Exhibit H.

3.3.2.2 GMP Proposal Review Meeting. Following CM/GC's submission of the proposed GMP Change Order and prior to its acceptance, the Owner and Design Professional shall meet with the CM/GC to review the proposed GMP Change Order and the statement of its basis. The Owner and the Design Professional shall promptly notify the CM/GC of any errors or omissions they discover in the presented information during their review of same. CM/GC shall be entitled to make any necessary adjustments to the proposed GMP Change Order as a result of any errors discovered by the CM/GC, the Design Professional, or the Owner prior to its acceptance by the Owner. Neither the Design Professional nor the Owner has any duty to CM/GC to examine the proposed GMP Change Order to discover such errors and no error discovered after acceptance by the Owner of the GMP Change Order shall constitute a basis for a change therein or a modification to this Contract.

### **3.3.3 Acceptance or Rejection of GMP Change Order.**

3.3.3.1 Time for Acceptance or Rejection. The Owner shall have fifteen (15) business days from the receipt of CM/GC's proposed GMP Change Order to accept or reject same.

3.3.3.2 Written Notice of Acceptance. If the Owner accepts the CM/GC's proposed Component Change Order, the Owner shall give written notice of same by returning the proposed Component Change Order with its acceptance endorsed thereon and shall issue to CM/GC a Proceed Order. At that time, the GMP Change Order shall become a part of the Contract Documents. Thereafter, the Work performed thereunder shall be performed and administered in accordance with the Contract Documents. The date of the Proceed Order shall be the starting date for the Work covered by the GMP Change Order.

3.3.3.3 Rejection of GMP Proposal. If the Owner rejects the CM/GC's proposed GMP Change Order, CM/GC may, but shall not be obligated to, revise and resubmit same. In the event no 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.

**3.3.4 Duty to Proceed.** Upon receipt of the Owner's Notice of Acceptance of the GMP Change Order, the CM/GC shall furnish the items required by Article 2.1.2 that are not yet submitted, and on the Proceed Order Date, the CM/GC shall promptly begin or continue the prosecution of the Work in accordance with the Contract Documents and in accordance with any subsequent Construction Document Change Order.

**3.3.5 Modification of GMP.** Whenever this Contract authorizes an increase or decrease in the GMP, the increase or decrease shall operate to increase or decrease the Estimated Cost Component and Fee Component of the GMP Change Order. The Guaranteed Maximum Price shall be subject to additions and deductions by Change Order.

### **3.3.6 Replacement of GMP with Lump Sum Price.**

3.3.6.1 Owner's Option. At Owner's sole option at or after completion of 95% of Construction Documents, Owner may request CM/GC to propose a Lump Sum Price to replace the GMP for full and final completion of the Project. Owner may, in its sole discretion, accept such Lump Sum Price, reject such Lump Sum Price, or enter into negotiations with CM/GC to reach a mutually agreeable Lump Sum Price. The cost of preparation of the Lump Sum Price Proposal may be paid from the Construction Contingency. Upon agreement as to the Lump Sum Price, the change shall be effected by a Lump Sum Price Change Order.

3.3.6.2 Effect of Lump Sum Price Change Order. The Lump Sum Price shall become the Contract Price for full and final completion of the Project in accordance with the Contract Documents. The CM/GC's Fee and the Construction Contingency shall be eliminated from the Construction Budget and, to the extent they have been paid, shall be included in the Lump Sum Fee. Unpaid amounts from these GMP budget categories shall be returned to the Owner, provided however, that CM/GC may retain within the Lump Sum Price the reasonable amounts required for completion of the Design Professional services and for the reasonable CM/GC's Fee to be earned through completion of the Project. Within 10 days of the

execution of the Lump Sum Price Change Order, CM/GC shall present for the approval of the Design Professional and Program Manager and Owner a schedule of values for the periodic payment of the remaining contract balance, which approval shall not be unreasonably withheld.

3.3.6.3 Periodic Payments of the Lump Sum Price. The cost accounting and payment provisions contained in this agreement are superseded and modified to the extent of the following:

(a) *Periodical Estimates and Receipts.*—The CM/GC shall submit to the Design Professional and Program Manager in accordance with a form to be supplied by the Owner (specimen of which will be supplied upon request) an application (sometimes herein designated "periodical estimate") for each payment, and, if requested by the Owner or Design Professional and Program Manager, receipts or other vouchers showing his payments for materials and labor, including payments to Trade Contractors, Trade Suppliers, and subcontractors.

(b) *Initial Breakdown and Periodical Payments.*—If payments are made on valuation of work done, such application shall be submitted at least ten days before each payment falls due. Before the first application, the CM/GC shall submit to the Design Professional and Program Manager a schedule of values of the various parts of the work, including quantities, aggregating the total sum of the contract, divided in such manner as to facilitate payments to Trade Contractors, Suppliers, and subcontractors, on a form to be furnished by the Owner with a complete breakdown of the Lump Sum Price so arranged and so itemized as to meet the approval of the Design Professional and Program Manager and, if requested, supported by such evidence as to its correctness as the Design Professional and Program Manager may direct. The schedule, designated herein the "initial breakdown" (specimen of which will be supplied on request), when approved by the Design Professional and Program Manager, shall be used as a basis for certificates of payment unless it be found to be in error. In applying for payments, the CM/GC shall submit a statement based upon this schedule on the periodical estimate form and, if requested by the Design Professional and Program Manager or Owner, said statement shall be itemized in such form and supported by such evidence as the Design Professional and Program Manager or Owner may direct, showing the CM/GC's right to the payment claimed on the periodical estimate.

(c) *Materials stored.*—If periodic payments are made on account of materials delivered and suitably stored on or off-site with Owner's prior approval but not incorporated in the work, they shall, if required by the Owner or the Design Professional and Program Manager, be conditional upon submission by the CM/GC of bills of sale or such other procedure as will establish the Owner's title to such material or otherwise adequately protect the Owner's interest. The CM/GC is responsible for the existence, protection, and, if necessary, replacement of materials until issuance of the Final Certificate by the Design Professional and Program Manager.

(d) *Processing of Periodical Estimates.*—The Contract Compliance Specialist will review the Periodical Estimate prepared by the CM/GC and, if he concurs, execute a certificate on the face of the Periodical Estimate as to its accuracy. The Design Professional and Program Manager shall visit the project site after the CM/GC and Contract Compliance Specialist have agreed on the Periodical Estimate and conduct such inspections and reviews as are necessary to make a decision as to the accuracy of the Periodical Estimate. If the Contract Compliance Specialist and the CM/GC cannot agree on the appropriateness of the Periodical Estimate in question, the Design Professional and Program Manager shall make a decision. Upon determining the appropriateness of the estimate, the Design Professional and Program Manager shall execute the certificate of Periodical Estimate and forward it to the Owner for payment.

3.3.7.4 Changes to the Lump Sum Price. As otherwise permitted by this Contract, the Lump Sum Price shall be subject to additions and deductions by Change Order.

#### **PART 4 CHANGES TO THE WORK**

**3.4.1 Acknowledgement of Existing Physical Conditions.** In undertaking the work under this Contract, the CM/GC acknowledges that he has visited the premises and has taken into consideration all open and apparent conditions that might affect his work. No claim based on lack of knowledge of existing conditions shall be allowed unless the existing physical conditions cannot be discovered by a reasonably observant person. Any claims relating to conditions that are materially different from the Contract Documents that were not open and apparent may be adjusted as provided in this Part.

**3.4.2 Owner's Right to Make Changes.** Without invalidating the Contract, the Owner, by Change Order and

without notice to the sureties, may authorize or order extra work or changes by altering, adding to, or deducting from the Work or the Contract Time, the Contract Sum being adjusted accordingly. All Change Orders shall be performed under the conditions of the original Contract except that any claim for extension of time caused thereby shall be adjusted at the time of signing of the Change Order. (See Change Order formats in Section 7.) Prior to the issuance of the Proceed Order, the CM/GC and the Owner shall advise each other in writing of their designees authorized to accept and approve changes to the Contract Sum and the limits to each designee's authority. Should any designee or limits of authority change during the time this Contract is in effect, the CM/GC or Owner shall give written notice to the other as provided in Article 1.1.5. There is no legal limitation on the Owner's right to make changes such as may be, in the Owner's sole discretion, useful or desirable to the Project.

**3.4.3 Changes Forbidden without Consent of Owner.** Neither the Design Professional nor the CM/GC shall make any change whatsoever in the work without an approved Change Order. In the absence of an approved Change Order, the CM/GC shall have no claim for payment, repayment, reimbursement, remittance, remuneration, compensation, profit, cost, overhead, expense, loss, expenditure, allowance, charge, demand, hire, wages, salary, tax, cash, assessment, price, money, bill, statement, dues, recovery, restitution, benefit, recoupment, exaction, injury, damages, or time based upon or resulting from any change. The provisions of this Article do not apply to emergencies as described in Article 1.4.4.

**3.4.4 Form and Execution of Change Orders**

3.4.4.1 The Change Order. The Change Order is the instrument by which adjustments in the Contract Sum and the Contract Time are effected. The Change Order shall be accompanied by a breakdown as set forth in Paragraph 3.4.7.4. The breakdown is for the purpose of enabling the Design Professional and the Owner to make a judgment on the dollar amount of the adjustment in the Contract Sum and is not a part of the Change Order. No condition, term, qualification, limitation, exception, exemption, modification, or proviso, except as set forth in this Part, shall appear in the breakdown. Only such conditions, terms, qualifications, limitations, exceptions, exemptions, modifications, and provisos as are permitted under this Part are valid. The Design Professional shall certify to the dollar amount and description of the adjustments permitted by the Change Order.

3.4.4.2 Execution of Change Orders. Change Orders shall be signed by the CM/GC, ordinarily certified by the Design Professional, and approved by the Owner in accordance with the form of Change Order prescribed by the Owner. No request for payment by the CM/GC for a Change Order shall be due, nor shall any such request appear on an Application for Payment, until the Change Order is executed by the Owner. In the event of emergency (see Article 1.4.4) or significant impact to the Overall Project Schedule, the Owner shall direct the Change Order to proceed upon a Force Account until the cost and time is resolved in the manner set forth in Paragraph 3.4.7.3 below.

3.4.4.3 Disagreement between Design Professional and CM/GC.

3.4.4.3.1 As to GMP and Fees. Should the Design Professional disagree with the CM/GC as to the amount of the adjustment to the GMP or CM/GC Fees and such disagreement is not resolved between them within seven days, the Owner, if it desires the Change Order work to proceed, may direct a Change Order for Force Account or Indeterminate Units.

3.4.4.3.2 As to Contract Time. Should the Design Professional disagree with the CM/GC as to the amount of the adjustment to the Contract Time and such disagreement not be resolved between them within seven days, the decision of the Design Professional as to any adjustment in the Contract Time, including any designation by the Design Professional of such time as is eligible for Time Dependent Overhead Costs, shall be final, subject to protest to the Owner of the Design Professional's decision as set forth in Section 5 Part 2.

3.4.4.3.3 As to Other Disagreements. Should the Design Professional disagree with the CM/GC as to matters other than Contract Sum or Contract Time, the dispute shall be resolved by the Owner as set forth in Section 5, Part 2.

3.4.4.4 Change Order Conditions. All Change Orders are issued under the following conditions and shall contain the following language as appropriate:

3.4.4.4.1 For Lump Sum Change Order: The payment and extension of time (if any) provided by this Change Order constitutes compensation in full to the CM/GC and its Subcontractors and Suppliers for all costs and markups directly and indirectly attributable to the Change Order

herein, for all delays related thereto and for performance of changes within the time stated.

3.4.4.4.2 For Force Account or Indefinite Amount Change Order: The payment and extension of time (if any) provided by this Change Order constitutes interim compensation to the CM/GC and its Subcontractors and Suppliers for actual costs and markups directly and indirectly attributable to the Change Order herein, for all delays related thereto and for performance of changes within the time stated.

3.4.4.4.3 For All Change Orders: Any changes or reservations by the CM/GC to the representations and releases in the Change Order, or refusal of the CM/GC to execute the Change Order, shall be a material breach of this Contract that may be sufficient cause to issue a declaration of default.

**3.4.5 All Cost and Time Impacts to be Included.** Each Change Order shall include all time and monetary impacts of the change. Failure to include a change in Contract Time or in Contract Sum in Change Orders shall be considered a zero price/zero time Change Order and shall waive any change in Contract Time and Contract Sum. Commencement of Work upon a Change Order is conclusive proof that the CM/GC accepts the Change Order.

**3.4.6 Changes in Contract Time.** All Change Orders must state that the Contract Time and the Material Completion and Occupancy Date either are not changed or are increased or decreased by a specific number of Days. The CM/GC must provide written justification for the extension to the Design Professional and to the Owner. The written justification must demonstrate an anticipated actual increase in the time required to complete the Work beyond that allowed by the Contract as adjusted by prior Change Orders to the Contract. No extension to the Contract Time shall be allowed unless the additional or changed Work increases the length of the critical path beyond the Material Completion and Occupancy Date. If approved, the increase in time required to complete the Work shall be added to the Contract Time. The Owner may decrease, by Change Order, the Contract Time when an Owner-requested deletion from the Work results in a decrease in the actual time required to complete the Work as demonstrable on the critical path of the Construction Progress Schedule. Eligibility and processing requirements for Time Dependent Overhead Costs for compensable delay is addressed in Article 3.5.8 and 3.5.10.

**3.4.7 Determining the Cost to Owner for Changes.** The cost to the Owner of any change shall be determined in one or more of the following ways:

3.4.7.1 Lump Sum. The Change Order cost is determined by mutual agreement as a lump sum amount changing the Contract Sum allowed for completion of the Work. The Change Order shall be substantiated by documentation itemizing the estimated quantities and costs of all labor, materials and equipment required as well as any mark-up used. The price change shall include the cost percent allowed for the CM/GC's overhead and profit and, if eligible, Time Dependent Overhead Costs.

3.4.7.2 Unit Price Work. The Change Order cost is calculated by using unit prices and calculating the number of net units of Work in each part of the Work that is changed, either as the Work progresses or before Work on the change commences, and by then multiplying the calculated number of units by the applicable unit price set forth in the Contract or multiplying by a mutually agreed unit price if none was provided in the Contract. No additional percentage markup for overhead or profit shall be added to the unit prices as this markup is included within the unit prices. Time Dependent Overhead Costs will be added if eligible.

3.4.7.3 Force Account. The Change Order cost is accomplished by Force Account in the event the CM/GC and Design Professional cannot agree on the cost of the Change Order or the cost cannot be reasonably determined prior to beginning the Work.

3.4.7.3.1 A Force Account is the establishment by the Owner's Incumbrance Record of a maximum dollar amount (Stipulated Maximum Sum) beyond which no changed work may be undertaken, subject to amendment, for funding all costs of a Change Order. As the Work authorized by the Change Order progresses, the CM/GC must provide an accounting of actual costs incurred in accomplishing the Work. The accounting must include an annotated copy of the Overall Project Schedule to accurately show the status of the Work at the time the Change

Order utilizing a Force Account is issued, to show the start and finish of the changed Work, and to show the status of the Work when the changed Work is completed.

3.4.7.3.2 Actual costs, except as otherwise agreed to in writing by the Owner, shall not exceed those prevailing for the trades or crafts, materials, and equipment in the locality of the Project, may include only those items listed as allowable in Article 3.4.9, and shall not include any of the costs listed as not allowable in Article 3.4.10. The Owner shall be permitted, on a daily basis, to verify such records and may require such additional records as are necessary to determine the cost of the change to the Work.

3.4.7.3.3 The Owner shall prescribe the dollar limit for a Force Account in writing by authorizing a Stipulated Maximum Sum of money to be committed toward execution of the said change, and the CM/GC shall have no authority to perform any change that will cost the Owner in excess of the Stipulated Maximum Sum. The Stipulated Maximum Sum shall be based on the estimated cost of the Work and the CM/GC's allowance for overhead and profit as set forth in 3.4.8 below, including any time extension, an increase in the maximum amount for Time Dependent Overhead Costs (if eligible), and a reasonable contingency. It shall be the sole responsibility of the CM/GC to apply in writing to the Owner, NOT to the 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.

3.4.7.3.4 Within fourteen days of the conclusion of such Work ordered by Force Account, the CM/GC and the Owner shall arrive at the total lump sum cost for the Change Order. Such lump sum cost shall be incorporated into and finalize the Change Order, and shall reference and close the Incumbrance Record establishing the Force Account.

3.4.7.4 Breakdown of Expenditures. The CM/GC shall review any Owner requested or directed change and shall respond in writing within fourteen calendar days after receipt of the proposed change (or such other reasonable time as the Owner may direct), stating the effect of the proposed change upon his Work, including any increase or decrease in the Contract Time and Sum. The CM/GC shall furnish to the Owner and the Design Professional an itemized breakdown of the quantities and prices and expenditures for labor and materials used in computing the proposed change in Contract Sum, in the form prescribed by the Owner, and 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 the CM/GC; and that the quantities shown do not exceed actual requirements.*

The CM/GC shall obtain and furnish as back up to the CM/GC's breakdown a separate breakdown for each subcontractor's charges prepared by each subcontractor on the letterhead of the subcontractor and properly signed by the subcontractor. The Owner shall review the CM/GC's proposal and respond to the CM/GC within fourteen days of receipt.

### **3.4.8 Overhead and Profit for Change Orders.**

3.4.8.1 Overhead and Profit. The percentage for overhead and profit to be used in calculating additive changes in the Work (not including changes covered by unit prices) shall not exceed the percentages for each category listed below. Said percentages for overhead and profit shall be applied only on the net cost of the changed Work, (i.e., the difference in cost between original and revised Work). Unless otherwise agreed in the Change Order, half of the percentage shall be applied to the maximum amount for Overhead Costs and Expenses; and the balance applied to the Construction Fee. If any extension of time is deemed eligible for Time Dependent Overhead costs, the amount calculated by multiplying the daily rate for Time Dependent Overhead Costs times the number of days approved shall additionally be added to the maximum amount for Overhead Costs and Expenses. Payments on account of change orders shall then be made as set forth in Section 4 of the General Requirements.

3.4.8.1.1 CM/GC. If the CM/GC does all or part of the changed Work with employees that work directly for the CM/GC (self-performance), its markup for overhead and profit on the changed

Work the CM/GC performs with its employees shall not exceed twenty percent (20%) of the net Allowable Costs, if any.

3.4.8.1.2 Subcontractor. If a Subcontractor does all or part of the changed Work with employees that work directly for the Subcontractor, the Subcontractor's markup for overhead and profit shall not exceed twenty percent (20%) of his net Allowable Costs.

3.4.8.1.3 CM/GC's Markup on Subcontractor' Work. The CM/GC's management markup on the subcontractor's net additional allowable expenditures shall exceed a total of ~~be~~ seven and one half percent (7.5%) of the amount due to the Subcontractor (including Subcontractor's overhead and profit).

3.4.8.1.4 Second and Lower Tier Subcontractor. Under this contract, the forces of a subcontractor of a subcontractor are deemed to be and are the forces of the subcontractor and the total management markup for overhead and profit for all tiers of subcontractors shall not exceed in the aggregate twenty (20%) of the net Allowable Costs of the subcontractor who performs the work.

3.4.8.2 The above percentages shall be applied to the net Allowable Costs, if any, as limited and defined in this Part. If the net difference between Allowable Costs and credits to the Owner results in a decrease in the Owner's cost, the amount of credit allowed the Owner shall be the net decrease without any allowance for profit and overhead. Eligible Time Dependent Overhead Costs and all costs that are not Allowable Costs in Article 3.4.9 or are disallowed in Article 3.4.10 shall be considered as overhead and shall be exclusively compensated in the allowances provided for in paragraph 3.4.8.1 above.

**3.4.9 Allowable Costs for Changes in the Work.** Allowable cost for changes to the Work are limited to the following:

3.4.9.1 Labor costs for employees directly employed in the change in the Work, including salaries and wages plus the cost of payroll charges and fringe benefits and overtime premiums, if such premiums are explicitly authorized by the Owner, set at rates established in the manner set forth in Article 2.1.7.

3.4.9.2 Materials incorporated into the change to the Work, including costs of transportation, handling, fuel, and on-site storage, if applicable.

3.4.9.3 Equipment incorporated in the changed Work or equipment used directly in accomplishing the Work. If the equipment is rented expressly for accomplishing the change in the Work, that cost shall be the rental rate according to the terms of the rental agreement, which the Owner shall have the right to approve, or shall be set at rates established in the manner set forth in Article 2.1.7. The decision of the Owner shall be final, binding, and conclusive on all parties.

3.4.9.4 Costs of increases in premiums for the CM/GC's Payment Bond and Performance Bond or for bond premiums for its Subcontractors, to the extent that such increased costs are a result of coverage adjustments for changes in Work approved by the Owner. Prior to requesting payment for the Change Order work, the CM/GC shall provide proof of its notification to the Surety of the change in the Work and of the Surety's agreement to include such change in its coverage. The cost of the increase in premium shall be an allowable cost but shall not be marked up. In no event shall a cost in excess of two percent of the cost of the change be allowable.

3.4.9.5 Sales, consumer, use, and other applicable taxes that are legally in effect at the time the change order is approved.

3.4.9.6 Any other costs directly attributable to the change in the Work, such as professional engineering costs, except those set forth in Articles 3.4.8 and 3.4.10.

3.4.9.7 For Change Order Work directed by the Owner, where the headquarters of the Subcontractor actually performing the work is more than 100 miles from the Project Site, the Subcontractor may include in the cost of the Change Order a stipend of fifty dollars per day for each worker performing work at the Site if that worker is receiving a per diem under present company policy, not to exceed the number of workers and number of days determined by Design Professional's decision to be attributable to the new

work so ordered, so long as the number of workers and number of days attributable to any deleted work is deducted there from. No allowance for overhead or profit as set forth in Article 3.4.8 may be added to the Change Order cost on account of the stipend amount, and the full amount of the stipend must be actually paid to the eligible worker or it shall be forfeited by the CM/GC and Subcontractor(s).

3.4.9.8 The Owner may require any or all of the following documentation to be provided by the CM/GC to support the Allowable Costs:

- (a) certified payroll records showing the name, classification, date, daily hours, total hours, rate, and extension for each laborer, foreman, supervisor or other worker;
- (b) equipment type & model, dates, daily hours, total hours, rental rate or other specified rate, and extension for each unit of equipment;
- (c) invoices for materials showing quantities, prices, and extensions;
- (d) daily records of waste materials removed from the Site and/or fill materials imported to the Site;
- (e) certified measurements of over excavations, piling installed and similar work; and/or
- (f) transportation records for materials, including prices, loads, and extensions.

**3.4.10 Costs Not Allowable for Changes in the Work.** Costs not allowable under any circumstances are as follows:

3.4.10.1 Costs due to the negligence of the CM/GC, Subcontractors, or other persons for whom the CM/GC is responsible, including but not limited to costs of delay, costs for the correction of Non-Compliant Work, costs for improper disposal of material, costs for equipment wrongly supplied, costs for the CM/GC's delay in performing the Work, or costs for delay in ordering and obtaining normally available materials or equipment.

3.4.10.2 Home office expenses, including payroll costs for the CM/GC's or any Subcontractors' officers, executives, administrators, accountants, counsel, engineers, timekeepers, estimators, clerks, and other similar administrative personnel employed by the CM/GC, whether at the Site or in the CM/GC's or a Subcontractor's principal or branch office for general administration of the Work (including those referred to as "Eichlay costs"). These costs are deemed overhead included in the percentage markups allowable in Article 3.4.8 above.

3.4.10.3 Home and branch office expenses that include, but are not limited to, expenses of CM/GC's home and branch offices, CM/GC's capital expenses, interest on CM/GC's capital used for the Work, charges for delinquent payments, small tools, incidental costs, rent, utilities, telephone and office equipment, and other general overhead expenses of the home and branch office (including those referred to as "Eichlay costs").

3.4.10.4 Where Work is deleted from the Contract (by Bulletin, Change Order, or otherwise) prior to commencement of that Work without substitution of other similar Work, one hundred percent of the Contract Sum attributable to that Work shall be deducted from the Contract Sum. However, in the event that material submittals have been approved and orders placed for said materials, a lesser amount as justified by proper documentation shall be deducted from the Contract Sum. The credit if any to the Owner for reduced premiums on payment bonds and performance bonds shall be in all cases one hundred percent of the credit. If the deductive Change Order affects the critical path or the schedule and it causes an overall reduction in the Contract Time, jobsite time dependent expenses shall be included in the deduction at the rate established in the Contract for Time Dependent Overhead Costs.

3.4.10.5 Wages of a foreman, if the foreman is concurrently supervising other Work at the Site.

3.4.10.6 Premiums for bonds required of Subcontractors by the CM/GC.

**3.4.11 Change Order Formats.** Formats for Lump Sum Change Orders and for Change Orders based upon either a force account or upon unit pricing with an indeterminate number of units are in Section 7, Forms.

**3.4.12 Changes due to Subsurface or Other Unforeseen Conditions.**

3.4.12.1 Subsurface Conditions. Unless the Contract Documents stipulate specific quantities and units

of rock or unsuitable soils, the CM/GC shall assume material below the surface of the Earth to be earth and other material that can be removed by power shovel or similar equipment. Should conditions encountered below the surface of the ground be at variance to the number of unit requirements as indicated by drawings or specifications, and absent an agreed-upon unit price established prior to the bid by Addendum, or after contract execution by Change Order, the Contract Sum and/or time shall be adjusted as provided in the Contract Documents for changes in the work.

3.4.12.2 Other Unforeseen Conditions. If unknown physical conditions are encountered at the Site that differ materially from those indicated in the Contract Documents, then the CM/GC shall give notice to the Design Professional promptly before conditions are further disturbed, but in no event later than two business days after the first observance of the conditions. The Design Professional shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the CM/GC's cost or time required for performance of any part of the Work, the Design Professional may recommend an adjustment by Change Order to the Contract Sum or Contract Time, or both. If the Design Professional determines that the conditions at the Site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Design Professional shall so notify the Owner and the CM/GC in writing, stating the reasons. Protest by either party of the Design Professional's decision shall be in accordance with Section 5, Part 2.

**3.4.13 Compensable Rock.** CAUTION: No rock for which extra compensation is expected to be received shall be removed except pursuant to and in conformity with a written authorization or order of the Owner. Unless otherwise provided in the Bid Documents, no removal of rock as defined herein shall be included in the Bid. 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.

3.4.13.1 Definitions of Compensable Rock. Rock, for the purposes of pricing its removal, is defined as follows:

3.4.13.1.1 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 56,000 pounds (Caterpillar D-8K or equivalent) and occupies an original volume of at least one cubic yard.

3.4.13.1.2 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 56,000 pounds (Caterpillar D-8K or equivalent) and occupies an original volume of at least one cubic yard.

3.4.13.1.3 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 18,300 pounds (Caterpillar Model 215 or equivalent) and occupies an original volume of at least one-half cubic yard.

3.4.13.1.4 Caisson Rock. Caisson Rock is defined as material that must be removed from a shaft which cannot be penetrated faster than two 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 1,000,000 inch pounds and a downward force of at least 50,000 pounds (a Hughes LLDH in good working condition) for piers up to seventy two 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 feet per hour (fifteen minute minimum). In rare cases, refusal may occur on a rock seam or boulder above the general massive rock surface. The compensation for Caisson Rock should include only material that cannot be penetrated by the rock auger at the specified rate.

3.4.13.2 Pricing for Compensable Rock. All compensable rock shall be priced by unit prices upon volume prior to removal and shall be calculated by survey and engineering calculations. No rock shall be priced by truckload, bucket load, or other similar pricing methods. Unit prices shall be determined prior to removal, either in the Contract Documents or by Change Order. Unit prices shall be inclusive of all profit and overhead, except for Time Dependent Overhead Costs. Unit prices shall include the following:

- (a) Excavation and removal of all rubble;

- (b) Addition and removal of overburden for blasting;
- (c) Excavation of all blast rubble;
- (d) Replacement of suitable soils in areas of overblasting or over removal; and
- (e) All costs of labor, equipment, supplies, blasting materials, safety requirements, drayage, haulage, and disposal, including offsite disposal costs.

The CM/GC expressly agrees that the CM/GC's sole monetary remedy for extensions of Contract Time due to removal of rock that materially affects the completion of the Work by lengthening the critical path of the Overall Project Schedule shall remain limited by the maximum amount for Time Dependent Overhead Costs (as amended) in the Contract. Extensions of Time and compensation for Time Dependent Overhead Costs for compensable rock are to be processed as a Change Order pursuant to Article 3.4.6.

**3.4.14 Subcontractor Claims for Extended Overhead Costs.** The daily rate for Time Dependent Overhead Costs established in the Contract is intended to compensate the CM/GC for the additional jobsite overhead costs resulting from any compensable time extension. The CM/GC, in its sole discretion, shall be responsible for allocating the Time Dependent Overhead Costs among its affected subcontractors and itself. Owner's payment of the Time Dependent Overhead Costs to the CM/GC, and CM/GC's allocation thereof, shall constitute the only monetary compensation the CM/GC and subcontractors shall be entitled to receive as reimbursement for Time Dependent Overhead Costs incurred as a result of any compensable delay to the Project.

**3.4.15 Release of Claims.** The execution by the CM/GC of a Change Order shall be and operate as a release to the Owner of all claims by the CM/GC and of all liability owing to the CM/GC for all things done or furnished in connection with the Work described in the Change Order. The execution of any Change Order by the Owner shall not be an acceptance of any Work or materials not in accordance with the Contract Documents, nor shall it relieve the CM/GC of responsibility for faulty materials or workmanship or operate to release the CM/GC or his surety from any obligation arising under the Contract or the Performance Bond or Payment Bond.

**3.4.16 Sole Source Designation for Change Order Work.**

3.4.16.1 Definition of Sole Source. As used in this Article 3.4.16, "Sole Source" means a Trade CM/GC or Supplier or Subcontractor specified by name in a Bulletin 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.

3.4.16.2 Limitations. This Article 3.4.16 applies only to Bulletins referenced in a proposed Change Order that designates a Sole Source that was not designated in the Bidding Documents. Except as stated in this Article, the CM/GC's inability to obtain payment and performance bonds from Sole Source Subcontractors or warranties from Subcontractors, as required under the Bidding Documents for this Contract, shall not otherwise excuse the CM/GC from its bonding and warranty obligations under this Contract.

3.4.16.3 Sole Source as Grounds for Rejection of a Change Order. If a Change Order is submitted to CM/GC for the purposes of adding a Bulletin to this Contract and said Bulletin 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, CM/GC shall be entitled to reject the proposed Change Order if the designated Sole Source refuses to provide to CM/GC the warranties, bonds, terms or schedule required under the Contract Documents, including any warranty or terms or schedule required by Bulletins referenced in the proposed Change Order. In such event, CM/GC shall give written notice to the Owner rejecting the proposed Change Order and, if possible, shall accompany said written notice with a proposal from CM/GC for changes or modifications to the Bulletin so as to eliminate the Sole Source designation but to achieve goods or services equal in quality or function. The Owner may then require the Design Professional to revise the subject Bulletin so as to eliminate the designation of the Sole Source by incorporation of CM/GC's proposal or otherwise. Upon revision of the Bulletin by the Design Professional and approval thereof by the Owner, the Owner shall again submit to the CM/GC a proposed Change Order for the purpose of adding the revised Bulletin to this Contract. If the 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.

3.4.16.4 No Excuse Without Notice. If CM/GC accepts a proposed Change Order adding a Bulletin to this Contract that designates a Sole Source without invoking this Article and putting the Owner on notice, CM/GC shall not be excused from its obligations with respect to the described Work by reason of the refusal of a designated Sole Source to provide warranties as required under this Contract.

**3.4.17 Effect of Change Order.** A Change Order takes precedence over any inconsistent terms of the Contract Documents preexistent to the Change Order.

## **PART 5 TIME**

**3.5.1 Time is of the Essence.** Time is of the essence of this Contract and all obligations hereunder.

**3.5.2 Competent Management of Time.** The CM/GC has represented to the Owner, in order to be awarded this contract, that the CM/GC is experienced in managing construction in accordance with contract requirements and in a timely manner and that the CM/GC has included in his proposal sufficient sums to carefully and competently manage this project for completion within the stipulated Contract Time.

### **3.5.3 Contract Time.**

3.5.3.1 Fair and Reasonable. The CM/GC has carefully examined and analyzed the Site, the Contract Documents, and all known factors related to his ability to complete this project within the Contract Time stipulated. By submitting his bid for this project, the CM/GC agrees that the stipulated Contract Time is fair and reasonable.

3.5.3.2 Delays. The parties recognize there may be delays to perform Change Order work in the event that conditions encountered at the Site are different from those indicated in the Contract Documents, or to perform Change Order work to correct errors in the plans and specifications. Execution of any change must be authorized. In such event, there shall be an adjustment in the GMP as provided in the Contract Documents for changes in the Work. The parties agree that such delays are not a ground for claiming extraordinary remunerations except as set forth in this Contract in Article 3.5.8 below.

### **3.5.4 Commencement, Prosecution, and Completion.**

3.5.4.1 Commencement, Prosecution, and Completion of Work. The CM/GC will be required (a) to commence the Work under this Contract on the applicable Proceed Order Date, (b) to prosecute the Work with faithfulness and energy (c) to install the various parts of the work with equal steps shown on the Overall Project Schedule and at the same rate (or better) shown on the Overall Project Schedule and (d) to complete the Work within the Contract Time, as adjusted. Commencement of the Work shall mean actual physical work on the Site. Unless otherwise agreed, and subject to Change Orders, Material Completion of the Project must be achieved on or before the date established as the Material Completion and Occupancy Date under the Schedule.

3.5.4.2 CM/GC's Acceleration for failure to meet Schedule Requirements. In the event the CM/GC shall be delinquent in respect to achieving the Milestone dates established in the Overall Project Schedule, CM/GC shall, within seven days after receipt of written demand of the Owner, cause its employees and Subcontractors to perform work at an accelerated pace with hours and days in addition to the normal working hours and working days, as necessary to promptly bring the Work into compliance with the Overall Project Schedule. Fulfillment of this requirement as to overtime work shall not relieve the CM/GC from liability for breach of the covenant as to time. For account of recovery of lost time required of the CM/GC for its breach of covenant as to time, the CM/GC shall be entitled to no claim against the Owner for any payment, repayment, reimbursement, remittance, remuneration, compensation, profit, cost, overhead, expense, loss expenditure, allowance, charge, demand, hire, wages, salary, tax, cash, assessment, price, money, bill, statement, dues, recovery, restitution, benefit, recoupment, exaction, injury or damages.

### **3.5.5 Construction Progress Schedule and Overall Project Schedule.**

3.5.5.1 Submittal, Approval, and Updates. Not later than sixty days after the Effective Date of the Contract, but prior to the Proceed Order, the CM/GC must submit a Construction Progress Schedule in accordance with Section 2.1.5.

3.5.5.2 Approval of Overall Project Schedule. . Upon recommendation by the Design Professional and

approval by the Owner, the Construction Progress Schedule shall become the Overall Project Schedule, and becomes a part of this Contract. The Overall Project Schedule shall govern the schedule of activities of the CM/GC under this Contract

3.5.5.3 **Monthly Updates.** The CM/GC must provide the Design Professional and the Owner with monthly updates of the Overall Project Schedule indicating completed activities and any changes in sequencing or activity durations. (See also Articles 2.1.2 and 2.1.5).

**3.5.6 Completion Date.** The Work under this Contract shall be completed by midnight of the date required in the Contract as the Material Completion and Occupancy Date unless extended by approved requests for extension of time.

**3.5.7 General Rule – No Damages for Delay, Extension of Time Sole Remedy.** CM/GC shall not be entitled to any damages for delay or to any other reimbursement as a Cost of the Work, or to an increase in the contract amount, or to payment, damages, monies, or compensation of any kind from Owner for direct, indirect, impact, or disruption damages (including but not limited to costs of acceleration of Work or any Phase thereof) arising because of delay or other hindrance of any kind whatsoever; except as specifically permitted by Article 3.5.8. Extension of the time is the CM/GC's sole remedy for any delays not the fault of the CM/GC.

**3.5.8 Exception to General Rule – Compensable Delay.** The extension of the Contract Time and the adjustment to the Contract Sum specifically provided for in this Article shall be CM/GC's sole and exclusive remedy for delays, hindrances, interferences or resulting inefficiencies and re-sequencing.

3.5.8.1 Compensable Delay – Unavoidable Delay.

3.5.8.1.1 Delay by Owner or Design Professional. If the CM/GC is delayed in the progress of the Work between the Proceed Order Date and the Material Completion and Occupancy Date, as amended, by an act or neglect of the Owner, Owner's employees, Design Professional or Separate Contractors employed by the Owner, or by other causes beyond the CM/GC's control which the Design Professional determines are the fault of the Owner or the Design Professional and may justify delay, then the Contract Time will be extended by Change Order for such reasonable time as the Design Professional and the Owner may determine; provided, however, that (i) such delays extend the Overall Project Schedule's critical path; (ii) the CM/GC has taken all reasonable actions to mitigate the effects of the delay on the Work; (iii) the fault or negligence of the CM/GC, the CM/GC's agents or employees did not materially contribute to such causes; and (iv) the CM/GC shall have notified Owner of the cause or causes of such delay within fourteen days from the date on which the CM/GC first becomes aware of such delay.

3.5.8.1.2 Delay in Responses to Submittals. Any claim by CM/GC for a change in the Material Completion and Occupancy Date due to delay of responses to submittals that materially affect the completion of the Work by lengthening the critical path of the Construction Progress Schedule may be made during the time while the failure of the Design Professional to act or perform continues, or within seven days after such failure to act or perform has been cured. If no Submittal Schedule or agreement as required in Paragraph 2.2.3.1 is agreed upon, then a claim for delay will be allowed only after the Design Professional has been allowed fourteen days to take action. Any claim for extension of time must be reasonable and take into consideration the nature of the submittal.

3.5.8.1.3 To be Processed as a Part of the Change Order Process. Extensions of Time and compensation for Time Dependent Overhead Costs for Unavoidable Delay are to be processed as a Change Order pursuant to Article 3.4.6.

3.5.8.2 Compensable Delay – Certain Change Orders.

3.5.8.2.1 Owner-Requested Changes. If the Owner requests changes in the Contract Documents that would materially affect the completion of the Work by lengthening the critical path of the Overall Project Schedule, the Design Professional shall determine the appropriate number of days and thereby extend the Material Completion and Occupancy Date. The CM/GC expressly agrees that the CM/GC's sole monetary remedy for such extensions of Contract Time shall remain limited by the maximum amount for Time Dependent Overhead Costs (as amended) in the Contract.

3.5.8.2.2 Other Change Orders. For Change Orders involving the following situations that would materially affect the completion of the Work by lengthening the critical path of the Construction Progress Schedule, the Design Professional shall determine the appropriate number of days and thereby extend the Material Completion and Occupancy Date. The CM/GC expressly agrees that the CM/GC's sole monetary remedy for such extensions of Contract Time shall remain limited by the maximum amount for Time Dependent Overhead Costs (as amended) in the Contract.

- (a) Changes due to Subsurface or Other Unforeseen Conditions, Article 3.4.12.
- (b) Changes for Compensable Rock, Article 3.4.13.
- (c) Changes deleting work, Paragraph 3.4.10.4

3.5.8.2.3 To be Processed as a Part of the Change Order Process. Extensions of Time and compensation for Time Dependent Overhead Costs for all Change Orders are to be processed as a part of each Change Order pursuant to Article 3.4.6.

3.5.8.3 Compensable Delay – Force Majeure. If, between the Proceed Order Date and the Material Completion and Occupancy Date, as amended, the CM/GC is unable to perform or is delayed in the performance of any of the terms and provisions of this Contract, that materially affects the completion of the Work by lengthening the critical path of the Construction Progress Schedule, as a result of (i) governmental preemption of materials in connection with a national emergency declared by the President of the United States; (ii) riot, insurrection, acts of terror or terrorism or other civil disorder affecting performance of the Work; (iii) labor strikes that could not be reasonably anticipated, or (iv) earthquakes, or unusual and extreme weather conditions constituting Acts of God, then, and in any such event, such inability or delay shall be excused, and the time for completing the affected portions of the Project (and the entire Project, if applicable) shall be extended for such reasonable period of time as the delay has affected the critical path of the performance of the Work hereunder.

3.5.8.3.1 Mitigation of Delay. CM/GC shall take all reasonable actions to minimize the delay caused by any of the above factors, and shall notify Owner in writing with a copy to the Design Professional of any event allowing for excuse or delay not later than seven days after the CM/GC first becomes aware of the event, or should have become aware, of the event; otherwise CM/GC will be deemed to have waived the excuse or delay.

3.5.8.3.2 To be Processed as a Part of the Change Order Process. Extensions of Time and compensation for Time Dependent Overhead Costs for *Force Majeure* are to be processed as a Change Order pursuant to Article 3.4.6.

3.5.8.4 Compensable Delay – Abnormal Weather. Extensions of time will be granted for abnormal inclement weather conditions that delay the critical path of the progress of the work.

3.5.8.4.1 Abnormal weather delay is defined as days lost to weather conditions either (i) in excess of days specified in the Supplementary General Conditions, or (ii) if not defined in the Supplementary General Conditions, as days in excess of a local historic average prevailing at the Site recorded by the National Oceanic and Atmospheric Administration (NOAA) for the 120 months immediately preceding the Proceed Order Date.

3.5.8.4.2 Not later than ten days after of the first occurrence of the event giving rise to the claim or with respect to claims for extension of time as a result of abnormal weather, and not later than ten days after the end of each calendar month thereafter, the CM/GC shall file a claim with the Design Professional with a copy to the Owner. By not later than fifteen days from the receipt of the claim, the Design Professional shall render a decision concerning the allowance of an extension of time and shall report his decision to both the CM/GC and the Owner.

3.5.8.4.3 Extensions of Time and compensation for Time Dependent Overhead Costs for Abnormal Weather are to be processed as a Change Order pursuant to Article 3.4.6.

3.5.8.5 Protest. The Design Professional's decision as to abnormal weather delay shall be subject to protest by either the CM/GC or the Owner as set forth in Section 5, Part 2.

**3.5.9 Non-Compensable Delay.** CM/GC understands, acknowledges and agrees that delays occasioned by the events and occurrences set forth below are not compensable delays and do not constitute reason for extending the Date for Material Completion and Occupancy. It is CM/GC's responsibility to make adequate provision for the following in scheduling the Work:

3.5.9.1 Normal Weather Conditions. Weather conditions other than those that substantially vary from the normal climatology conditions that prevailed at the Site for the preceding 120 months, as evidenced by data published by the National Oceanic and Atmospheric Administration.

3.5.9.2 Delay in Delivery of Materials or Equipment. Delay in delivery of materials or equipment for any cause other than those specified in Paragraph 3.5.8.3. No claim will be approved if materials or equipment are delayed due to CM/GC's tardy procurement or expediting.

3.5.9.3 All Other Delay. All delay not covered in Article 3.5.8.

**3.5.10 Submission of Claims for Compensable Delay, Extending the Material Completion and Occupancy Date.**

3.5.10.1 Time for Submission. Except as specified below, any claim by CM/GC for a change in the Contract Time or the Material Completion and Occupancy Date shall be made within fourteen days of the day on which the CM/GC becomes aware of the event on which the claim is based or, if the Contract Documents specify a shorter or longer period with respect to such event, within the period specified by the Contract Documents.

3.5.10.2 Delay Claim Must Be In Writing. Any claim to extend the Contract Time and Material Completion and Occupancy Date must be in writing, must set forth in detail the basis for the claim and the number of days of delay claimed, must be correlated with the approved Overall Project Schedule, must be executed by the CM/GC and delivered to the Design Professional and the Owner, and must be reviewed and an appropriate time assessed by the Design Professional.

3.5.10.3 When Delay Claim Deemed Waived. Any claim to extend the Contract Time and Material Completion and Occupancy Date not made in writing to Owner within the above time periods shall be deemed waived and shall not thereafter be valid. In the case of a continuing delay as a result of a single event, only one claim submission is necessary.

3.5.10.4 Design Professional to Decide. The Contract Time and the Material Completion and Occupancy Date may be extended for such reasonable time as the Design Professional may decide, and the Overall Project Schedule shall then be updated.

3.5.10.5 Payment for Extensions of Contract Time. The CM/GC expressly agrees that the CM/GC's sole monetary remedy for Compensable Delay shall remain limited by the maximum amount for Time Dependent Overhead Costs (as amended) in the Contract.

**3.5.11 Recovery of Schedule Delays.**

3.5.11.1 Recovery of Schedule Delays. If the Design Professional determines that the Project is one week or more behind schedule, per the approved Overall Project Schedule, the Design Professional shall so notify the CM/GC in writing. Within seven days of the date of the Design Professional's notice, the CM/GC shall deliver to the Design Professional and Owner a written plan explaining how the CM/GC intends to bring the Project back on schedule. The CM/GC's plan must provide sufficient detail to allow the Design Professional and Owner to determine the proposal's feasibility.

3.5.11.2 Recovery of Schedule Delays During Last Sixty Days of Contract Time. At any time during the last sixty days of the Contract Time that the Design Professional finds that the CM/GC is behind schedule per the Contract Time, as amended, the Design Professional shall notify the CM/GC in writing. Within seven days of the date of the Design Professional's notice, the CM/GC shall prepare and deliver to the Design Professional and Owner a written plan explaining how the CM/GC intends to bring the Project back on schedule. The CM/GC's plan must provide sufficient detail to allow the Design Professional and Owner to determine the proposal's feasibility.

3.5.11.3 Payment of Costs of Recovery of Schedule Delays. Costs attributable to recovery of schedule delays, after execution of the GMP Change Order, may be paid from the Construction Contingency.

## **PART 6 CORRECTING THE WORK; INSPECTIONS, COVERING AND UNCOVERING WORK**

**3.6.1 Duty to Promptly Correct Work.** The CM/GC shall promptly correct Work rejected by the Design Professional or Owner or known by the CM/GC to be defective, damaged, or failing to conform to the requirements of the Contract Documents, whether observed before or after Final Completion and whether or not designed, fabricated, installed, or completed. The CM/GC shall bear costs of correcting such rejected Work, including without limitation additional testing and inspections.

3.6.1.1 Full and Complete Charge. Notwithstanding the provisions of this Contract, and until final acceptance of the Work by the Owner, the CM/GC shall have full and complete charge and care of the Work or any portion thereof (including the Owner-furnished supplies, material, equipment, or other items to be utilized or incorporated in the Work).

3.6.1.2 Make Good Losses. The CM/GC shall rebuild, repair, restore, and make good losses of, and injuries or damages to, the Work or any portion thereof (including the Owner-furnished supplies, material, equipment, or other items to be utilized with, or incorporated in, the Work and that are at the Site) before final acceptance of the Work. Such rebuilding, repair, or restoration may be paid from the Construction Contingency; provided, however, that the Owner will make available applicable proceeds from the Builders' Risk policy required by the Contract Documents.

3.6.1.3 No Limitation. Nothing contained in this Part shall be construed to establish a period of limitation with respect to the CM/GC's obligations to correct defective or non-conforming Work under this Contract, at law or in equity.

### **3.6.2 Correcting the Work.**

3.6.2.1 Notice of Non-Compliant Work. A Notice of Non-Compliant Work shall be in writing, shall be dated, shall be signed by the Design Professional, shall be addressed to the CM/GC with a copy to the Owner, and shall contain three elements as follows:

3.6.2.1.1 Description of Work.

- (a) that has been omitted or
- (b) that is unexecuted as of the date of the Notice of Non-Compliant Work, the time for its incorporation into the work as planned in the Overall Project Schedule having expired, or
- (c) that has not been executed in accordance with the methods and materials designated in the Contract Documents.

3.6.2.1.2 Contract References: Citation of the provision or provisions of the Contract Documents which specify the Work to be executed.

3.6.2.1.3 Time for Compliance. Fixing of a reasonable space of time within which the CM/GC shall have made good the deficiency (which said space of time shall not be deemed to be an extension of Contract Time, nor shall it be deemed to be authorization for amendment to the Overall Project Schedule).

3.6.2.2 Failure to Supply Workmen or Materials or to Prosecute the Work. A Notice of Non-Compliant Work may be issued for failure of the CM/GC to supply enough workers or enough materials or proper materials to prosecute the Work. A Notice of Non-Compliant Work in such event may be based deficiencies in management of time.

3.6.2.3 Removal and Making Good of Non-Compliant Work. The CM/GC shall remove from the Site within the space of time designated in Notice of Non-Compliant Work all work determined by the Design Professional as failing to conform to the contract, whether incorporated in the work or not, and the CM/GC shall promptly replace and re-execute the work in accordance with the Contract and without expense to the Owner and shall bear the expense of making good all work of other contractors destroyed by such removal or replacement. The CM/GC shall supply any omitted work and perform all unexecuted work within the space of time fixed by the Design Professional in Notices of Non-Compliant Work.

### 3.6.2.4 Remedy of the Owner for Breach of Notice of Non-Compliant

3.6.2.4.1 Failure to Make Good a Deficiency. If the CM/GC does not make good a deficiency within a reasonable space of time fixed in a Notice of Non-Compliant Work, the Owner may do any of the following:

(a) Remove the Non-Compliant Work and store it at the expense of the CM/GC. If the CM/GC does not pay the expenses of such removal and storing within ten days after receipt of written demand of the Owner, the Owner may upon three days' notice in writing to the CM/GC sell such materials at private sale or at auction and shall account for the net proceeds thereof after deducting all proper costs incurred by the Owner.

(b) Supply omitted work, perform unexecuted work, or replace and re-execute work not done in accordance with the methods and materials designated in the Contract Documents, and deduct the cost thereof from any payment then or thereafter due the CM/GC. The Design Professional shall approve the amount charged to the CM/GC.

3.6.2.4.2 Other Remedies. The remedies stated in this article are in addition to the remedies otherwise available to the Owner, do not exclude such other remedies, and are without prejudice to any other remedies. Time limits stated in Notices of Non-Compliant Work are of the essence of the contract. Unless otherwise agreed to by the Owner in writing, the making good of Non-Compliant work shall physically commence at the Site in not more than seven days after receipt of the Notice of Non-Compliant Work, except that in case of emergency correction shall physically commence at the Site at once, and except that the CM/GC shall in any event physically commence the correction at the Site early enough to complete within the space of time allowed in the Notice of Non-Compliant Work. The Owner shall give prompt consideration to reasonable requests for delay in commencement of the making good of Notices of Non-Compliant Work. The making good of Non-Compliant work shall be completed within the space of time allowed in the Notice of Non-Compliant Work unless the CM/GC shall have requested from the Design Professional an increase in the amount of time allowed and the Design Professional shall have given notice to the CM/GC in writing, with copy to the Owner, stating the additional amount of time, if any, allowed.

3.6.2.5 Notice of Correction from CM/GC. The CM/GC shall give prompt notice in writing to the Design Professional, with copy to the Owner, 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, supplying remedy, or performance of unexecuted work.

3.6.2.6 The Owner's Right to Correct Work. If the CM/GC should neglect to prosecute the Work properly or fail to correct Non-Compliant Work or fail to perform any provision of this Contract, the Owner, after three days' written notice to the CM/GC, may without prejudice to any other remedy he may have (including without limitation remedies against the CM/GC's surety), make good the deficiencies and may deduct the cost thereof from the payment then or thereafter due the CM/GC.

**3.6.3 No Delay.** Work requiring correction shall be corrected immediately and shall be carried out in such a way not to delay the completion of the Project. If it is not feasible to correct said work immediately, the corrective work shall be done on a schedule acceptable to the Owner.

### **3.6.4 Inspection of Work.**

3.6.4.1 Access to Work. At all times, the Design Professional and his representatives shall have access to the work wherever it is in preparation or progress, and the CM/GC shall provide proper facilities for such access and for inspection.

3.6.4.2 Notice to Design Professional from CM/GC Prior to Covering Work. If the specifications, the Design Professional's instructions (either in the specifications or issued later in writing), laws, ordinances, or any public authority require any work to be specially tested or approved, the CM/GC shall give the Design Professional timely notice in writing of its readiness for inspection and, if the inspection is by any

authority other than the Design Professional, will tell the Design Professional the date fixed for such inspection. Inspections by the Design Professional shall be made promptly and, where practicable, at the source of supply. If any work should be covered without approval or consent of the Design Professional, said Work must, if required by the Design Professional, be uncovered for examination at the CM/GC's expense.

#### 3.6.4.3 Fire Marshal Inspections.

3.6.4.3.1 General. The State Fire Marshal may make inspections at any time. It shall be the responsibility of the CM/GC to request an inspection at eighty percent completion and at 100% completion and to give notice when all items on the 100% inspection report have been completed. Requests shall be in writing with a copy to the Owner and Design Professional.

3.6.4.3.2 Inspections Defined. The basic definitions for eighty percent and 100% inspections are as follows:

(a) Eighty Percent Inspection: The structural components are in place and open for review of the fire safety components. NOTE: Structural components include the following: fire walls, vertical shafts, stairways, smoke stops, hazardous area separation, roof and ceiling assemblies, corridor and door width, and HVAC system.

(b) 100% Inspection: The CM/GC has completed all of the items on the eighty percent inspection report and has the certificate of occupancy in hand.

3.6.4.4 False Start. In the event the CM/GC shall have issued notice of readiness prematurely, his action shall be deemed to be a "false start." The CM/GC shall be liable for the damage resulting from the aforesaid false start, including, but not limited to, the salary, professional fees, and travel and living expenses of the person or parties inconvenienced by the aforesaid false start.

3.6.4.5 Certificate of Occupancy. The CM/GC's obligation under the Contract is to install the Work in accordance with the Contract Documents, obtain the Certificate of Occupancy from the State Fire Marshal or his deputy, and forward it to the Design Professional as a part of the final close out procedures. The Design Professional's obligation is to design the Work to comply with the applicable codes and to qualify for a Certificate of Occupancy.

### 3.6.5 **Covering and Uncovering Work.**

3.6.5.1 Re-examination or Re-testing of Work Covered Pursuant to Consent of Design Professional. Re-examination or re-testing of questioned Work previously covered pursuant to consent of the Design Professional may be ordered by the Design Professional. If so ordered the Work must be uncovered by the CM/GC. The Owner shall pay the cost of re-examination and replacement or of re-testing if such Work is found in accordance with the Contract Documents. The CM/GC shall pay such cost if such Work is found not in accordance with the Contract Documents unless the CM/GC can show that a Separate CM/GC caused the defect in the Work. In that event, the Owner shall pay such cost. Re-examination or re-testing under the terms of this Paragraph applies only to Work that has been covered with consent of the Design Professional. Work covered without consent of the Design Professional must be uncovered for examination as provided below.

3.6.5.2 Re-examination or Re-testing of Work Covered Without Consent of Design Professional. If any Work should be covered without approval or consent of the Design Professional or contrary to any provision of the Contract Documents, such Work must be uncovered for examination by the Design Professional at the CM/GC's expense. The CM/GC shall be liable for the costs resulting from the aforesaid uncovering, including, but not limited to, the salary, professional fees, and travel and living expenses of the person or parties inconvenienced thereby.

**3.6.6 Inspection Does Not Relieve CM/GC.** Under the Contract Documents, the CM/GC acknowledges that it has the responsibility for furnishing all services, labor, supplies, and materials for the entire Work in accordance with such documents. No provisions of this article nor any inspection of the Work by the Owner, representatives of the Owner, the Using Agency, Contract Compliance Specialist, clerk-of-the-works, engineers employed by the Design Professional, representatives of the Design Professional, or the Design Professional shall in any way diminish, relieve, or alter said responsibility and undertaking of the CM/GC. Neither shall the omission of any of

the foregoing to discover or to bring to the attention of the CM/GC the existence of any Work or materials injured or done not in accordance with said Contract Documents in any way diminish, relieve, or alter such obligation of the CM/GC nor shall the aforesaid omission diminish or alter the rights or remedies of the Owner as set forth in the Contract Documents. The Contract Compliance Specialist has no power to make decisions, to accept or reject work, or to consent to the covering of Work. The Contract Compliance Specialist owes no duty to the CM/GC.

**3.6.7 Owner may Require Uncovering of Work.** The Owner may require any Work to be uncovered, whether or not prior information was provided as to the schedule for covering. Should work so uncovered prove to be in noncompliance with the Contract Documents or the Construction Documents, the cost of uncovering, correction of the Work, recovering, and any schedule recovery costs shall be borne by the CM/GC and may be paid from the Construction Contingency. However, if the CM/GC complies with the notice requirements above, and the Owner fails to make its desired inspections, and the Owner then requires the CM/GC to uncover the Work, the Owner shall bear all additional costs of uncovering and recovering the Work unless the Work is found to be non-compliant with the Construction Documents, in which case the CM/GC shall bear all such uncovering and recovering costs, which may be paid from the Construction Contingency. Should the work be compliant, however, the Owner will pay for the uncovering and repair of the affected work, in addition to any delay that affects the critical path of the Project.

**3.6.8 Owner may Pay for Uncovering Work.** Should the Owner require work to be uncovered contrary to the Contract Documents and the Construction Documents, the Owner shall compensate the CM/GC for any extra cost caused the CM/GC, including any cost of schedule recovery.

**3.6.9 Effect of Notice of Non-Compliant Work.** Notwithstanding anything contained in the Contract Documents to the contrary, in order to minimize delays in the completion of the Project, the CM/GC shall continue working while responding to a Notice of Non-Compliant Work and shall continue working while protesting any decision by the Design Professional or the Owner.

**3.6.10 Deductions for Uncorrected Work.** If the Design Professional and Owner deem it inexpedient to correct work injured or done not in accordance with the contract, an equitable deduction from the contract price shall be made therefore. There is no duty on the part of the Owner, however, to accept any work injured or done not in accordance with the methods and materials designated in the contract documents, nor does the CM/GC have the right to demand that there shall be acceptance of work injured or done not in accordance with the methods and materials designated in the Contract Documents.

## **PART 7 TRADE CONTRACTORS; SELF-PERFORMANCE**

**3.7.1 Parties.** Trade Contracts shall be between the CM/GC and the Trade Contractor or Trade Supplier selected by CM/GC, as CM/GC deems appropriate, subject to the requirements that such Trade Contract be awarded in accordance with the procedures set forth in this Part.

### **3.7.2 Selection.**

**3.7.2.1 Selection Process.** All Trade Contracts between CM/GC and Trade Contractors or Trade Suppliers shall be entered into only after the CM/GC's completion of the selection process required by this Section 3, Part 7. For each selection, CM/GC, in consultation with the Design Professional and the Owner, shall develop appropriate selection criteria for the selection of the Trade Contractor or Trade Supplier. The cost of the work shall be a factor for consideration in every selection, but may not necessarily be the determining factor.

**3.7.2.2 Information for Proposed Firms.** CM/GC shall develop information for proposed firms for all of the Work. Such information shall describe the Work to be procured by the CM/GC through Trade Contractors or Trade Suppliers, using CM/GC's own forms and procedures. Firms shall be required to submit a proposal encompassing the full contract price for the Work to be procured, except as provided in Article 3.7.9 below.

**3.7.2.3 Alternative Prices.** With the approval of the Owner, the CM/GC shall be entitled to take alternative prices as it deems necessary to advance the Work and by the stated Date of Final Completion. The Owner shall not unreasonably withhold such approval.

**3.7.2.4 Timing of Proposals.** CM/GC may, at its discretion, procure proposals for Work described in

Construction Documents proposed for additional to this Contract by Change Order prior to acceptance of such Change Order by CM/GC or by Owner, but CM/GC shall not be authorized to reject a Construction Document Change Order proposed after the issuance of a GMP Change Order by reason of CM/GC's failure to obtain any acceptable proposals.

**3.7.3 Proposers Lists.** Prior to each solicitation of proposals, the CM/GC shall prepare and submit to the Owner for review a list of recommended proposers. CM/GC may require prospective proposer to undergo a pre-qualification process to permit CM/GC affirmatively to determine that a proposer who desires to submit a proposal is a responsible proposer as defined in Article 3.7.6.

**3.7.4 CM/GC Proposal Review.** Upon receipt of proposals and prior to CM/GC's acceptance of any proposal, CM/GC shall prepare and deliver to the Owner for its review a complete and thorough analysis of the proposals received. Such proposal analysis shall clearly indicate the apparent best proposal from the proposer or proposers determined by CM/GC to be responsible and responsive and shall be accompanied by a copy of each proposal received. Nothing herein requires CM/GC to select the lowest price proposal. The risk and cost of CM/GC's selection of a successful proposer lies exclusively with CM/GC.

**3.7.5 Responsible Proposers.** CM/GC shall affirmatively determine whether each proposer is or is not responsible and whether each proposal is or is not responsive. To be deemed a responsible proposer, the proposed Trade Contractors or Trade Suppliers shall match the following criteria:

3.7.6.1 Qualified. Be reputable, skilled, reliable, competent, qualified in the trade or field in which they are to perform on the Project, and be thoroughly familiar with applicable codes.

3.7.6.2 Bonding. Have the ability to obtain bonding from a bonding company acceptable to CM/GC.

3.7.6.3 Insurance. Shall have or shall have the ability to obtain insurance required by the Contract Documents.

**3.7.6 Owner Rights.** The Owner reserves the right in its sole and absolute discretion to require CM/GC to reject any Trade Supplier or Trade Contractor and any proposal. If after the acceptance of the GMP Change Order by the Owner, the Owner exercises its right to require CM/GC to reject a Trade Contractor, a Trade Supplier, or the lowest price proposal submitted by a responsible proposer, the acceptance of which CM/GC recommends, CM/GC shall recommend an acceptable substitute Trade Contractor, Trade Supplier, or proposer, and if the substitute Trade Contractor, Trade Supplier or proposer has submitted a higher proposal or price, the GMP Change Order and its Estimated Cost Component shall be adjusted to reflect the difference between the amount of the rejected proposal or price and the higher accepted proposal or price.

**3.7.7 CM/GC Award.** Unless the Owner exercises its rights under Article 3.7.5, CM/GC shall award the Work to a responsible Trade Contractor or Trade Supplier of CM/GC's choosing and proceed with the preparation of a purchase order or Trade Contract incorporating all necessary terms and conditions of the Contract Documents. Upon execution by CM/GC, and if requested by the Owner, CM/GC shall send a copy of the executed purchase order or Trade Contract to the Owner.

**3.7.8 CM/GC Self-Performance.**

3.7.8.1 Conditions. After the acceptance of the GMP Change Order by the Owner, and in the event the lowest responsible and responsive proposal received by CM/GC exceeds CM/GC's adjusted Construction Budget line item for such Work, or in the event that no proposal is received, and any permitted redesign does not eliminate the budget shortfall or result in the submission of an acceptable proposal, the CM/GC has the following options: (i) In the case where the lowest responsible and responsive proposal exceeds the line item budget, and with the prior approval of the Owner, the CM/GC may perform such Work with its own forces for the lump sum amount stated in its line item budget for such Work in its current Construction Budget; or (ii) In the case where no responsible and responsive proposal is received, the CM/GC shall perform such Work with its own forces within the Guaranteed Maximum Price stated in the GMP Change Order for the lump sum amount stated in its line item budget for such Work in its current Construction Budget. CM/GC's line item budget for Work stated in its current Construction Budget shall be deemed to be a proposal submitted by the CM/GC for such Work for which, in accordance with this Paragraph 3.7.11.1 and subject to approval by Owner, the CM/GC will undertake to perform such Work on a lump sum basis. CM/GC shall not be entitled to any additional CM/GC's Fee

calculated on such lump sum. No action permitted under this Paragraph shall increase the Guaranteed Maximum Price.

**3.7.8.2 Default of Trade Contractor.** In addition, CM/GC may with its own forces perform Work encompassed within any Trade Contract between CM/GC and any Trade Contractor upon the termination of such Trade Contract by CM/GC by reason of the default or abandonment of the Work by the Trade Contractor but, except as provided in Article 1.5.5, the CM/GC shall perform such Work or the balance thereof remaining at the time of termination for an amount not exceeding the contract sum specified in the Trade Contract or the unexpended balance thereof remaining at the time of termination, except as provided in Article 1.5.5., but CM/GC's Fee shall not be reduced, or increased on account of the Work performed under this Paragraph 3.7.11.2.

**3.7.8.3 Other Compelling Circumstances with Specific Approval of Owner.** In certain compelling circumstances, upon the request of the CM/GC and the recommendation of the Design Professional, Owner may permit, in its sole and unfettered discretion where such approval is in the best interest of the Owner, CM/GC to perform specified work with its own forces. CM/GC's line item budget for such Work stated in its current Construction Budget, or less, shall be deemed to be a proposal submitted by the CM/GC for such Work for which, in accordance with this Paragraph and subject to approval by Owner, the CM/GC will undertake to perform on a lump sum basis. CM/GC shall not be entitled to any additional CM/GC Fee calculated on such lump sum. No action permitted under this Paragraph shall increase the Guaranteed Maximum Price.

**3.7.9 Duty to Continue Work.** Notwithstanding any dispute between the Owner and CM/GC or between CM/GC and any Trade Contractors or between such Trade Contractors, it shall be the responsibility of CM/GC to continue to prosecute all of the Work and perform all of its services diligently in a good and Workmanlike manner in conformity with this Contract, and the CM/GC and/or Trade Contractors shall have no right to cease performance hereunder or to permit the prosecution of the Work to be delayed so long as Owner does not default hereunder. So long as the CM/GC continues performance under this Contract, the Owner shall continue to pay CM/GC in accordance with this Contract.

**3.7.10 Alternative Price Terms.** Notwithstanding the requirements of Paragraphs 3.7.2 and 3.7.12, CM/GC shall be permitted, with Owner's advance approval and in Owner's sole discretion, to seek Trade Contractors or Trade Suppliers who meet the requirements of this Section, through a proposal process under which the proposed Trade Contractor or Trade Supplier offers to provide Construction Management services for designated subcomponents of the Project and, with the Owner's approval, CM/GC may enter such contracts for the furnishing of such systems on a guaranteed maximum price basis.

**3.7.11 CM/GC Supplied Equipment or Supplies.** With the prior approval of the Owner and in its sole discretion, CM/GC may supply for use by its Trade Contractors or Trade Suppliers or for use by CM/GC for the performance of Work performed by CM/GC with its own forces, equipment and supplies necessary to the performance of the Work in addition to those items that the CM/GC is authorized to supply. However, the Actual Cost of such equipment or supplies reimbursable by the Owner to CM/GC shall not in any event exceed the least 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 amount that would be reimbursable to CM/GC as an Actual Cost for such equipment or supplies had such equipment or supplies been procured from others under the terms of the Contract Documents, or (iii) the applicable amounts stated in Subparagraph 4.5.4.1. If the Owner approves the provision by CM/GC of such items from CM/GC's inventory, then no CM/GC's Fee shall be payable by Owner on account of such self-provided items in excess of any fee included in the approved sales price or rental rate. CM/GC's Fee shall be reduced proportionately for such self-provided items.

**3.7.12 No Conflict of Interests.** Without prior written approval from the Owner after full disclosure by CM/GC, the CM/GC shall not award any Trade Contract to any Affiliate of CM/GC.

**3.7.13 Fair Opportunity for Trade Contractors – Trade Packages.** All construction Work to be performed by Trade Contractors shall be performed pursuant to Trade Packages from qualified Trade Contractors. The CM/GC shall make reasonable efforts to insure that Trade Contractors and Suppliers local to the Project site are given the fair opportunity to propose for, be considered for, and participate in the award of Trade Packages required for completion of the Project. The CM/GC shall, on behalf of Owner, advertise and solicit proposals from Trade Contractors and from suppliers of material or equipment fabricated to a special design for the work. All proposals

will be delivered to the CM/GC. CM/GC will, on behalf of the Owner, analyze all such proposals to determine whether the proposals are responsive and the proposers are responsible. The CM/GC will recommend to the Owner, based on price and other factors, the Trade Contractor or Supplier. If the recommended Trade Contractor or Supplier is not the low price proposer, CM/GC will provide additional information justifying its recommendation. The Trade Package will be awarded upon receipt of approval from the Owner. If the Owner does not agree with the CM/GC's recommendation, the Owner will instruct the CM/GC to award the Trade Package to the lowest responsive and responsible price proposer, or to reissue the package for additional proposers.

**3.7.14 Warranty of CM/GC.** The CM/GC warrants that the Trade Contractors selected by him are reputable, skilled, reliable, competent, qualified in the trade or field in which they are to perform on the Project, and thoroughly familiar with applicable codes. The CM/GC will have primary responsibility for all Trade Packages. Trade Contractors are required to execute CM/GC's standard subcontract, as amended to be consistent with this Contract. The Trade Contractors shall be acting as Trade Contractors to the CM/GC. The CM/GC shall execute and administer all such Trade Package contracts and shall assume full responsibility for each and every item of Work performed thereunder and for the timely completion of all such Work in accordance herewith, including responsibility for all guarantees and warranties to be provided by each Trade Contractor.

**3.7.15 CM/GC Responsible for Acts and Omissions of Trade Contractors, Materialmen, Suppliers, and Employees.** The CM/GC agrees that he is as fully responsible for the acts and omissions of his Trade Contractors, materialmen, suppliers, and employees, and of persons either directly or indirectly employed by them, as he is responsible for the acts and omissions of persons directly employed by him. The failure of a Trade Contractor, materialman, supplier, or employee to perform shall not be asserted by the CM/GC as an excuse for any omission from or noncompliance with requirements of the contract; nor shall the CM/GC be entitled to an extension of time because of failure of a Trade Contractor, materialman, supplier, or employee to perform unless said failure was a direct result of some delay to the Trade Contractor, materialman, supplier, or employee of the kind and character described in the Contract for which the CM/GC shall have requested and received an extension of time under the terms of the General Requirements. The subcontracting of work does not relieve the CM/GC of the full responsibility for the execution of the work and for compliance with all requirements of the Contract Documents. The CM/GC shall not assert negligence, inefficiency, insolvency, bankruptcy, or incompetence of any Trade Contractor, materialman, supplier, or employee as excuse for the existence of any noncompliance with or omission to fulfill any obligation under the Contract either as to timely performance or as to compliance with methods and materials designated in the Contract Documents; nor shall the CM/GC assert nonperformance (unless an extension of time shall have been granted pursuant to the Contract requirements) of a Trade Contractor, materialman, supplier, or employee as excuse for the existence of any noncompliance with or omission to fulfill any obligation under the Contract either as to timely performance or as to compliance with methods and materials designated in the Contract Documents. Any provision in any contract between the CM/GC and any Trade Contractor pursuant to which the CM/GC is obliged to present to the Owner any claim of any Trade Contractor shall be invalid.

**3.7.16 Relationship of CM/GC and Trade Contractors.**

3.7.16.1 Obligations of Each. The CM/GC agrees to bind every Subcontractor, Trade CM/GC, Supplier (hereinafter collectively referred to as "Subordinate CM/GC") to the terms of the Contract Documents insofar as they are applicable to its work, including the following provisions of this Article:

3.7.16.1.1 The CM/GC Agrees:

(a) To be bound to the Subordinate CM/GC by all the obligations that the Owner owes to the CM/GC under the Contract Documents.

(b) To pay the Subordinate CM/GC upon the payment of certificates issued under the schedule of values described in the General Conditions the amount allowed to the CM/GC on account of the Subordinate CM/GC's work to the extent of the Subordinate CM/GC's interest therein within seven days of receipt of payment from the Owner; provided, however, that retainage shall be released to the Subordinate CM/GC as provided by law and in accordance with the statutory affidavit set forth in Section 7, Forms.

(c) To pay the Subordinate CM/GC upon the payment of certificates issued otherwise than the schedule of values such manner that at all times the Subordinate CM/GC's total payments shall be as large in proportion to the value of the work done

by the Subordinate CM/GC as the total amount certified and paid to the CM/GC is to the value of the work done by the Subordinate CM/GC.

(d) To pay the Subordinate CM/GC a just share of any property insurance money received by the CM/GC and due to Subordinate CM/GC for work performed by Subordinate and paid for by insurance.

(e) That no claim for services rendered or materials supplied or other matters by the CM/GC against the Subordinate CM/GC shall be valid unless written notice thereof is given by the CM/GC to the Subordinate CM/GC prior to or during the first ten days of the calendar month following that in which the CM/GC determines that the claim is chargeable against that Subordinate CM/GC.

(f) To give the Subordinate CM/GC, upon its request, an opportunity to be present with CM/GC and to submit evidence in any dispute involving rights of the Subordinate CM/GC.

3.7.16.1.2 The CM/GC Agrees to require its Subcontractors to do the following:

(a) To be bound to the CM/GC by the terms of the Contract Documents and to assume toward the CM/GC all the obligations and responsibilities that the CM/GC by the aforesaid documents assumes toward the Owner.

(b) To submit to the CM/GC applications for payment in such reasonable time as to enable the CM/GC to apply for payment under these General Conditions.

(c) To make all claims for extras, for extensions of time or for damages to the CM/GC in the manner provided in the General Conditions for like claims by the CM/GC upon the Owner, except that the time for making such claims to the CM/GC is within ten days after the initial event leading to the claim.

(d) To pay their Subordinate Contractors upon the payment of certificates issued under the schedule of values described in the General Conditions the amount allowed on account of such Subordinate CM/GC's work to the extent of such Subordinate CM/GC's interest therein within seven days of its receipt of payment; provided, however, that retainage shall be released as provided by law and in accordance with the statutory affidavit set forth in Section 7, Forms.

(e) To pay their Subordinate Contractors upon Subcontractor's receipt of payment such that at all times their Subordinate Contractors' aggregate payments shall be in proportion to the Work performed by each of the Subordinate Contractors.

3.7.16.2 Owner Not Obligated to Any Subcontractor, Subordinate CM/GC, Trade CM/GC, or Supplier. There is no obligation on the part of the Owner to pay to or to see to the payment of any sums to any Subcontractor, Subordinate CM/GC, Trade CM/GC, Supplier, laborer, employee, or person supplying labor, materials, machinery or equipment to the Project.

3.7.16.3 Term "Substantial Completion" Deleted. The term "substantial completion," if found, is hereby deleted and is of no force in all Subcontracts, Trade Contracts, and in the Trade Sections of the Contract Documents. In certain contexts, the term may be superseded by the term "Material Completion" as defined in this Contract.

3.7.16.4 Failure to Incorporate Terms in Subcontracts. The CM/GC agrees that failure on his part to incorporate this Article 3.5.5 in all Subcontracts, Trade Contracts, or Supplier contracts, is a material breach of an essential covenant of this Contract, and further agrees that in the event of such breach the CM/GC shall, within five days after demand of the Owner, furnish proof in writing that the deficiency has been remedied to the end that (i) the CM/GC may not maintain that it is beyond his competence to require performance of terms of the contract by a subcontractor and (i) no subcontractor may maintain that he has not assumed toward the CM/GC all the obligations and responsibilities that the CM/GC has assumed

toward the Owner. Failure on the part of the CM/GC to effect remedy as above within five days after receipt of written demand of the Owner shall be grounds for issuance of a declaration of default by the Owner.

### **3.7.17 Assignment of Trade Contracts, Subcontracts.**

3.7.17.1 No Contractual Relationship. Nothing contained in this Contract creates a contractual relationship between the Owner and any person or entity other than the CM/GC. However, the Owner and CM/GC agree that the Owner is an intended and express third-party beneficiary of all contracts for construction services and all subcontracts, purchase orders, and other agreements between the CM/GC and third parties in connection with the Project or the Work.

3.7.17.2 Conditional Assignment. The CM/GC hereby conditionally assigns to the Owner all of its interest in any subcontracts (including, without limitation, purchase orders) entered into by the CM/GC for performance of any part of the Work. Such conditional assignment shall become effective only upon the termination of this Contract, whereupon the Owner shall succeed to the rights and obligations of the CM/GC under such subcontract. The CM/GC shall incorporate, into its respective subcontracts, supply agreements, purchase orders, and other agreements in connection with the Project or the Work, language that expressly names the Owner as an intended third-party beneficiary of such agreements.

3.7.17.3 Assignment Provisions. CM/GC shall also ensure that its subcontracts, supply agreements, purchase orders, and other agreements contain a provision that assigns to the Owner the CM/GC's interest in the respective agreement to the Owner immediately upon Trade Contractor's or supplier's receipt of Owner's notice to such effect. Furthermore, CM/GC shall ensure that its subcontracts, supply agreements, purchase orders, and other agreements contain a provision that allows the Owner to terminate that agreement solely for the Owner's convenience in accordance with the provisions set forth in this Contract. Owner further agrees to pay reasonable costs of cancellation charges, or re-stocking costs for the Owner's termination for convenience of subcontracts, supply agreements, purchase orders, and other agreements.

3.7.17.4 Assignment of Warranties. Without limiting CM/GC's post-construction obligations pursuant to this Contract, CM/GC shall assign to Owner all post-construction warranties resulting from CM/GC's agreements with third parties, subject to CM/GC's reservation of rights under such warranties to the extent necessary to enable CM/GC to fulfill its obligations to Owner hereunder. Moreover, CM/GC shall protect Owner's interest in all such warranties and shall take no action nor commit an act or omission that renders such warranties void or voidable.

## **SECTION 4 – COMPENSATION**

### **PART 1 GENERAL**

#### **4.1.1 Authorized Compensation and Limitations.**

4.1.1.1 CM/GC's Fee. CM/GC's Fee shall be the amount specified in Paragraph 5 of the Contract.

4.1.1.1.1 Basis of Fee. The CM/GC's fee is the amount, established by and agreed to by both parties, that is the full amount of compensation due to the CM/GC as gross profit, and for any and all expenses of the Project not included and identified as a Cost of the Work or the CM/GC's Overhead Cost, provided that the CM/GC performs all the requirements of the Contract Documents within the time limits established. The CM/GC's Fee consists of the following:

a. Preconstruction Fee. For the preconstruction consulting services provided by CM/GC, including design consultation services, as described in Section 2 of the General Requirements, Owner shall pay to CM/GC a Preconstruction Fee representing the gross profit relative to the preconstruction services, in accordance with Section 4, Part 2 below.

b. Construction Fee. For the construction services, as described in Section 3 of the General Requirements, provided by CM/GC, Owner shall pay to CM/GC a Construction Fee representing the gross profit relative to the construction services, in accordance with Section 4, Part 3 below.

4.1.1.1.2 Adjustments in the CM/GC's Fees. The CM/GC's Fee can only be changed by a written Change Order executed by both parties. The Fee can only be adjusted for material changes in the scope of the Work, which includes without limitation the management of the replacement of an insured or uninsured loss.

4.1.1.2 CM/GC's Preconstruction Costs and Construction Overhead Costs. The maximum allowable amount for preconstruction costs and construction overhead costs shall be not in excess of the amount specified in Paragraph 6 of the Contract, established by agreement with the Owner based upon the CM/GC Fee Proposal, set forth in Exhibit E, and by using the Project Cost Matrix included therein. These costs and limitations consist of the following:

4.1.1.2.1 Preconstruction Costs and Expenses. The Preconstruction Costs and Expenses are inclusive of all costs for professional consulting services and all direct and incidental expenses not related to construction activities or the Work, including but not limited to cost estimating services, scheduling services, value engineering, constructability, toll telephone calls, facsimile charges, postage and use of courier services, photocopying and reproduction expenses, bond premiums, reproduction, salaries, wages, fees to consultants and subcontractors assisting the CM/GC, design coordination expenses and related services, based upon Actual Cost not exceeding, in the aggregate, the amounts for Preconstruction Cost And Expense items shown on the completed Project Cost Matrix in Exhibit E. The maximum allowable amount the Owner shall be liable to CM/GC for Preconstruction Costs and Expenses is shown in Exhibit E and the aggregate of all Overhead Costs and Expenses shall not exceed the amount shown in Paragraph 6 of the Contract.

4.1.1.2.2 Construction Overhead Costs. The Construction Overhead Costs are inclusive of all direct and incidental expenses including but not limited to toll telephone calls, facsimile charges, postage and use of courier services, photocopying and reproduction expenses, travel costs, sustenance, reproduction, salaries, wages, and field office expenses, based upon Actual Cost not exceeding, in the aggregate, the amounts for construction overhead items shown on the completed Project Cost Matrix in Exhibit E. The maximum allowable amount the Owner shall be liable to the CM/GC for Construction Overhead Costs is shown in Exhibit E and the aggregate of all Overhead Costs and Expenses shall not exceed the amount shown in Paragraph 6 of the Contract.

4.1.1.3 Cost of the Work. The Actual Cost for the Cost of the Work shall be paid as set forth in Section 4, Part 4.

4.1.1.4 GMP Cost Limitation. The Guaranteed Maximum Price shall not be in excess of the GMP Cost Limitation.

4.1.1.4.1 GMP Cost Limitation. The amount allocated for the construction services and construction of the Project. GMP Cost Limitation does not include design costs, Owner contingency, or Site acquisition costs. See Subparagraph 4.1.1.4.2 for details and effect of the GMP Cost Limitation.

4.1.1.4.2 Details and Effect of the GMP Cost Limitation.

- (a) The CM/GC recognizes that the Design Professional is required to design the Project such that the initial Guaranteed Maximum Price will not exceed the GMP Cost Limitation.
- (b) In contracting with a public or governmental body to render services, the CM/GC is charged with knowledge of any limitation imposed on such body as to amount of money it may spend for a given project; and
- (c) The GMP Cost Limitation limits the Owner, the Design Professional and the CM/GC prior to, but not after, the establishment of the GMP.

4.1.1.5 Guaranteed Maximum Price. The Owner will pay the CM/GC an amount established as the CM/GC's Fee, plus the actual Construction Overhead Costs and the actual Cost of the Work as described herein, but not to exceed, in any event or for any reason, the Guaranteed Maximum Price.

4.1.1.6 Effect of GMP Change Order. The Preconstruction Phase cannot extend beyond the execution of the GMP Change Order. By definition, all services provided after the execution of the GMP Change Order are Construction Phase Services and are included in the GMP. When CM/GC Proposes a GMP Change Order, any earned but unbilled balance of the Preconstruction Fee shall be invoiced for payment. Upon acceptance of the GMP Change Order by Owner, the GMP Change Order shall exclusively govern the compensation to CM/GC for all fees and services thereafter provided by CM/GC and all services previously provided for which payment has not been made or application for payment made or invoice submitted.

4.1.1.7 Payment Schedule. The CM/GC's Fee shall be paid monthly in proportion to the services actually performed. CM/GC shall submit not later than the tenth (10th) day of any month an invoice for the proportionate part of the CM/GC's Fee that represents the services actually performed for the period subsequent to the period covered by any prior invoice to the end of the preceding month. If and to the extent approved by Owner, the amount of such invoice shall be paid by Owner promptly.

4.1.1.8 Payments Withheld. The Owner or Program Manager may withhold from the Cost of the Work or, on account of subsequently discovered evidence, nullify the whole or a part of any pay request or certificate to such extent as may be necessary to protect the Owner from loss on account of:

- (a) Defective work not remedied
- (b) Claims filed or reasonable evidence indicating probable filing of claims.
- (c) Failure of the Contractor to make payments properly to subcontractor or for materials or labor.
- (d) A reasonable doubt that the contract can be completed for the balance then unpaid.
- (e) Damage to another contractor or to some third party.
- (f) Failure to maintain a rate of progress in accordance with the construction progress schedule.
- (g) Failure to supply enough skilled workmen or proper materials.

When the above grounds are removed, payment shall be made for amounts withheld because of them. With regard to cases

(b) and (c) above, the Owner may agree to payment upon receipt of a satisfactory Bond to Discharge Claim in the amount of double the claim (see Section 5, Contract Forms). At the option of the Owner, adherence to the construction progress schedule shall be a condition precedent to the right of the CM/GC to demand payment. No omission on the part of the Owner to exercise the aforesaid option shall be construed to be a waiver of breach of the construction progress schedule or acquiescence therein, and the Owner may exercise its option from time to time and as often as may be expedient.

4.1.1.9 Change in Tax Rates. If the rate of sales, use, payroll, or other similar direct taxes on materials, equipment, or labor required for the performance of the Work shall increase above the rate in force on the date of the GMP Change Order, then the Cost of Work Component (but not the Fee or Construction Overhead Component) of the GMP Change Order shall be increased by the amount of additional taxes incurred by CM/GC as a result of such change in rate. A written claim shall be made promptly after CM/GC receives notice of such tax increase. If the tax rates decrease, the estimated amount of saved taxes due to the decrease as yet unexpended shall be moved into the Construction Contingency.

**4.1.2 Audit.** At the request of the Owner, the CM/GC shall allow the Owner the opportunity to select an auditor to examine and inspect the Project and the CM/GC's books, records, and any and all accounts and similar data related to the Project. The Owner shall bear the cost of such audit. The auditor may sign a confidentiality agreement before conducting any such audit. Notwithstanding such agreement, CM/GC understands and agrees that all project records are subject to the Georgia Open Records Act. Approval of an Application for Payment by the Owner, including Final Payment, shall not foreclose the right of the Owner to examine the books and records and their backup documents in accordance with the Contract Documents to determine the correctness and accuracy of any item.

**4.1.3 Limitation of Owner Liability.** The Owner shall not be liable to pay CM/GC any amount for Fees, Overhead, or Actual Cost of Work performed after the date of the GMP Change Order that, after the payment of such amount or any portion thereof, would cause the aggregate amount paid to CM/GC hereunder to exceed the Guaranteed Maximum Price.

**4.1.4 Provision for Further Development of the Contract Documents.** Because the Contract Documents may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the CM/GC shall provide within the Guaranteed Maximum Price and its Construction Contingency an amount for further development of the Contract Documents.

**4.1.5 Inclusion of Contingency Amounts in GMP.**

4.1.5.1 A Part of the Cost of the Work. The estimated Cost of the Work shall include in the Construction Contingency sums established by the CM/GC for the CM/GC's use to cover costs arising under Articles 1.5.6 *et seq.* and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

4.1.5.2 CM/GC to Monitor. The Owner and the CM/GC agree that the amounts so established will be monitored by both parties and used by the CM/GC, with approvals as specified by the Owner, to provide for the cost of labor, materials, services, or equipment that are properly reimbursable as a Cost of the Work but that will not be the basis of a Change Order to adjust the GMP. The balances of all contingency funds will be returned to the Owner at the completion of the project. The CM/GC will provide a full accounting of the status of the contingency funds to the Owner on a quarterly basis until the Project is completed, notwithstanding any change to a Lump Sum Price as permitted by Article 3.3.6.

**4.1.6 CM/GC's Compensation Prior to Acceptance of GMP.** Prior to the Owner's acceptance of CM/GC's Guaranteed Maximum Price proposal and issuance of a Proceed Order, CM/GC's compensation shall be limited to an amount equal to the sum of (i) all direct personnel expenses plus (ii) reimbursement of all reasonable out-of-pocket costs and expenses incurred in the performance hereunder with respect to such and the Cost of the Work set forth in any approved Component Change Order. Prior to the Owner's acceptance of the CM/GC's Guaranteed Maximum Price proposal and issuance of a Proceed Order, the CM/GC shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing or in an approved Component Change Order.

**PART 2 PAYMENT FOR PRECONSTRUCTION PHASE SERVICES**

**4.2.1 Basis of Compensation.** For its services, the CM/GC will be reimbursed for its actual wages, salaries and costs as permitted in Section 4, Part 4, not to exceed the prevailing wage rate or the reasonable salaries set forth in Exhibit J.

**4.2.2 Payment Schedule.** The Preconstruction Fee payable under Paragraph 4.1.1 shall be paid monthly in proportion to the services actually performed. CM/GC shall submit not later than the tenth (10th) day of any month an invoice for the proportionate part of the Preconstruction Fee that represents the services actually performed for the period subsequent to the period covered by any prior invoice to the end of the preceding month. The CM/GC shall at the same time submit the actual costs of the Preconstruction Costs and Expenses it has incurred. If approved by the Owner and to the extent approved by Owner, the amount of such invoice shall be paid promptly by the Owner.

**4.2.3 Payment Due.** Payments are due and payable 15 days from the date that the CM/GC's proper invoice is received by the Owner. Amounts unpaid more than 30 days after the date on which payment is due shall bear interest at the legal rate prevailing from time to time at the place where the Project is located.

**4.2.4 CM/GC's Fee.** If the Preconstruction Phase Services are being rendered simultaneously with Construction Phase Services, each monthly invoice shall include a pro rata portion of the CM/GC's fee based on the preliminary progress schedule and the actual costs of the Construction Overhead Costs actually incurred. As the schedule is adjusted, each subsequent invoice will be adjusted to provide for the allocation of the Fee throughout the life of the Project.

**4.2.5 Effect of GMP Change Order.** The Preconstruction Phase cannot extend beyond the execution of the GMP Change Order. By definition, all services provided after the execution of the GMP Change Order are Construction Phase Services and are included in the GMP.

**4.2.6 Form of Applications for Payment.** Applications for payment shall meet the requirements of Article 4.3.10, and be consistent with this Part 2.

### **PART 3 PAYMENT FOR CONSTRUCTION PHASE SERVICES**

#### **4.3.1 Basis of Compensation.**

4.3.1.1 Actual Costs. For its services the CM/GC will be reimbursed for its actual wages, salaries and costs as permitted in Section 4, Part 4, not to exceed the prevailing wage rate or the reasonable salaries set forth in Exhibit J.

4.3.1.2 Schedule of Values as a Comparison. Before the first Application for Payment, the CM/GC shall submit to the Program Manager or Owner through the Design Professional a Schedule of Values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This Schedule of Values, unless objected to by the Owner, will be used as a basis for reviewing the CM/GC's Applications for Payment. Each Application for Payment will be reviewed for actual costs and also for consistency based on percentage completion of the Schedule of Values. The Schedule of Values will also be utilized in the event the Owner elects conversion to a Lump Sum Price pursuant to Article 3.3.6.

**4.3.2 Submission of Applications for Payment.** By the twenty-fifth day (25<sup>th</sup>) of each month, the CM/GC shall submit to the Design Professional itemized Applications for Payment in the form attached hereto as Exhibit K. The CM/GC shall submit no more than one (1) Application for Payment during each month.

**4.3.3 Timing of Payments.** No later than the tenth (10<sup>th</sup>) business day of the month following Owner's timely approval of an Application for Payment (in the form required by this Contract), and to the extent it has approved such Application, it shall pay to the CM/GC 100% of all Actual Costs and Contingency Costs properly incurred by the CM/GC during the preceding period (less retainage, if applicable, as provided herein), subject to adjustment on account of any prior overpayment attributable to error of CM/GC, Program Manager, or Owner, whether discovered by audit or otherwise. Amounts unpaid more than 30 days after the date on which payment is due shall bear interest at the legal rate prevailing from time to time at the place where the Project is located. Within twenty (20) days after receiving an approved Application for Payment, the Owner will notify the CM/GC of any disputed amounts. The Owner and the CM/GC agree to use their best efforts to resolve all disputes concerning the disputed amounts within thirty (30) days of the Owner's notice to the CM/GC of the dispute.

**4.3.4 Payments Withheld.** The Program Manager or Owner may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any application for payment or certificate to such extent as may be necessary to protect the Owner from loss on account of:

- (a) Defective work not remedied
- (b) Claims filed or reasonable evidence indicating probable filing of claims.
- (c) Failure of the Contractor to make payments properly to subcontractor or for materials or labor.
- (d) A reasonable doubt that the contract can be completed for the balance then unpaid.
- (e) Damage to another contractor or to some third party.
- (f) Failure to maintain a rate of progress in accordance with the construction progress schedule.
- (g) Failure to supply enough skilled workmen or proper materials.

When the above grounds are removed, payment shall be made for amounts withheld because of them. With regard to cases (b) and (c) above, the Owner may agree to payment upon receipt of a satisfactory Bond to Discharge Claim in the amount of double the claim (see Section 6, Contract Forms). At the option of the Owner adherence to the construction progress schedule shall be a condition precedent to the right of the CM/GC to demand payment of an application for payment or certificate. No omission on the part of the Owner to exercise the aforesaid option shall be construed to be a waiver of breach of the construction progress schedule or acquiescence therein, and the Owner may exercise its option from time to time and as often as may be expedient.

**4.3.5 Retainage.** Retainage shall be withheld from each Application for Payment to the CM/GC in the amount of five percent of the sum of the total cost for original Contract Work, Change Order Work, materials stored On Site or Off Site with Owner's prior approval and CM/GC Fee earned.

**4.3.6 Subcontractor's Retainage Release.** Upon request by the CM/GC, Owner may, but is not required, to permit an amount equal to the subcontract retainage of a Subcontractor to be separately released from the retainage held by the Owner as he completes his work. An application in accordance with the Owner's specimen form (See Section 7, Forms) for release of a Subcontractor's retainage shall contain a release of all claims by the Subcontractor and shall bear the original certificates of the Subcontractor, the CM/GC, and the Design

Professional that the Subcontractor's work has been fully performed and that the sum for which payment is requested is due by the CM/GC to the Subcontractor. Before receiving any portion of the retainage the CM/GC will be required to furnish a non-influence affidavit and a statutory affidavit executed by the Subcontractor in the exact form as shown in Section 7. Checks releasing a Subcontractor's retainage shall be made payable to the CM/GC, the CM/GC's surety, and the Subcontractor and shall be mailed to the CM/GC's surety. This article does not create any contractual relationship between the Owner and the Subcontractor or any duty of the Owner to any Subcontractor.

**4.3.7 Supplier's Retainage Release.** Upon request by the CM/GC, Owner may, but is not required, to permit an amount equal to the retainage of Supplier to be separately released from the retainage held by the Owner, if the Supplier has fully performed all delivery obligations under its Trade Contract or, in the alternative, to permit CM/GC to take advantage of discounts or for other reasons in the best interest of the Owner. The retainage release shall be processed in the same manner as for a Subcontractor as set forth in Article 4.3.6 above.

**4.3.8 CM/GC's Warranty on Applications for Payment.** The CM/GC hereby warrants to the Owner that, subject to Owner making payments to the CM/GC in accordance with the Contract Documents:

4.3.8.1 Title to Work. Title to Work, materials and equipment covered by an approved Application for Payment will pass to the Owner either by incorporation in construction or upon receipt of payment by the CM/GC, whichever shall occur first;

4.3.8.2 No Liens. Work, materials and equipment covered by any previously approved Applications for Payment are free and clear of liens, claims, security interests or encumbrances, hereinafter referred to as "liens";

4.3.8.3 No Encumbrance. No Work, materials or equipment covered by an approved Application for Payment will have been acquired by the CM/GC, or any other person performing work at the Site or furnishing materials or equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the CM/GC or such other person.

**4.3.9 Special Provisions for Payment of CM/GC Fee under a Component or GMP Change Order.**

4.3.9.1 Payment of CM/GC Fee.

4.3.9.1.1 Prior to GMP. With respect to Component Change Orders prior to the GMP Change Order, the CM/GC's Fee shall be paid on a monthly basis proportionately to the ratio which the Actual Costs for the Work performed under any Component Change Order bears to the Trade Contract sum stated in the applicable Component Change Order less retainage.

4.3.9.1.2 After GMP. After a GMP Change Order, CM/GC's Fee shall be paid on a monthly basis and proportionate to the ratio the Actual Costs incurred for Work on the Project bear to the Estimated Cost Component of the GMP Change Order, less retainage.

4.3.9.2 Payment of CM/GC Fee Withheld. The Owner may withhold payment only on account of a breach of this Contract by CM/GC, its failure to perform the management and similar services hereunder, its failure to provide information it is required to provide to the Owner hereunder, or under other circumstances as may be permitted by the Contract or the CM/GC's Proposal.

**4.3.10 Applications for Payment.**

4.3.10.1 Form of Application. The CM/GC shall periodically submit to the Design Professional an Application for Payment on the form set forth in Exhibit K for each payment requested, and, if requested by the Owner or Design Professional, shall attach backup materials including, but not limited to, receipts or other vouchers, showing his payments for materials and labor, including payments previously made to Subcontractors.

4.3.10.2 Initial Breakdown and Periodic Payments. Each Application for Payment shall be submitted at least ten days before each payment falls due, and the CM/GC shall, before the first application, shall submit to the Design Professional a Schedule of Values as required by Paragraph 4.3.1.2 above of the various parts of the work, including quantities, aggregating the total sum of the Contract, divided in the

same manner set forth in the Application for Payment Form set forth in Exhibit K and so arranged and so itemized as to meet the approval of the Design Professional and, further, if requested, supported by such evidence as to its correctness as the Design Professional may direct.

4.3.10.3 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 / Using Agencies title to such materials, adherence to Owner's procedures to adequately protect Owner's / Using Agencies interest, and execution of an agreement for storing materials off-site if the Payment Application includes request for payment for off-site stored materials. Contractor is responsible for the existence, protection, and, if necessary, replacement of materials at least until execution of the Final Certificate of Design Professional.

4.3.10.3.1 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.

4.3.10.3.2 Costs of Materials Stored Off-Site with Owner Approval. If approved in writing by Owner / Using Agency prior to the issuance of the GMP, pursuant to an agreement for storing materials off-site executed by GMP execution, or later. Trade Contractor Costs include the costs of materials stored off the Project Site. Owner / Using Agency 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. Off-Site Stored Materials Agreement is required if the Work includes any materials that will be stored off-site (see SECTION 7 – CONTRACT FORMS).

4.3.10.4 Action by Owner. The Owner may refuse to pay any item or items contained in any such Application for Payment until and unless documentation and details are submitted to the reasonable satisfaction of the Owner. While awaiting such documentation, the Owner may delete any item or items at issue, and elect to pay the items which are approved, indicating the revised total amount paid upon the invoice. The deleted items may be paid by an interim application for payment, or separately identified and included on a subsequent regular application for payment.

4.3.10.5 Accounting Format. Applications for Payment shall be broken down by CSI Category and, in certain situations, by CSI Description and capital asset category, as set forth in the form for Application for Payment. The purpose is to provide appropriate backup documents for the CM/GC's Final Certification of Costs in conformance with GASB 34 accounting standards. See Section 7 – Forms, "Application for Payment" and Final Certification of Costs.

**4.3.11 Processing of Application for Payment.** The Contract Compliance Specialist (CCS) will review the Application for Payment prepared and executed by the Contractor and, if he concurs, execute a certificate on the face of the Application for Payment as to its accuracy. The Design Professional shall visit the Site after the Contractor and CCS have agreed on the Application for Payment and conduct such inspections and reviews as are necessary to make a decision as to the accuracy of the Application for Payment. If the CCS and the Contractor cannot agree on the appropriateness of the Application for Payment in question, the Design Professional shall make a decision. Upon determining the appropriateness of the Application, the Design Professional shall execute the certificate on the Application for Payment and forward it to the Owner for payment. Not later than seven days after receipt of the Application for Payment, the 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.

**4.3.12 Representations of CM/GC.** The Application for Payment constitutes a representation by the CM/GC to the Owner that (i) the design and construction have progressed to the point indicated; (ii) the quality of the Work covered by the application is in accordance with the Contract Documents; and (iii) the CM/GC is entitled to payment in the amount requested.

**4.3.13 Design Professional's Certificate Not Acceptance of Work.** No certificate issued by the Design Professional, or partial or entire use or occupancy of the Work by the Owner shall be an acceptance of any work or materials not in accordance with the Contract Documents.

**4.3.14 Payment Not Acceptance of Work.** No payment nor any partial or entire use or occupancy of the Project by the Owner shall constitute an acceptance of Work not in accordance with the Contract Documents.

**4.3.15 Payment for Change Order Work.** Payments will not be made for any changes in the Work until a Change Order has been executed.

**4.3.16 Payment Due.** Payment of an Application for Payment shall be due ten days after receipt by the Owner of the certification of the Application for Payment by the Design Professional, unless items are audited and deleted pursuant to Article 4.3.10, in which case payment shall be due ten days after the deletions are approved by the Owner.

**4.3.17 Late Payments and Interest.** Should the Owner fail to pay a proper invoice within thirty calendar days of receipt, the Contractor shall notify the Owner in writing by certified or statutory mail. If the Owner fails to pay within five business days of receipt of the notice, the Contractor shall receive, in addition the sum named in the proper invoice, interest thereon at the rate of one half percent per month on the unpaid balance as may be due.

#### **PART 4 COST OF THE WORK**

**4.4.1 Definition.** The term "Cost of the Work" is defined in Paragraph 1.1.9.22, and includes costs necessarily incurred by CM/GC in the proper performance of the Work. Such costs shall include or be limited by the items set forth in this Part and otherwise in this Contract.

#### **4.4.2 Preconstruction Phase Services.**

**4.4.2.1 Labor Costs.** Reasonable salaries and wages of workers directly employed by CM/GC to perform work directly associated with the Project performed off-site including Preconstruction personnel and Administrative assistance. All pre-construction salaried workers employed by CM/GC shall be reimbursed based upon Actual Cost not exceeding in the aggregate the amounts shown in the CM/GC's proposal, shown as Exhibit E, which, upon agreement with the Owner, is incorporated into and made a part of this Contract by reference.

**4.4.2.2 Pre-Construction Costs and Expenses.** CM/GC shall be reimbursed for all reasonable Pre-Construction costs and expenses incurred in the performance of CM/GC's Pre-Construction services under this Contract, including, without limitation, (i) toll telephone calls, facsimile charges, postage and use of courier services; (ii) photocopying and reproduction expenses; and (iii) travel costs, based upon Actual Cost not exceeding the maximum amounts in the shown on Exhibit A, or in the aggregate, the amounts for Pre-Construction cost and expense items shown on the completed Project Cost Matrix in Exhibit E.

**4.4.3 Construction Phase Services.** "Actual Cost" as used in this Contract shall consist of all costs, except those costs excluded by Article 4.4.4, necessarily incurred by the CM/GC in the proper performance of the Work or services described in the Contract Documents (including this Contract) for which records required by the Contract Documents are established contemporaneously with the incurring of such cost, and maintained and which are not otherwise reimbursed or recovered by CM/GC. Such Actual Costs shall be at rates not higher than the standard paid in the locality of the performance required by the Contract Documents except upon the prior written consent of the Owner. The Owner will pay the CM/GC for the following Actual Costs incurred during the Construction Phase of the Project, consistent with the approved GMP:

##### **4.4.3.1 Wages.**

**4.4.3.1.2 Actual Wages.** Actual wages paid for labor under applicable collective bargaining agreements, or under a wage schedule, not to exceed the prevailing wage rate in the area, agreed upon by the Owner and CM/GC and including such Owner-approved welfare or other benefits, if any, as may be payable with respect thereto.

**4.4.3.2.2 No Changes.** No change in such wage schedules shall be made by CM/GC without prior approval by Owner in advance. Employees of CM/GC who are engaged at shops or on the road in expediting the production or transportation of materials or equipment in connection with the performance of the Work shall be considered stationed at the Field Office and their wages paid for that portion of their time spent on such performance. The Owner shall be furnished with a list of employees whom the CM/GC assigns to the performance of Work or services under this

Contract with an indication of the wages of each employee. The aforesaid employees shall be paid on the basis of time cards to which the Owner shall have ready access.

4.4.3.2 Salaries

4.4.3.2.1 Actual Salaries. When approved in advance by Owner, the actual amount of reasonable salaries paid by CM/GC of CM/GC's employees when stationed at the Site Field Office for that portion of the time spent in performing the Work in whatever capacity employed, and CM/GC's employees in its main or branch offices for that portion of their time spent in performing estimating, scheduling, procuring, accounting and administrative functions essential for the proper performance of the Work, including project management functions performed at CM/GC's main offices prior to the establishment of the Field Office, to the extent such costs are consistent with the staffing plan and wage and salary schedule approved by Owner in advance.

4.4.3.2.2 No Changes. No change in such salary schedules shall be made by CM/GC without prior approval by Owner in advance. Employees of CM/GC who are engaged at shops or on the road in expediting the production or transportation of materials or equipment in connection with the performance of the Work shall be considered stationed at the Field Office and their salaries paid for that portion of their time spent on such performance. The Owner shall be furnished with a list of employees whom the CM/GC assigns to the performance of Work or services under this Contract with an indication of the salary of each employee. The aforesaid employees shall be paid on the basis of time cards to which the Owner shall have ready access.

4.4.3.3 Employee Taxes. Cost of contributions, assessments or taxes for such items as unemployment compensation and social security, insofar as such cost is based on wages, salaries, or other remuneration paid to employees of the CM/GC and included in the Actual Cost under Paragraphs 4.4.3.1 and 4.4.3.2.

4.4.3.4 Cost of Materials, etc. The cost of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers that are used or consumed in the performance of the Work, less the salvage or residual value on such items used, but not consumed on the Work that remain the property of the CM/GC, including without limitation the costs of inspection and testing not furnished by the Owner, storage and handling;

4.4.3.5 Sales Taxes. Sales, use or similar taxes for which CM/GC is liable and imposed by any governmental authority due to or in connection with the performance of the Work or services required hereunder.

4.4.3.6 Trade Contractors. The cost of all work performed by Trade Contractors or Trade Suppliers for Work performed or materials procured pursuant to Trade Contracts entered into in accordance with this Contract and subject to the limitations stated in the Contract Documents.

4.4.3.7 Royalties. Royalties and license fees payable under any patents and the cost of defending any claim of infringement of any patent, and any liability under such claim, unless such claim arises out of CM/GC's failure to pay royalty and license fees.

4.4.3.8 Rental Charges. When approved by Owner in advance, (a) rental charges of all necessary equipment used at the Site of the Project, exclusive of hand tools owned by workers or included in Paragraph 4.4.3.4 above, whether rented from the CM/GC or others, including loading and unloading, installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation, insurance and delivery costs thereof, at rental charges consistent with those prevailing in the area, during their use on the Work and (b) wages of operating engineers for the operation of such equipment, subject in each case [item (a) and (b)] to the limitations stated in Contract Documents. Rental rates for rental of heavy equipment and hourly rates of operating engineers provided directly by the CM/GC or by any Trade Contractor or Trade Supplier shall not exceed the rates approved by Owner in accordance with Article 3.2.13.5.

4.4.3.9 Insurance Premiums. The costs of premiums for all bonds, the cost of insurance (including Workers' compensation insurance) covering risks related solely to the Project, and the *prorata* cost of insurance (including Workers' compensation insurance) covering such Project risks and other risks,

which bonds and insurance the CM/GC is required by the Contract Documents to purchase and maintain.

4.4.3.10 Permits, Fees, etc. Permits, fees, licenses, tests, royalties, sales, use, or any other such taxes, tariffs or duties related to the Work for which the 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. Fees and assessments for the building permit and impact fees (as included in approved Guaranteed Maximum Price Proposal) and for other permits, licenses and inspections for which CM/GC is required by the Contract Documents to pay.

4.4.3.11 Field Office Costs. All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office;

4.4.3.12 Utility Costs. The cost of utilities, such as water, power, fuel, sewer, etc., (unless provided by Owner) required for CM/GC's operations at the Project Site and fuel consumed in the generation of electrical power or in the operation of equipment required in the CM/GC's operation at the Project Site, except to the extent such costs are included in the rental rates for such equipment in accordance with this Contract.

4.4.3.13 Demolition Costs. Cost of demolition, if any, and removal of non-hazardous materials, debris and waste materials;

4.4.3.14 Testing. Fees of testing laboratories for tests required by the Contract Documents not paid for by the Owner.

4.4.3.15 Reproduction Costs. Costs of reproduction of plans, specifications, and other documents required for the construction of the Project.

4.4.3.16 Telephones, etc. The cost of telephone service (including toll charges), office equipment, and office furnishings, and similar items incurred in the operation of the Project Field Office.

4.4.3.17 Safety Plan. Cost incurred in the implementation of Project Site safety and security plans.

4.4.3.18 Deposits. Deposits lost for causes other than the CM/GC's negligence. approved in advance by the Owner, but only if such travel is to a point outside the Atlanta Standard Metropolitan Statistical Area and then in accordance with policies of the State Auditor of the State governing travel by employees of the State

4.4.3.20 Final Clean-up. Costs of final clean-up of the Project.

4.4.3.21 Emergency Costs. Any and all costs incurred due to an emergency affecting the safety of persons or property and related to the performance of the Work.

4.4.3.22 Other. Other costs approved in advance by the Owner.

**4.4.4 Limitations on the Cost of the Work.** All costs not identified in Articles 4.4.2 and 4.4.3 shall be considered a part of the CM/GC's Fee. Without limiting the effect of the foregoing, the following items are specifically excluded from the Cost of the Work:

4.4.4.1 Rental Rates. Rental costs of machinery and equipment, except as specifically provided in Articles 4.4.2 and 4.4.3, above, and as limited herein. The Owner will in no event consider a rental rate in excess of 80% of the rate set forth in the latest edition of the "Compilation of Nationally Averaged Rental Rates for Construction Equipment" of the Associated Equipment Distributors unless the rates proposed in excess of 80% are supported by proof satisfactory to the Owner that the excess rates are reasonable, the decision of the Owner to be final, binding and conclusive on all parties. Rental rates shall be payable only for the actual time the equipment is required on the site in the reasonable opinion of the Design Professional whose decision in this respect shall be final, binding and conclusive on all parties.

4.4.4.2 Salaries. Wages and salaries paid by CM/GC for officers, directors, and partners of CM/GC, whether or not stationed at the site Field Office, or for officers, directors, partners or employees of CM/GC performing Basic Services in the main or branch offices in any capacity whatsoever except as provided in Paragraph 4.4.3.2. Salaries and other compensation of CM/GC's personnel stationed at CM/GC's principal office or offices other than the site unless agreed to by Owner or as noted in Paragraph 4.4.3.2 above.

4.4.4.3 Employment Taxes. Costs of contributions, assessments, or taxes for such items as unemployment compensation and social security paid by CM/GC, insofar as such costs are based on wages, salaries, or other remuneration paid to officers, directors, partners, or employees of the CM/GC under Paragraph 4.4.4.2.

4.4.4.4 Office Expenses. CM/GC's main office costs and offices other than the site office except as provided in Paragraph 4.4.3.11.

4.4.4.5 Overhead Expenses. Overhead and general expenses, except as may be expressly included in Articles 4.4.2 and 4.4.3, above.

4.4.4.6 Capital Expenses. CM/GC's capital expenses, including interest on capital employed either in CM/GC's plant or for expenditures incurred in connection with the Work.

4.4.4.7 Transportation. Costs of transportation, traveling, and temporary accommodation expenses of employees, officers, or other staff of CM/GC, except as provided in Paragraph 4.4.3.19.

4.4.4.8 Relocation Expenses. Relocation costs for any employees, officers, or other staff of CM/GC, except as provided in Paragraph 4.4.3.19.

4.4.4.9 Profit Sharing. Profit sharing, bonuses, or other similar compensation of any kind paid by CM/GC to its employees.

4.4.4.10 Fines, Penalties, etc. The cost of all fines and penalties, including interest thereon, assessed against CM/GC by any federal, state or local government or quasi-governmental authorities.

4.4.4.11 Lost or Stolen Equipment. The cost of replacing lost or stolen equipment of any kind, tools, including hand and small tools, or materials of any kind.

4.4.4.12 Undocumented Costs. Costs for which records required by this Contract are not established or maintained.

4.4.4.13 Negligent Costs. Costs which arise as a result of the default, breach, delinquency, oversight, negligence, or lack of due care by CM/GC or any of its employees, servants, consultants, officers, Trade Contractors, Trade Suppliers or any other person or party which performs services for the CM/GC in connection with the Work, except as provided in Article 4.4.5.

4.4.4.14 Legal Fees. Legal fees.

4.4.4.15 Contingency Costs. Any contingency cost not covered by Article 4.4.5.

4.4.4.16 Other Costs. Any cost not specifically and expressly described in Articles 4.4.2 and 4.4.3 above.

4.4.4.17 Costs in Excess of GMP. Costs which would cause the Guaranteed Maximum Price, if any, to be exceeded.

**4.4.5 Construction Contingency Costs.** As provided in this Article 4.4.5, but only prior to the Design Professional's Certificate of Material Completion, the CM/GC shall be entitled to payment as a Construction Contingency Cost item, but not in the aggregate in excess of the Construction Contingency Component of its Component Change Order or of the GMP Change Order, as the case may be, as adjusted pursuant to Articles

4.4.6 and 4.4.7, all reasonable costs actually incurred prior to such Certificate of Material Completion incident to the performance of Work under this Contract, which are not otherwise reimbursed or recovered by it, which are not attributable to CM/GC's gross negligence or willful misconduct, and for which records required hereunder are established contemporaneously with the incurring of such costs and are maintained, for the following Construction Contingency Costs until the issuance of the Certificate of Final Completion:

4.4.5.1 Unanticipated Events. Costs arising from unanticipated events, including, for purposes of illustration, unanticipated local market labor or materials conditions;

4.4.5.2 Trade Proposer Defaults. Costs incurred as a result of defaults by proposers who submit proposals to CM/GC for Trade Contracts or as a result of defaults by Trade Contractors or Trade Suppliers.

4.4.5.3 Omissions and Oversight. Interfacing omissions between and from the various Work contingents of the CM/GC and oversight of Non-Compliant Work to the extent not recoverable from the Trade Contractor, its surety or insurance.

4.4.5.4 Legal Fees. Legal fees incurred by CM/GC in connection with the performance of its services under this Contract but in no event legal fees incurred in the negotiation of or any dispute arising out of the relationship between Owner and CM/GC.

4.4.5.5 Acceleration Costs. Subject to the limitations stated in this Paragraph, costs incurred or charged by CM/GC to accelerate the performance of Work by a Trade Contractor so as to achieve final completion of such work in advance of the time stated for same in the applicable Trade Contract. Costs incurred under this paragraph shall be within the discretion of the CM/GC. However, if significant acceleration is required, CM/GC will advise Owner prior to incurring significant acceleration costs.

4.4.5.6 Reexamination Costs. Costs for uncovering, reexamining, retesting and replacing any Work which the Design Professional demands be uncovered for its observation and which the Design Professional did not inspect within 72 hours of CM/GC's issuance of a notice of readiness for inspection under Contract Documents, so long as such Work, when uncovered, is found to be in accordance with the Contract Documents.

4.4.5.7 Liens. Subject to prior approval of the Owner and the surety, costs of liens against subcontractors, pending recovery of costs from the subcontractor at fault.

#### **4.4.6 Adjustments to Construction Contingency.**

4.4.6.1 Basis of Adjustments. The contingency costs incurred by CM/GC under Article 4.4.5 shall be reimbursable to CM/GC from the Construction Contingency. The amount of the Construction Contingency shall be increased by the net amount of (i) the aggregate by which Trade Contracts entered by CM/GC are less than line item amounts stated in CM/GC's construction budget for each particular Trade Contract less (ii) the aggregate amount by which Trade Contracts entered by CM/GC exceeds the line item amount stated in CM/GC's construction budget for each particular Trade Contract. All net amounts saved, if any, shall be added to the existing Construction Contingency amount and shall be available for all purposes permitted under Article 4.4.5. Funds from the Construction Contingency may be encumbered by the CM/GC without written direction from the Owner, provided that Owner shall approve, on a quarterly basis, the accounting for the Construction Contingency, which approval shall not be unreasonably withheld.

4.4.6.2 Limitations on Adjustments. No claim shall be made for any Construction Contingency costs in excess of the established contingency account plus and adjustments as specified in Paragraph 4.4.6.1 above by CM/GC for any reason, including a default by Owner, or payment of additional compensation to CM/GC, or any other circumstance which would otherwise permit an increase in the Guaranteed Maximum Price under a GMP Change Order. The Design Professional shall not have any jurisdiction to decide any such claim other than to reject and thereby deny such a claim.

#### **4.4.7 Release of Construction Contingency.**

4.4.7.1 Periodic Review. After approval of the GMP Change Order, the Owner and the CM/GC shall review for approval each transfer to and from the Construction Contingency on a periodic basis as

requested by the CM/GC, but not less than quarterly. The Owner shall determine if the transfer is in compliance with the contract, and if so, the Owner shall not unreasonably withhold approval of the transfer. Additionally, the CM/GC shall periodically review its accrued and anticipated Construction Contingency Costs and shall promptly inform Owner of CM/GC's determination of the extent to which the remaining Construction Contingency exceeds CM/GC's reasonably anticipated Construction Contingency Costs expected to be incurred prior to the issuance of a Final Certificate. CM/GC shall in good faith negotiate with Owner for the release of any surplus of Construction Contingency over such anticipated Construction Contingency Costs so as to permit Owner to enhance the Project. Any such release shall be confirmed by Change Order. Release of Construction Contingency shall occur in a timely basis as to allow adequate decision making time for the Owner.

4.4.7.2 Confirmation of Balance. The amount of any balance of Construction Contingency shall be confirmed by the written certification of the CM/GC to the Owner at each review..

4.4.7.3 Gross Negligence. In no event shall CM/GC be entitled to reimbursement of any cost attributable to CM/GC's gross negligence or willful misconduct.

**4.4.8 Final Disposition of Construction Contingency.** The amount of any funds remaining in Construction Contingency upon the issuance of a Certificate of Final Completion of the entire Project, or upon the earlier termination of this Contract, shall be confirmed by the written certification of the CM/GC to the Owner at the time of the issuance of the Final Certificate and any funds remaining in the Construction Contingency at the time of the issuance of the Final Certificate or at the time of any conversion to a Lump Sum Price and shall be returned to the Owner.

**4.4.9 Owner Option.** With respect to any furniture, equipment, or other capital items of a similar nature for which the Owner reimburses CM/GC its Actual Costs of acquisition, upon the termination or expiration of this Contract, and at the election of the Owner, CM/GC shall either deliver such furniture, equipment and other capital items to the Owner, or shall credit to the Owner the depreciated (normal wear and tear only) value of such items as to which the Owner elects not to obtain. The CM/GC shall protect all such items during the term of this Contract against loss or damage other than normal wear and tear.

**4.4.10 Discounts, Rebates, Etc.** The CM/GC shall provide the Owner an opportunity to provide funds to take advantage of discounts for prompt payment of materials, supplies, equipment, etc. Any trade or quantity discounts, rebates, refunds, and/or proceeds from the sale of surplus materials or equipment shall be credited to reduce the Cost of the Work.

## **PART 5 LIENS**

**4.5.1 Public Property Not Subject to Lien.** The CM/GC acknowledges that, pursuant to law, the Site is public property of the State of Georgia and is not subject to lien or levy. The CM/GC will notify the Owner of any liens or levies against the Site of which it becomes aware. The CM/GC shall cooperate with the Owner and shall use its best efforts to assist in securing the release of any liens or levies of which it becomes aware.

**4.5.2 Notice of Commencement.** A Notice of Commencement shall be filed by the CM/GC with the Clerk of the Superior Court in the county in which the Project is located, pursuant to O.C.G.A. §13-10-62.

**4.5.3 Release of Liens.** Neither any part of the retainage nor the Final Payment shall become due until the CM/GC, if required, shall deliver to the Owner a complete release of all liens or conditional release of lien upon payment or claims arising out of this contract in accordance with the Owner's specimen form (a copy of which will be provided to any bidder on request), or receipts in full in place thereof and, if required in either case, an affidavit that so far as he has knowledge or information the releases and receipts include all labor and materials for which a lien or claim could be filed; but the CM/GC may, if any Subcontractor or claimant refuses to provide a release, furnish a bond satisfactory to the Owner to indemnify the Owner against any lien or claim. If any lien or claim remains unsatisfied after all payments are made, the CM/GC shall refund to the Owner all monies that the latter may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees.

## **SECTION 5 CONTRACT ADJUSTMENTS, DISPUTES AND TERMINATION**

### **PART 1 Owner's Right to Suspend the Work.**

**5.1.1 Owner's Right to Suspend Work.** The Owner reserves the right, with or without the concurrence of the Design Professional or Program Manager, to suspend the work at any time or from time to time at the Owner's sole discretion, upon giving CM/GC five (5) days advanced written notice thereof. If the Owner exercises this right and then resumes the work covered hereby, CM/GC shall be entitled, upon timely claim to a Change Order, to payment by Owner of any reasonable Actual Costs incurred by CM/GC in connection with the suspension and resumption of the work, as well as to an extension in the time for performance of the work to the extent CM/GC is delayed by Owner's suspension.

**5.1.2 Owner's and Program Manager's Right to Stop Work.** The Owner reserves the right, for itself and the Program Manager, and for any retained Owner's Construction Inspector, upon observation of apparent nonconforming work, to immediately stop the affected work at any time by oral direction at the Owner's or Program Manager's sole discretion, with notice to be provided to CM/GC within 72 hours. If the work is later determined by the Design Professional to be in fact conforming work, then CM/GC, for the period commencing 72 hours after the issuance of the initial stop work order, shall be entitled, upon timely claim to a Change Order, to payment by Owner of any reasonable Actual Costs incurred by CM/GC in connection with the stop work order and resumption of the work, as well as to a non-compensable extension in the time for performance of the work to the extent CM/GC is delayed by Owner's stop-work order beyond the initial 72 hours.

**5.1.3 Owner's Rights Independent from Rights and Duty of the Design Professional.** The rights granted to Owner under this Article are independent of the duty and obligation of the Design Professional to stop the work for nonconforming work or to issue orders of condemnation for nonconforming work.

## **PART 2 CONTRACT ADJUSTMENTS AND DISPUTES**

### **5.2.1 General Provisions.**

5.2.1.1 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.

5.2.1.2 Continuation of the Work. Unless otherwise agreed in writing, and notwithstanding any other rights or obligations of either of the parties under any Contract Documents or Agreements, the CM/GC must carry on with the performance of its contract services and the Work, including all duties and obligations hereunder, during the pendency of any claim, dispute, and other matter in question or during any alternative dispute resolution proceeding, court proceeding, or other proceeding to resolve any claim, dispute, and other matter in question, and the Owner will continue to make payments in accordance with the Contract Documents. The Owner, however, is under no obligation to make payments on or against such claims, disputes, and other matters in question during the time required to resolve such claims, disputes, and other matters in question.

### **5.2.2 General Claims for Contract Adjustments and Disputes.**

5.2.2.1 General Claims of the CM/GC. Budgeting and cash flow being of material importance to the Owner, should the CM/GC suffer any injury or damage to person or property that CM/GC reasonably believes a legal basis exists for liability on the part of the Owner, Program Manager or Design Professional, and that should result in an adjustment in the Cost of the Work or the Contract Time, such claim shall be made in writing in the form of a Request for Change Order to the Design Professional within fourteen (14) days after such injury or damage is or should have been first observed. Any and all claims not made within said fourteen (14) days are barred, waived, released, and discharged. The decision of the Design Professional is final and binding on both Owner and CM/GC unless the CM/GC protests the decision of the Design Professional and files a Statement of General Claim as set forth below.

5.2.2.2 Protest; Statement of General Claim; Time of Submission. No protest of a claim decision of the Design Professional by the CM/GC, whether said claim shall be accrued or prospective, shall be valid unless a "Statement of Claim" in writing and accompanied by vouchers and other supporting data shall have been filed with the Program Manager, or if there is no Program Manager, with the Owner by the CM/GC not later than thirty (30) days after the Design Professional's decision to reject the claim, time being of the essence. The "Statement of Claim" shall contain a concise and clear recital of the grounds and the legal basis upon which the claim is asserted, including a designation of the provision or provisions of the Contract Documents and the legal basis of liability on which the claim is based. The Statement of Claim shall indicate the dollar amount of the claim and the number of days of adjustment of the Contract Time.

#### 5.2.2.3 Certain Claims Excluded from General Claims.

5.2.2.3.1 All claims for Unavoidable Delay as defined in Article 3.5.8 must be filed and processed pursuant to Article 3.5.10 and are subject to the limitations of Articles 3.5.7 and 3.5.9

5.2.2.3.2 All claims concerning designation of a Sole Source must be filed and processed pursuant to Articles 2.2.4 or 3.4.6 and are subject to the provisions and limitations therein.

5.2.2.3.3 All claims concerning the Owner's rejection of Construction Documents in conjunction with a Construction Document Change Order must be filed and processed pursuant to Article 2.2.3 and are subject to the provisions and limitations therein.

5.2.2.3.4 After execution of the GMP Change Order, all claims to modify the Contract Time or extend the Construction Completion and Occupancy Date must be filed and processed pursuant to Article 3.5.10.

5.2.2.3.5 After execution of the GMP Change Order, all claims to modify the Cost of Work or adjust the GMP must be filed and processed as a request for change order and subject to the processes and limitations set forth in Sections 3 and 4. If the requested change order is rejected, a protest may be made as set forth in Paragraph 5.2.2.2 above.

### 5.2.3 **Dispute Resolution.**

5.2.3.1 Initial Dispute Resolution. If a dispute arises out of or relates to this Contract or its breach, 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 days thereafter. If the dispute is not settled by the senior administrators, the parties may submit the dispute to mediation in accordance with Paragraph 5.2.3.2.

5.2.3.2 Mediation. If the dispute cannot be settled pursuant to Paragraph 5.2.3.1, the parties may elect to submit the dispute to mediation. The parties agree to conclude such mediation within sixty 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.

5.2.3.3 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.

5.2.3.4 No Litigation. No litigation may be commenced without first following the process in this Article. Litigation may be filed in the Superior Court of Fulton County, Georgia, pursuant to OCGA §50-21-1, after the filing party provides thirty days written 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.

## **PART 3 TERMINATION**

### 5.3.1 **Owner's Right to Terminate Contract Without Cause.**

5.3.1.1 Owner's Right to Terminate. If Owner determines the Project lacks feasibility or for any other reason, in its sole and complete discretion, elects to forego the Project's construction, the Owner shall have the right, upon thirty (30) days prior written notice to the CM/GC, to terminate this Contract without cause and irrespective of whether or not CM/GC is in default of any of its obligations hereunder.

#### 5.3.1.2 Termination Prior to Entry of GMP Change Order.

5.3.1.2.1 CM/GC Fee. In the event such termination occurs prior to any Component Change Order, or after all Work under any issued Component Change Orders has been finally

completed, the Owner shall pay CM/GC the sums due for the CM/GC Fee earned to the date of termination, not exceeding the unpaid balance of the Preconstruction Fee amount set forth in Paragraph 4.1.1 (Exhibit A, Item 5). For purposes of calculation, the CM/GC Fee shall be deemed earned only to the extent of an amount that bears to the total Fee the same ratio that the Work in place at the time of termination bears to the total Work, as reasonably determined by the Design Professional.

5.3.1.2.2 Prior to GMP Change Order, Items for Which Payment Shall Be Made. In the event such termination occurs prior to the entry of the GMP Change Order, the Owner shall pay CM/GC the reasonable termination expenses for:

- (a) Sums due for authorized Consultant Fees earned prior to termination, but not exceeding the remaining unpaid balance of the Preconstruction Fee amount set forth in Paragraph 4.1.1 (Exhibit A, Item 5), after payment of the CM/GC Fee;
- (b) Any unpaid Actual Costs, Contingency Costs and lump sum amounts due under Component Change Orders, incurred or earned to the date of termination;
- (c) Any other costs, not exceeding the unpaid balance of the aggregate of all approved Change Order and Component Change Order Sums, attributable to the termination (including, by way of illustration only, cancellation charges owed to and other incurred obligations, commitments and claims of Trade Contractors or Trade Suppliers) and for which CM/GC is not otherwise compensated;
- (d) Fair compensation by purchase or rental (at Owner's election), for any equipment retained by Owner, to the extent it has not already paid for same as an item of Actual Cost or Contingency Cost.

5.3.1.3 Termination After GMP Change Order. Should such termination occur after the entry of the GMP Change Order, the Owner shall pay CM/GC, up to the unpaid balance of the GMP, for (1) all Actual Costs, Contingency Costs and lump sum amounts earned to the date of such termination; (2) all other costs attributable to the termination (including by way of illustration only cancellation charges owed to and other incurred obligations, commitments and claims of Trade Contractors or Trade Suppliers) and for which CM/GC is not otherwise compensated; (3) a proportionate amount of CM/GC's Fee that bears to the total Fee under the GMP Change Order the same ratio that the Actual Cost and lump sum amounts due with respect to the Work in place at the date of termination bears to the Estimated Cost Component of the GMP Change Order; and (4) fair compensation by purchase or rental (at Owner's election), for any equipment retained by Owner, to the extent it has not already paid for same as an item of Actual Cost or Contingency Cost

5.3.1.4 Condition Precedent to Payment. As a condition precedent to receiving the payment set forth in this Article 5.3.2, CM/GC shall deliver to the Owner all papers, documents, assignments and agreements relating to the Project, in particular the Construction Documents (including ownership and copyright thereof) as set forth in Article 1.6.3.

5.3.1.4.1 Assignment. If requested shall assign to the Owner or to an entity of Owner's choice all of CM/GC's contractual rights in respect thereof, so that the assignee shall be fully vested with all rights and benefits of CM/GC under such papers, documents and agreements, together with releases and waivers of lien in the same manner as would be required upon Final Completion. The Owner may also request the assignment from CM/GC to Owner or to the entity of Owner's choice of all Trade Contracts entered into by CM/GC under Component Change Orders and in that event the assignee shall be solely obligated to the Trade Contractors or Trade Suppliers under such Trade Contracts for all sums payable thereunder and not previously paid by the Owner to CM/GC.

5.3.1.4.2 Cessation of Entitlement. Upon the CM/GC's assignment of agreements, contracts, Trade Contracts and/or Owner's payment of monies due CM/GC as provided in Subparagraph 5.3.4.4.1 above, CM/GC shall be entitled to no further compensation of any kind from Owner and shall have no further obligation with regard to the assigned agreements, contracts, or Trade

## Contracts.

### 5.3.2 Owner's Right to Declare Default and/or Terminate Contract for Cause.

5.3.2.1 Owner's Right to Terminate. If CM/GC makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if it persistently or repeatedly refuses or fails, except in cases for which extensions of time are provided, to supply enough properly skilled workmen or proper materials, or if it fails to make proper payment to Trade Contractors for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the Project, or if it fails to diligently prosecute the work in accordance with the User's Program, the Construction Documents, or the Contract Documents, or if it otherwise is guilty of a substantial violation of any provision of this Contract, then the Owner may, without prejudice to any right or remedy and after giving the CM/GC and its surety, if any, ten (10) days' written notice of the Owner's Intent to Declare Default, during which period the CM/GC fails to cure or fails to commence and thereafter diligently prosecute Work necessary to cure the violation, declare the CM/GC to be in Default and to terminate the employment of the CM/GC.

5.3.2.2 Default or Termination Prior to GMP. If such default or termination occurs prior to entry of any Component Change Order or GMP Change Order, Owner shall pay all Consultation Fees earned prior to termination less such damages as may be incurred by Owner by reason of such termination.

5.3.2.3 Default or Termination after GMP. Upon default or termination of this Contract as set forth above after entry of a Component Change Order or GMP Change Order, the 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 the Owner may deem expedient. In such case, CM/GC shall not be entitled to receive any further payment until the Work is completed and shall take all necessary steps, including the legal assignment of its contract rights, as the Owner may require for the purpose of fully vesting in the Owner or the entity of Owner's choice the rights and benefits of CM/GC under such obligations or commitments as the Owner may elect. Upon final completion of the Work governed by Change Orders then in force (including the GMP Change Order), CM/GC shall pay the Owner the amount, if any, that the total cost of completing the Work governed by Change Orders in force at the time of default or termination (including the GMP Change Order), plus any damages recoverable by Owner for delays in completion, together with amounts previously paid to CM/GC, exceeds the amount stated in the Change Orders (including the GMP Change Order) in force at the time of said default or termination. If there is no such excess, the Owner shall pay CM/GC any portion of the Actual Cost and lump sum amounts due with respect to the Work and the CM/GC's Fee that has not previously been paid and that was owed to CM/GC at the time of termination under Change Orders then in force, so long as the total amount paid by the Owner for completing the Work under such Change Orders, including all costs and damages incurred by the Owner as a result of any delay in completion, and all amounts previously paid to CM/GC, do not exceed the amount stated in the Change Orders (including the GMP Change Order) in force at the time of termination.

5.3.2.4 Owner's Right to Prosecute the Work. Time being of the essence, if the CM/GC shall be declared in default or shall fail or neglect to carry out the Work in accordance with the Contract Documents, or fail to otherwise fully comply with its obligations under this Contract, both the CM/GC and the Surety agree that the Owner may, after giving the CM/GC and Surety twenty five (25) calendar days written notice, without prejudice to any other remedy and without invalidating the performance bond, make good such deficiencies and may deduct the cost thereof from payment due the CM/GC or at the Owner's option, the Owner may terminate this Contract and take possession of the Site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the CM/GC and finish the Work by whatever method the Owner shall deem expedient.

5.3.2.5 Effect of Later Judicial Determination. In the event a court of competent jurisdiction determines (or the parties agree to settle with a consent determination) that a termination for default is wrongful or not the fault of the CM/GC, the termination shall be considered to be a Termination Without Cause and the sole remedy available to the CM/GC shall be the contractual treatment of the termination pursuant to Article 5.3.4 above and without any other damages or relief.

### 5.3.3 CM/GC's Right to Terminate.

5.3.3.1 CM/GC's General Right to Terminate. If the Project, in whole or substantial part, is stopped for

a period of thirty (30) days or more under an order of any court or other public authority having jurisdiction over the Project, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the CM/GC, or should the Work be suspended by Owner under Paragraph 5.3.3 for a period of more than thirty (30) days, then the CM/GC may, upon seven (7) days' written notice to the Owner, terminate this Contract and, upon providing Owner with all releases and waivers of lien in the same manner as would be required upon Final Completion, recover from the Owner payment of Actual Costs, and lump sum amounts due for all Work properly executed, the CM/GC's Fee earned to date, and, upon timely claim therefor, for any proven loss sustained or cost incurred upon any materials, equipment, tools, construction equipment and machinery, and cancellation charges on existing obligations of the CM/GC.

**5.3.3.2 CM/GC's Right to Terminate for Nonpayment.** If the Owner fails to pay the CM/GC when payment is due, the CM/GC must give written notice of the CM/GC's intention to terminate this Contract. If the Owner fails to provide the CM/GC payment or written notice of a dispute as to the amount sought by the CM/GC within thirty (30) days after receipt of the CM/GC's written notice, the CM/GC may terminate this Contract. Upon such termination the Owner will pay the CM/GC the for the Work properly executed, the CM/GC's Fee earned to date, and, upon timely claim therefor, for any proven loss sustained or cost incurred upon any materials, equipment, tools, construction equipment and machinery, and cancellation charges on existing obligations of the CM/GC.

**5.3.3.3 Limitation on Fee.** The CM/GC Fee shall be deemed earned only to the extent of an amount that bears to the total fee the same ratio that the Work in place at the time of termination bears to the total Work, as reasonably determined by the Design Professional, and approved by the Owner.

**5.3.4 Termination for Abandonment by CM/GC.** Both the CM/GC and the Surety under any bond furnished for the Project, agree that the Owner, after fourteen (14) calendar days' written notice to the CM/GC, may terminate this Contract if the CM/GC abandons the Project. If such termination occurs, the Owner shall pay the CM/GC for Work completed and for the CM/GC's actual expenses for materials, equipment, tools and construction equipment and machinery, less any costs the Owner incurs in re-contracting and the start-up of a replacement for the CM/GC.

**5.3.5 Notices of Termination.** Notwithstanding any other provision of this Contract, if the either party elects to terminate this Contract regardless of reason, the terminating party will issue a written Notice of Termination or of Default to the terminated or defaulted party by Certified Mail, Return Receipt Requested.

**5.3.6 Cumulative Remedies.** Except as otherwise provided herein, each right and remedy provided for in this Contract shall be cumulative and shall be in addition to every other right or remedy provided for in this Contract as now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise of any one or more of the rights or remedies provided for in this Contract as now or hereafter existing 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 as now or hereafter existing at law or in equity or by statute or otherwise.

## **SECTION 6 - PROJECT COMPLETION**

### **PART 1 MATERIAL COMPLETION**

#### **6.1.1 Prerequisites.**

**6.1.1.1 No Incomplete Work.** The CM/GC must attain material completion prior to any occupancy of the Project.

**6.1.2.2 Completion of Components.** The Owner does not intend to accept partial occupancy of components. All components of the Project must achieve Material Completion.

**6.1.3.3 No Partial Occupancy.** In the event partial occupancy becomes appropriate, which decision shall be at the sole discretion of the Owner, a Change Order will be executed.

#### **6.1.2 Material Completion.**

6.1.2.1 Material Completion Defined. Material Completion is when the Work or designated portion thereof is complete in accordance with the Contract Documents so that the Owner and its Using Agency can occupy and utilize the Work for its intended use. Material Completion shall require building commissioning and complete operation of all applicable building systems including, but not limited to, mechanical, electrical, plumbing, fire protection, fire alarm, telecom, data, security, elevators, life safety, and accessibility. The Work shall be complete except for Minor Items or Permitted Incomplete Work or Warranty Complaint Items (see Article 6.6.3).

6.1.2.1.1 Minor Item Defined. A Minor Item is a portion or element of the Work:

(a) that can be totally complete within thirty (30) days; and

(b) that can be completed while the Using Agency occupies the Work without impeding or interfering with either the Using Agency's use and occupation of the Work or the CM/GC's ability to complete the Minor Item; and

(c) that will not interfere with the complete use and enjoyment of the project by the Using Agency.

6.1.2.1.2 Permitted Incomplete Work Defined. Permitted Incomplete Work is work that is incomplete through no fault of the CM/GC, as determined by the Owner, including, but not limited to, seasonal test and balance, seasonal landscaping, scheduled elevator inspection or maintenance, incomplete work due to failure of Separate Contractors to complete work, and the like.

6.1.2.2 When Material Completion Required. Material Completion shall be achieved within the Contract Time and by the Material Completion and Occupancy Date, as amended. Failure by the CM/GC to achieve Material Completion by not later than the Material Completion and Occupancy Date, as amended, shall be sufficient cause for the assessment of Liquidated Damages.

**6.1.3 Effect of Achieving Material Completion.** Upon the date when Material Completion is achieved, the following matters are conclusively determined:

6.1.3.1 Occupancy of the Work. The Using Agency may immediately occupy the Work without restriction.

6.1.3.2 Warranty Periods. All warranties begin to run from the date Material Completion is achieved.

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

6.1.3.4 Insurance. The Using Agency is responsibility for all insurance for the Project.

6.1.3.5 Liquidated Damages. The Liquidated Damages daily rate is reduced to zero.

6.1.3.6 Payment for Material Completion. The CM/GC may request payment of the remaining contract balance, including retainage, less amounts credited the Owner or incurred as liquidated damages, and less amounts withheld for the Punchlist by reason of Minor Items or Permitted Incomplete Work (See Paragraph 6.6.3.2). Completion and Occupancy Date, as amended, the following matters are conclusively determined:

**6.1.4 Effect of Failure to Achieve Material Completion.** Should Material Completion not be achieved by the Material Completion and Occupancy Date, as amended, the following matters are conclusively determined:

6.1.4.1 Breach of Covenant of Time. As time is of the essence in the completion of the Work, the CM/GC is in breach of the covenant of time and is subject to default.

6.1.4.2 Liquidated Damages. Liquidated Damages at the specified daily rate in the Contract begin to accrue and are payable on the day immediately following the Material Completion and Occupancy Date.

6.1.4.3 Extension of Time. While it is anticipated that all applications of the CM/GC for additional time or extensions of the Material Completion and Occupancy Date would have been filed and determined by the Design Professional prior to the Material Completion and Occupancy Date, the CM/GC may, within 10 days after the Material Completion and Occupancy Date, file for any additional extensions of time pursuant to Section 3, Part 3, and the collection, but not the accrual, of Liquidated Damages shall be suspended until the Design Professional's decision. Should such a belated application be filed after the 10-day period, the Owner, in its sole discretion, may begin collection of Liquidated Damages. Should the Design Professional grant any applications for extension of time and the Material Completion and Occupancy Date, Liquidated Damages shall be adjusted accordingly.

## **PART 2 FINAL COMPLETION**

### **6.2.1 Final Completion.**

6.2.1.1 Final Completion Defined. Final Completion is the completion of all Work, including completion of all Minor Items as defined in Section 6, Part 1. Final Completion shall be evidenced by the Design Professional's Certificate of Final Completion. Final Completion should include completion of Permitted Incomplete Work, as defined in Section 6, Part 1, for which the reason that the Work was incomplete has been removed.

6.2.1.2 When Final Completion Required. Final Completion shall be obtained not later than thirty (30) days after Material Completion of the Work. Permitted Incomplete Work shall be completed as expeditiously as possible, but not later than a date established by the Design Professional. The Design Professional's Certificate of Final Completion shall not be issued until all Permitted Incomplete Work is completed.

**6.2.2 Effect of Achieving Final Completion.** Upon the date when Final Completion is achieved and the Design Professional's Certificate of Final Completion is issued, the following matters are conclusively determined:

6.2.2.1 Project Completion. The Project and the Work are complete.

6.2.2.2 Payment for Final Completion. All amounts withheld from Payment for Material Completion and not credited to the Owner, as set forth in Section 6, Part 4, are payable upon receipt of a final pay request from the CM/GC.

**6.2.3 Effect of Failure to Achieve Final Completion.** Should Final Completion not be achieved within the time specified, the Owner will issue to the CM/GC a fourteen (14) day notice as a final warning to complete the Work. If Final Completion is not achieved by the end of the 14<sup>th</sup> day from the date of the Notice, the following matters are conclusively determined, subject to any request for extension of time as set forth in paragraph 6.2.3.3 below:

6.2.3.1 Breach of Covenant of Time. As time is of the essence in the completion of the Work, the CM/GC is in breach of the covenant of time and is subject to default.

6.2.3.2 Ineligibility to Bid Upon State Contracts. The CM/GC is ineligible to bid upon any contract invitation to bid of 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, or the Georgia Department of Administrative Services. In the event a bid has been submitted but the bid award has not been made, the CM/GC's ineligibility requires that its bid be rejected.

6.2.3.2.1 Automatic Restoration of Eligibility to Bid. The 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 the Certificate of Final Completion.

6.2.3.2.2 Application to Reinstate Eligibility to Bid. The CM/GC's eligibility to bid upon state contracts may be reinstated upon the following:

- (a) A written application to the Owner, not earlier than 18 months after the date of failure to achieve final completion; requesting reinstatement of eligibility, and

(b) The showing of good and just cause why the CM/GC's eligibility should be reinstated, or that there is good and just cause to believe that the achievement of Final Completion was impossible to the extent that determination of ineligibility was improvident.

(c) The Owner may, upon written request, permit the CM/GC to make a personal presentation upon the application to either the Director, Construction Division, GSFIC; the Vice Chancellor for Facilities, Board of Regents, or the Commissioner, Department of Administrative Services, whichever agency is the Owner of the Project which caused the ineligibility to be imposed.

6.2.3.3 Extension of Time for Final Completion. The CM/GC may file a request for an additional extension of time in the manner prescribed in Section 3, Part 4, and the effects of Failure to Achieve Final Completion shall be suspended until the Design Professional's decision. Should the Design Professional grant the application for extension of time generally, the time for achieving Final Completion shall be adjusted accordingly. Should the Design Professional grant the application for extension of time for a specific item of Work, that item of Work shall be deemed Permitted Incomplete Work with a specific individual final completion date.

### **PART 3 INSPECTIONS FOR THE COMPLETION OF THE WORK**

**6.3.1 General Responsibility of the CM/GC for Inspection.** The CM/GC acknowledges and agrees that he has an indivisible, non-delegable, and nontransferable contractual obligation to the Owner to make his own inspections of the Work at all stages of construction; and he shall supervise and superintend performance of the Contract in such manner as to enable him to confirm and corroborate at all times that all work has been executed strictly, literally, rigidly, and inflexibly in accordance with the methods and materials designated in the Contract Documents. The CM/GC's inspections are also for the purpose of permitting the CM/GC to accurately represent that (a) his certifications on periodical estimates are true and correct and (b) his notices of readiness for inspections are true and correct. Accordingly, the CM/GC acknowledges and agrees that he may not defend or excuse any deviation from the Contract Documents on the ground (a) that the deviation was not brought to his attention by another person or party or other persons or parties or (b) that a subcontractor is or subcontractors are at fault.

### **6.3.2 Notice of Readiness for Inspection for Material Completion.**

6.3.2.1 Preparation of Initial Punchlist. Prior to the Material Completion and Occupancy Date, as amended, the CM/GC shall correct all non-compliant or incomplete work. The CM/GC shall then prepare an "Initial Punchlist" itemizing to the best of the CM/GC's knowledge all Minor Items and Permitted Incomplete Work (as defined in Section 6, Part 1) and provide a copy of the Initial Punchlist to the Design Professional and Owner. The CM/GC is encouraged to consult with the Design Professional prior to finalizing the Initial Punchlist, in particular in arriving at consensus for Minor Items and Permitted Incomplete Work.

6.3.2.2 Notice of Readiness for Inspection for Material Completion. After or simultaneously with the provision of the Initial Punchlist, the CM/GC shall give the Design Professional and Owner written notice requesting inspection for Material Completion in the following words:

*The work on the Contract for the [show name of Project as it appears in the Contract] having been materially completed, it is requested that an Inspection for Material Completion be made promptly by the Design Professional in accordance with Section 6 of the General Conditions. The Initial Punchlist, to the best of the CM/GC's knowledge, is attached hereto.*

6.3.2.3 No Inspection without Notice. No Inspection for Material Completion shall be made until such time as the Design Professional and Owner have received notice in the exact form indicated above. In the event the CM/GC shall have issued the "Notice of Readiness for Inspection for Material Completion" prematurely, hereinafter referred to as a "false start," the CM/GC shall be liable for the damage resulting from the false start including, but not limited to, the salaries, professional fees, and travel and living expenses of the persons or parties inconvenienced by the false start.

6.3.2.4 Additional Requirements for Inspection for Material Completion. No Inspection for Material

Completion shall be requested by the CM/GC until such time as the CM/GC has provided to the Design Professional the following:

6.3.2.4.1 a copy of the initial test and balance report on the heating, ventilating and air conditioning system;

6.3.2.4.2 a copy of the facility operation and maintenance instructions and any other documents specified by the Design Professional in Division 1 of the Specifications; and

6.3.2.4.3 a certification that all building systems specified in Paragraph 6.1.1.1 above are operational. The CM/GC expressly agrees that the manufacturers are solely the agents of the CM/GC. In accomplishing this certification, the CM/GC shall obtain the manufacturer's certificates and coordinate the initial start-up and testing of building systems. In all cases where the equipment of two or more manufacturers ties in and functions together, the CM/GC shall require the field representatives to perform simultaneously the initial start-up, the testing, and the placing of their equipment into operation. "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. All building commissioning activities should be completed, with the exception of those designated as "Permitted Incomplete Work."

**6.3.3 Conducting the Inspection for Material Completion.** The Design Professional shall conduct the Inspection for Material Completion. The Design Professional shall confirm the Initial Punch List and shall add or delete such Minor Items or Permitted Incomplete Work as shall be appropriate. Where appropriate, the Design Professional shall assign completion dates for the items of Permitted Incomplete Work. At the completion of the Inspection for Material Completion, the resulting punch list shall become the "Final Punch List." Upon successful completion of the inspection, the Design Professional shall issue a Certificate of Material Completion.

**6.3.4 Notification of Using Agency of Site Visits by the CM/GC or Trade Contractors.** Following the successful completion of the Inspection for Material Completion the CM/GC and his Trade CM/GC or subcontractors shall make no visits to the site without first giving notice to the Using Agency and the Owner.

**6.3.5 Notification of Readiness for Interim Inspection for Punchlist Completion.** Not more than 30 days after Material Completion, and upon completion of the Final Punchlist (including *all* Minor Items and such Permitted Incomplete Items as are due to be completed), the CM/GC shall give the Design Professional and Owner written notice requesting inspection for Final Completion in the following words:

*The work on the Contract for the [show name of Project as it appears in the Contract] having been 100% completed, except for Permitted Incomplete Work not yet due to be completed, it is requested that an Inspection for Final Completion be made promptly by the Design Professional in accordance with Section 6 of the General Conditions*

No Inspection for Interim Inspection for Punchlist Completion shall be made until such time as the Design Professional and Owner have received notice in the exact form indicated above. In the event the CM/GC shall have issued the "Notice of Readiness for Interim Inspection for Punchlist Completion " prematurely, hereinafter referred to as a "false start," the CM/GC shall be liable for the damage resulting from the false start including, but not limited to, the salaries, professional fees, and travel and living expenses of the persons or parties inconvenienced by the false start.

**6.3.6 Conducting the Interim Inspection for Punchlist Completion.** The Design Professional shall conduct the Inspection for Final Completion. The Design Professional shall confirm the Final Punch List has been completed including *all* Minor Items. Upon successful completion of the inspection, the Design Professional 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. In the event *all* Permitted Incomplete Work has been completed at the time of this Interim Inspection, and the Design Professional so certifies, then this inspection shall be deemed an Inspection for Final Completion. In the event any Minor Item is determined to be incomplete, the Owner may give the fourteen (14) day notice of failure to complete the Work set forth in Article 6.2.3.

**6.3.7 Conducting the Inspection for Final Completion.** In the event that Permitted Incomplete Work remains after the Interim Inspection for Punchlist Completion, at such time when all such Permitted Incomplete Work has been completed or scheduled for completion, the Owner shall call for and the Design Professional shall schedule the Final Inspection with the Owner and CM/GC. The Design Professional shall conduct the Inspection for Final Completion and shall confirm that all Permitted Incomplete Work has been completed. Upon successful completion of the inspection, the Design Professional shall issue the Certificate of Final Completion and Final Payment, including any remaining funds withheld in accordance with Paragraph 6.6.3.2 may, upon an application for payment, be paid to the CM/GC. Any Final Documents not yet submitted must be submitted with the application for Final Payment. In the event any item of Permitted Incomplete Work is determined to be incomplete and the date for its completion has passed, the Owner may give the fourteen (14) day notice of failure to complete the Work set forth in Article 6.2.3.

## **PART 4 FINAL DOCUMENTS**

### **6.4.1 Final Documents.**

6.4.1.1 Final Documents Defined. Final Documents consist of all documents set forth in Division 1 of the specifications, warranties, and guarantees required by the Contract Documents.

6.4.1.2 Minimum Specific Final Documents Required. Prior to beginning processing of the application for payment upon the Certificate of Material Completion, all Final Documents, including but not limited to the following, must be submitted to the Owner and Using Agency:

#### 6.4.1.2.1 Affidavits.

- (a) A non-influence affidavit in the exact form as shown in Section 7, Forms.
- (b) A statutory affidavit in the exact form as shown in Section 7, Forms.

#### 6.4.1.2.2 Bonds.

- (a) A Five Year Bond of Roofs and Walls as shown in Section 7, Forms, written by a surety authorized to do business in the State of Georgia and in the penal sum of the actual cost of the walls, wall cladding, wall insulation, roof, insulation and roof deck, but not less than the amount shown as in the approved initial breakdown for these roof and wall systems.
- (b) Any Bonds to Discharge Claim issued to Trade Contractors and suppliers as shown in Section 7, Forms.

6.4.1.2.3 Marked-up Construction Documents. The CM/GC shall provide a complete set of Marked-up Construction Documents to the Design Professional, which set shall reflect all changes caused by addenda, field changes, Change Orders, or observed changes by the CM/GC or subcontractor(s) for the purpose of the Design Professional's issuance of Record Documents to the Owner.

6.4.1.2.4 Operation and Maintenance Data and Instructions and Training. The CM/GC shall furnish proper written instructions to the Owner and Using Agency on operation and maintenance of all mechanical and electrical equipment. The CM/GC shall provide training in the operation and maintenance of all mechanical and electrical systems in the presence of the Design Professional and Owner to the Using Agency and shall give notice in writing to the Design Professional, Owner and Using Agency at least fifteen (15) days prior to the date it is proposes for the training. For all items of mechanical or electrical equipment or apparatus installed which require operation or maintenance after occupancy, the CM/GC shall furnish and deliver to the Owner and Using Agency complete brochures and data as prepared and published by the manufacturers covering details of operation and maintenance.

6.4.1.2.5 Certificates of Manufacturers for Major Components. For 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; start-up, testing, and placing into operation shall be performed by the field representative(s) of

the manufacturer(s), and certificate(s) of the manufacturer(s) shall be filed with the Owner on the letterhead(s) of the manufacturer(s) in which the manufacturer(s) certifies or certify that "the equipment has been installed in strict compliance with the recommendations of the manufacturer(s) and is operating properly," in the format shown in Section 7, Forms. The manufacturer shall list in the certificate the item or items furnished to the job and the date, name, or other positive means of identifying any supplementary documents containing the recommendations of the manufacturer, with a copy of each of the supplementary documents attached to the certificate.

6.4.1.2.6 Final Certification of Costs. For proper capital asset reporting of the Project, the CM/GC shall submit his Final Certification of Costs in the format set forth in Section 7, Forms.

**6.4.2 Presentation of Final Documents.** At the time of the Inspection for Material Completion, but in any event prior to the application for Final Payment, the CM/GC will provide the Owner and Using Agency with a three ring binder containing all of the Final Documents, warranties, and guarantees required by the Contract Documents. Included in the binder shall be the documents indicating the brand names actually used in the installation of the work.

**6.4.3 Keys.** Keys with tags indicating number and/or description of door or room each key is intended to fit attached to each key shall be delivered to the Owner and Using Agency. 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.

## **PART 5 PAYMENT FOR MATERIAL COMPLETION AND FINAL PAYMENT**

**6.5.1 Payment for Material Completion.** Payment for Material Completion shall be due 10 days after receipt by the Owner of the application for payment upon achievement and certification of Material Completion, provided that Final Documents shall have been submitted. Payment shall be made by a check payable jointly to the CM/GC and surety and shall be mailed to the surety.

### **6.5.2 Application for Payment for Material Completion.**

6.5.2.1 Certification of CM/GC. The CM/GC shall certify, over his own signature, that the Work provided for by the Contract Documents has been completed under the terms and conditions thereof, and that the entire balance of the contract, including retainage, is due and payable, except for those amounts determined by the Design Professional to be withheld due to credits due to the Owner and Minor Items or Permitted Incomplete Work pursuant to Article 6.6.3 below.

#### 6.5.2.2 Supporting Documentation.

6.5.2.2.1 Financial Data. The CM/GC shall submit evidence satisfactory to the Design Professional that all payrolls, material bills, and other indebtedness connected with the work have been paid.

6.5.2.2.2 Affidavits and Bonds. The CM/GC shall attach copies of the affidavits and bonds set forth in subparagraphs 6.4.2.2.1 and 2 above, execute the payment certification and forward it directly to the Design Professional.

### **6.5.3 Release of CM/GC's Retainage.**

6.5.3.1 Establishment of List. At the completion of the Inspection for Material Completion, the Design Professional and CM/GC, with the consent of the Owner, shall develop the Final Punchlist. The Design Professional will assign a value for each the Minor Items and Permitted Incomplete Work.

6.5.3.2 Establishment of Amount of to be Withheld for Punchlist Items. In general, the amount to be withheld from the Payment for Material Completion and to be paid upon Final Completion shall be equal to 200% of the Design Professional's value of completing the Work for each Minor Item or Permitted Incomplete Work. The following additional amounts to be withheld shall be applied where applicable.

6.5.3.2.1 Mechanical and HVAC Systems. Until such time as the Design Professional shall have certified that the heating system has been balanced under seasonable weather conditions, the amount withheld shall in no event be less than \$1,000.00.

6.5.3.2.2 Certificates. For each certificate required for major components a sum of \$500.00 shall

be withheld until such certificate shall have been filed with the Owner and Institution.

**6.5.4 Effect of Payment for Material Completion and Release of Claims.** Owner shall process the Payment for Material Completion as expeditiously as possible in accordance with the certification of the Design Professional, but interest shall not accrue until thirty (30) days have elapsed from receipt, unless error is found in the application or supporting documents. Acceptance of Payment for Material Completion by the 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 except for the work associated with the Minor Items and the Permitted Incomplete Work.

**6.5.5 Final Payment.** Final Payment shall be due 10 days after receipt by the Owner of the application for payment upon achievement and certification of Final Completion, provided that Final Documents shall have been submitted. Payment shall be made by a check payable jointly to the CM/GC and surety and shall be mailed to the surety. Owner shall process the Final Payment expeditiously as possible in accordance with the certification of the Design Professional, but interest shall not accrue until thirty (30) days have elapsed from receipt, unless error is found in the application or supporting documents.

6.5.5.1 Certification of CM/GC. The CM/GC shall certify, over his own signature, that the Work provided for by the Contract Documents has been completed under the terms and conditions thereof, and that the entire balance of the contract is due and payable.

6.5.5.2 Supporting Documentation.

6.5.5.2.1 Financial Data. The CM/GC shall submit evidence satisfactory to the Design Professional that all payrolls, material bills, and other indebtedness connected with the work have been paid.

6.5.5.2.2 Affidavits and Bonds. The CM/GC shall attach copies of the affidavits and bonds set forth in subparagraphs 6.4.2.2.1 and 2 above, execute the payment certification, and forward it directly to the Design Professional.

**6.5.6 Effect of Final Payment and Release of Claims.** Acceptance of Final Payment for Material Completion by the 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.

## **PART 6 CORRECTION OF WORK AFTER FINAL PAYMENT**

**6.6.1 Non-Complying or Defective Work.** Neither (1) the Design Professional's Certificate of Material Completion, (2) nor any decision of the Design Professional, (3) nor payment, (4) nor any provision in the Contract shall relieve the CM/GC of responsibility for faulty materials, faulty workmanship, or omission of contract work, and he shall remedy any defects or supply any omissions resulting therefrom and pay for any damage to other work resulting therefrom.

6.6.1.1 Notice of Non-Complying or Defective Work. The Owner shall give notice of observed defects or omissions with reasonable promptness. Attached to or included within the notice shall be a Notice of Non-complying Work.

6.6.1.2 Correction of the Work. The CM/GC shall within the space of time designated in Notices of Non-complying Work and without expense to the Owner, correct, remedy, replace, re-execute, supply omitted work, or remove from the premises all work designated as Non-complying by the Design Professional. The CM/GC shall give prompt notice in writing to the Design Professional, with copy to the Owner, upon completion of the supplying of any omitted work or the correction of any work designated as Non-complying by the Design Professional. In the absence of said notice, it shall be and is presumed under this Contract that there has been no correction of the Non-complying work or supplying of omitted work. If the CM/GC does not remove, make good the deficiency, correct, or remedy faulty work, or supply any omitted work within the space of time designated in Notices of Non-complying Work without expense to the Owner, the Owner, after ten (10) days' notice in writing to the CM/GC, may remove the work, correct the work, remedy the work or supply omitted work at the expense of the CM/GC. In case of emergency involving health, safety of property, or safety of life the Owner may proceed at once with correction of the Work without waiving any rights of the Owner. Correction of defective work executed under the plans and specifications or supplying of omitted work whether or not covered by warranty of a subcontractor or materialmen, remains the primary, direct responsibility of the CM/GC. The foregoing obligation of the CM/GC shall remain in effect until the expiration of the statute of limitations covering the Work.

**6.6.2 Warranty and Guaranty.** As additional security for the fulfillment of such obligation, but in no way limiting the same, the CM/GC warrants and guarantees (1) that all work executed under the plans and specifications shall be free from defects of materials or workmanship for a period of one year from the date of the Material Completion, or for such greater space of time as may have been designated in the specifications, products of manufacturers shall be free from defects of materials and workmanship. Whenever written guaranties or warranties are called for, the CM/GC shall furnish the aforesaid for such period of time as may be stipulated. The aforesaid instruments shall be in such form as to permit direct enforcement by the Owner against any subcontractor, materialmen, or manufacturer whose guaranty or warranty is called for. The CM/GC further agrees that:

6.6.2.1 Jointly and Severally Liable. The CM/GC is jointly and severally liable with such subcontractors, materialmen, or manufacturers; and

6.6.2.2 Agents of the CM/GC. The said subcontractors, materialmen, or manufacturers are agents of the CM/GC for purposes of performance under this article, and the CM/GC, as principal, ratifies the warranties or guaranties of his aforesaid agents by the filing of the aforesaid instruments with the Owner. The CM/GC as principal is liable for the acts or omissions of his agents.

6.6.2.3 Service of notice. Service of notice on the CM/GC that there has been breach of any warranty or guaranty will be sufficient to invoke the terms of the instrument.

6.6.2.4 Bind Subcontractors, etc. The CM/GC will bind his subcontractor, materialmen, and manufacturers to the terms of this article.

6.6.2.5 Warranties no Limitation. The calling for or the furnishing of written warranties shall in no way limit the contractual obligation of the CM/GC to correct the work as set forth in this Part. The remedies stated in this article are in addition to the remedies otherwise available to the Owner, do not exclude such other remedies, and are without prejudice to any other remedies.

### **6.6.3 Warranty Complaint Item Procedure.**

6.6.3.1 Notice of Warranty/Guaranty Complaint Items. The CM/GC, Design Professional, Owner, and Using Agency acknowledge that many malfunctions in building equipment and systems do not constitute Non-Complying or defective Work as contemplated in Article 6.6.1 above. Accordingly, the Owner and Using Agency may provide notice of such apparent warranty work by a Warranty Complaint letter, sent by statutory mail or facsimile to the CM/GC. The letter should outline, in non-technical language, the complaint item. In emergency situations, the initial notification may be oral to a person or office designated by the CM/GC. The CM/GC shall respond promptly to all such notices.

6.6.3.2 Duty to Correct. In light of the above stated CM/GC's warranty and guarantee, during the one year period of the warranty and guarantee any defects of material or workmanship that become apparent shall be the responsibility of the CM/GC until and unless the CM/GC can show abuse or design defect. The CM/GC shall immediately correct all defects that become known during the one year period at no cost to the Owner unless notice is given to the Design Professional, Owner and Using Agency, prior to correcting the defect that the cause of the defect is the result of abuse or design deficiency.

6.6.3.2.1 Initial Response. When the Using Agency, the Owner, or the Design Professional notifies the CM/GC of a defect, the CM/GC will visit the site to review the complaint within five (5) days and shall promptly correct the Work. If the CM/GC fails to respond within this time limit, the Owner may correct the defect or malfunction and charge the CM/GC for the Work. The CM/GC shall give notice in writing to the Owner when corrections have been completed.

6.6.3.2.2 Design Defect or User Abuse. If the CM/GC believes that a design defect or user abuse has caused the malfunction or defect, he will notify the Design Professional and the Design Professional will issue a formal decision in his capacity as Design Professional and impartial interpreter of the conditions of the contract. If it is determined the complaint is not the responsibility of the CM/GC, the CM/GC shall be promptly paid for the cost of the corrective work.

6.6.3.2.3 Emergency Situations. If the condition is an emergency, this will be communicated to the CM/GC with the request that no matter what he finds, corrections are to be accomplished

immediately. The CM/GC shall respond to the notice in emergency situations within twenty-four (24) hours. If the CM/GC fails to respond within this time limit, the Owner may correct the defect and charge the CM/GC for the Work. If it is determined the complaint is not the responsibility of the CM/GC, the CM/GC shall be promptly paid for the cost of the corrective work. The CM/GC shall give notice in writing to the Owner when corrections have been completed.

