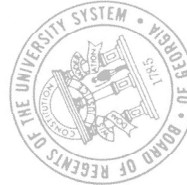


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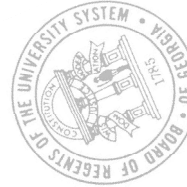
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**DESIGN PROFESSIONAL SERVICES REQUIREMENTS
FOR CM/GC CONSTRUCTION DELIVERY**

SECTION 1 - GENERAL

PART 1 – PRELIMINARY MATTERS

1.1.1 Project Parameters.

1.1.1.1 Objectives/Use. The project is being constructed to provide a necessary facility for the State Agency identified in the Contract.

1.1.1.2 Physical Parameters. The project will be constructed on public property of the State of Georgia administered by the State Agency identified in the Contract as the Owner. A plat of boundary line survey of the property involved was furnished to the Design Professional under cover of a letter from the Owner identified in the Contract, and the Design Professional is entitled to rely on such information.

1.1.1.3 Owner's Project Development File. The Design Professional will design the project in accordance with the Owner's Project Development File, if any, as amended, a copy of which is included as Exhibit C and incorporated into and made a part of this document by reference. If no Project Development File is available, the Design Professional will design the project in accordance with the Owner's Program shown in Exhibit C.

1.1.1.4 Time and Schedule. A Preliminary Design and Construction Schedule, including major milestones for the production of the design and construction documents, as well as the anticipated time required for construction is attached as Exhibit D and is incorporated into and made a part of this Contract by reference. The Design Professional and the Owner agree that the time limits shown in the schedule are reasonable and achievable. Changes in the major milestone dates will require the consent of both parties, which shall not unreasonably be withheld.

1.1.1.5 Delays. The Design Professional is responsible for the timely performance of its design and administrative services, but shall not be responsible for delays due to persons or conditions beyond the Design Professional's control. The Design Professional assumes full responsibility for the timely performance of its consultants.

1.1.1.5.1 Delays by Design Professional

If the completion of the Project is delayed by reason of ordinary negligence on the part of the Design Professional, the Design Professional shall indemnify the Owner against all reasonable costs, expenses, liabilities, or damages resulting from such delay. In addition, the Design Professional shall provide accelerated services at its own expense to make up time lost because of such delay.

1.1.1.5.2 Delay by the Owner

If the Design Professional is delayed in performance of its services by any act or omission of Owner, or by its consultants or agents, or by changes ordered by the Owner, or by causes beyond the Design Professional's control, or by a delay authorized by the Owner, then the Design Professional may request an adjustment of its fees and in the project schedule.

1.1.1.6 Project Delivery Method This Contract presumes that the construction of the Project shall be procured by using the construction management method specified as CM/GC with a multiple component packages.

1.1.2 Project Team.

1.1.2.1 Owner's Authorized Agent. For the purpose of administration of this Contract, the Owner's Authorized Agent is the Owner's Representative. The Owner's Authorized Agent has the right and power to bind the Owner in all project matters, requiring approvals, authorization, written notice and Change Orders. The Owner's Authorized Agent shall be fully acquainted with project and provide the Design Professional the information and services required of the Owner by this contract so as not to delay the services of the Design Professional. The Design Professional shall render all services pursuant to this Contract under the direction and supervision of the Authorized Agent or its designated representative

1.1.2.2 Review of Services of the Design Professional. The Design Professional agrees that the Owner is at liberty to engage consultants for the purpose of checking, reviewing, and commenting upon the deliverables provided under this Contract. The Owner is hereby authorized to deliver a certified copy of this Contract to Design Professionals or consultants, or both, as selected by the Owner for the foregoing purposes, and such delivery will constitute the unqualified consent and agreement on the part of the Design Professional and its consultants to the checking, reviewing and commenting upon the deliverables provided under this Contract.

1.1.2.3 The Owner's Consultants. If the Owner elects to engage an independent consultant for any reason (e.g., a Commissioning Authority), the Design Professional agrees to cooperate with such consultant in the professional services provided under this Contract. The Owner will provide a copy of the contract with such consultant to the Design Professional upon a written request from the Design Professional.

1.1.2.4 The Design Professional's Team.

1.1.2.4.1 Design Professional of Record. The Design Professional of Record is the individual identified in the Contract. The Design Professional of Record shall not be changed without written permission from the Owner, unless the Design Professional is incapacitated, is unable to perform, or leaves the firm. In that event, the replacement is subject to approval by the Owner.

1.1.2.4.2 Key Personnel and Consultants. The Design Professional agrees that the Project will be performed substantially with the key personnel and consultants presented at the time of selection. The Design Professional's key personnel and consultants who have been assigned to the Project, along with a description of the role and duties of such personnel are listed in Exhibit E hereof. The Design Professional acknowledges that the Owner has relied upon the designated assignments and roles of the key personnel and consultants in its decision to enter into this Agreement. Without good cause shown, the key personnel and consultants shall remain assigned to the Project throughout the duration of the Project and shall not be changed without the Owner's prior written approval, which approval will not be unreasonably withheld.

1.1.2.4.3 Design Team. The Design Professional represents that it has or will secure at its own expense, all personnel required in the performance of this Contract, except for personnel required to be furnished by the Owner. The Design Professional's personnel shall not be employees of the Owner. The Design Professional further represents that all of the services required hereunder will be performed by the Design Professional or under its supervision, or by subconsultants under its supervision, as applicable. All personnel so engaged shall be fully qualified and shall be authorized under State or local law to perform such services.

1.1.2.5 Change in Business Form. In the event the Design Professional changes its business form, it shall notify the Owner in writing and include appropriate tax identification information. The Owner shall make all future payments in accordance with such notice and a signed amendment to this Contract.

1.1.2.6 Acquisition of Consulting Services. The Design Professional shall select, using qualifications-based criteria, the following:

1.1.2.6.1 Registered Professional Engineers and Other Licensed Consultants. The Design Professional may select registered professional engineers or other licensed consultants to render professional services to the Design Professional.

1.1.2.6.2 Stamp of Registered Professional Engineer or Other Licensed Consultants. The Design Professional agrees that all drawings and specifications for engineering services shall be performed by registered professionals in its own organization, or the Design Professional agrees to employ without additional cost to the Owner, the services of registered professionals regularly engaged in delivering such professional services. Construction Documents so prepared shall bear the stamp of responsible registered professionals licensed in the State of Georgia.

1.1.2.6.3 Geotechnical Engineer. The Design Professional shall select a licensed geotechnical engineer to be retained by the Design Professional.

1.1.2.6.4 Other Consultants. Without diminishing its duties hereunder, but to assist the Design Professional in performing its services, the Design Professional may select other consultants to render professional services to the Design Professional but only with prior written approval of the Owner.

1.1.2.6.5 Incorporation of Terms in Consultant Contracts. The Design Professional agrees to incorporate all of the material provisions of this Contract into each Consultant Contract, and that failure to accomplish such incorporation by an express provision in each Consultant Contract is a breach of an essential covenant of this Contract. In the event of such breach the Design Professional shall, within five (5) calendar days after demand of the Owner, furnish proof in writing that the deficiency has been remedied to the end that no subcontractor or consultant may maintain that he has not assumed toward the Design Professional all the obligations and responsibilities that the Design Professional has assumed toward the Owner.

1.1.2.7 Notification of Design Professional's Consultants. As soon as practicable after award of the Contract, the Design Professional shall furnish in writing to the Owner the names of persons or entities proposed to be consultants on the Project not previously selected under Subparagraph 1.1.2.4.3. The Owner will promptly reply to the Design Professional in writing stating whether or not the Owner, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner to reply within fifteen calendar days shall constitute notice of no reasonable objection. A list of consultants and key personnel that will be retained by the Design Professional for the Project (along with a description of their respective role or services), and that have been pre-approved by the Owner, as of the date of this Contract, is attached hereto as Exhibit E. All consultants shall be duly licensed pursuant to the applicable requirements and regulations of the State of Georgia. The Design Professional shall not, without good cause and only after obtaining the written approval of the Owner, change a consultant (or its role or services) previously selected. The Design Professional shall be responsible to the Owner for the acts of, and services provided by, its consultants. The Owner's review, approval, or rejection of consultants or their respective proposal or contracts, will not relieve the Design Professional of its responsibilities under the Contract, nor will it relieve the Design Professional of its responsibilities to obtain corrective work to remedy the unsatisfactory acts or omissions of such consultants.

1.1.2.8 Coordination. The Design Professional shall coordinate all the services of all design consultants for the Project, including coordinating its services as required with consultants retained by the Owner. The Owner shall require a reciprocal coordination clause in each of its separate consultant contracts.

1.1.3 Project Team Cooperation, Partnering.

1.1.3.1 Concept. It is the Owner's expectation that the Program Manager, if any, the Design Professional, the Owner, Owner-retained consultants, the Using Agency, any Separate Contractors and the CM/GC shall work as a project team to effect the commencement of and completion of construction in accordance with the Contract Documents. By its various contracts with the other parties, the Owner will require that each team member communicate with all other team members to encourage and facilitate overall coordination, cooperation and efficiency, and 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, in consultation with the other team members, 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 consistent with the successful completion of the Project, in real time. The Design Professional shall not be required to attend such partnering meetings more than twice per month. It is the Owner's intent that all consensus decisions of the team, where differing from the Contract Documents, be reduced to writing in an appropriate Change Order or amendment or modification.

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

1.1.3.3 Team Evaluation, Covenant not to Sue. If the Owner determines to utilize the State of Georgia's formal Team Evaluation Process, then the Owner, Design Professional, CM/GC, and any other Team Member agree to participate in good faith. In such event, the Design Professional waives any and all legal rights for defamation, libel or slander, and covenants not to sue the State of Georgia, the Owner, the CM/GC, the Using Agency, other Team Members, and their respective representatives and agents, as a result of rankings and results related to the Design Professional's performance, rendered and posted in good faith as part of and in accordance with said Team Evaluation Process. The CM/GC and other Team Members, in their agreements with the Owner, shall execute a similar contract provision.

1.1.4 The CM/GC Contract's General Requirements.

A copy of the General Requirements to the CM/GC Contract is attached hereto and is incorporated herein by reference. If the Owner approves the issuance of Component Change Orders to the CM/GC, the Design Professional shall perform the Construction Contract Administration duties in this Contract and all of the duties of the Design Professional called for in the CM/GC General Requirements. Specific attention is directed to the definitions and concepts of project completion as set forth in Section 3, Part 10, of the General Requirements. The CM/GC General Requirements, including all definitions therein, are expressly adopted and incorporated into this Contract.

1.1.5 Insurance.

1.1.5.1 Insurance Provisions. From insurers authorized to provide the required insurance in Georgia, the Design Professional shall provide the following kinds of insurance in the minimum amount of coverage set forth below, to cover all loss and liability for damages on account of bodily injury, including death therefrom, and injury to or destruction of property caused by or arising from any and all operations carried on and any and all work performed by the Design Professional under this Contract. Within ten (10) calendar days after execution of the Contract and during the entire period of the Design Professional's responsibility under the Contract, the Design Professional shall maintain professional liability insurance for claims arising from the negligent performance of professional services under this contract as provided herein. The Design Professional shall file with the Owner a certificate of insurance from an insurance company rated at least A- by Best's and licensed to do business in the State of Georgia showing evidence of insurance as follows:

1.1.5.1.1 Worker's Compensation and Employer's Liability. Statutory coverage; Employer's liability in the minimum amount of \$1,000,000 per occurrence;

1.1.5.1.2 Commercial General Liability Insurance. Commercial General Liability Insurance of at least \$1,000,000 per occurrence, and \$2,000,000 in the aggregate. The Design Professional shall require its consultants to maintain Commercial General Liability insurance with business automobile liability coverage with companies and limits as stated above. The Commercial General Liability policy shall name the Owner and Using Agency as additional insureds.

1.1.5.1.3 Business Automobile Insurance. Business Automobile Insurance to cover vehicles owned, non-owned, leased, or rented by the Design Professional of at least \$1,000,000 combined single limit. This paragraph applies to Design Professional operating motor vehicles on Owner / Using Agency property.

1.1.5.1.4 Professional Liability (Errors and Omissions) Insurance. Limits shall not be less than the following:

- (a) For Projects with a budgeted construction cost of more than \$30,000,000:
 - i. For Design Professionals – \$3,000,000 per claim and \$4,000,000 in aggregate coverage;
 - ii. For Subconsultant Engineers and Architects – \$2,000,000 per claim and \$3,000,000 in aggregate coverage;
 - iii. For Other Consultants – \$1,000,000 per claim and \$2,000,000 in aggregate coverage. At the Design Professional's request, the Owner may, at its sole discretion, agree to a lower limit for certain consultants.
- (b) For Projects with a budgeted construction cost of \$20,000,000 up to \$30,000,000:
 - i. For Design Professionals – \$2,000,000 per claim and \$3,000,000 in aggregate coverage;
 - ii. For Subconsultant Engineers and Architects – \$1,000,000 per claim and \$2,000,000 in aggregate coverage;
 - iii. For Other Consultants – \$1,000,000 per claim and \$1,000,000 in aggregate coverage. At the Design Professional's request, the Owner may, at its sole discretion, agree to a lower limit for certain consultants.
- (c) For Projects with a budgeted construction cost of less than \$20,000,000:
 - i. For Design Professionals – \$1,000,000 per claim and \$1,000,000 in aggregate coverage;
 - ii. For Subconsultant Engineers and Architects – \$1,000,000 per claim and \$1,000,000 in aggregate coverage;
 - iii. For Other Consultants – \$1,000,000 per claim and \$1,000,000 in aggregate coverage. At the Design Professional's request, the Owner may, at its sole discretion, agree to a lower limit for certain consultants.

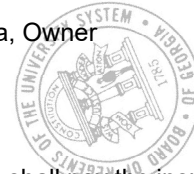
(d) The Design Professional shall maintain professional liability insurance that shall be either a practice policy or project-specific coverage. Professional liability insurance shall contain prior acts coverage for services performed by the Design Professional for this Project. If project-specific coverage is used, these requirements shall be continued in effect for three years following the issuance of the Certificate of Final Completion for the Project.

1.1.5.1.5 Maximum Deductible. No policies shall specify a deductible of more than \$100,000 per claim. If demanded in writing by the insurer and with the Owner's approval, the deductible limit may be increased to an amount not in excess of the limit established for Design Professionals under the usual deductible guidelines of the insurer.

1.1.5.1.6 Insurer's Endorsement. Each certificate of insurance shall bear an endorsement in words exactly as follows:

Insurer agrees that the coverage shall not be canceled, changed, allowed to lapse, or allowed to expire until thirty calendar days (ten calendar days for nonpayment of premium) after written notice by United States Certified Mail, Return Receipt Requested, postage prepaid, in an envelope addressed to the party to be notified at such party's address as follows:

Board of Regents of the University System of Georgia, Owner
270 Washington Street, SW
Atlanta, Georgia 30334
Attn: Director of Contracts & Services



1.1.5.2 Insurance Premiums and Deductibles. The Design Professional shall pay the insurance premiums. If additional insurance coverage is required, an amendment to this Contract shall be executed and the additional cost of the insurance shall be paid by the Owner as a reimbursable cost. All deductibles shall be paid by the Design Professional.

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

1.1.6 Meaning of Terms.

1.1.6.1 Meaning of Terms. Unless specifically defined herein, terms used in this Contract and its General Requirements shall have the same meaning as in common usage and defined in a standard dictionary.

1.1.6.2 Other Defined Terms. Terms defined in other documents associated with this Project, including the Program, the Contract Documents and the CM/GC General Requirements, and CM/GC Supplementary General Requirements, and any program management contract for the management of this Project, shall have the same meaning in this Contract unless such meaning is in conflict with the meaning defined herein.

1.1.6.3 Defined Terms.

1.1.6.3.1 *Construction Contract Administration.* See Section 2, Part 2.

1.1.6.3.2 *Construction Documents.* See Section 2, Part 1, Article 2.1.6.

1.1.6.3.3 *Design Coordination Meetings.* A meeting between the Design Professional or Design Professional's consultant and the Using Agency and/or Owner, inclusive of all travel time, professional time, documentation time, travel expenses, meals, lodging, and incidental expenses, during the performance of basic design services, to review the design for validation, for constructability and for value engineering. Meetings shall be accounted in half-day increments (i.e., 0 to 4 hours expended in a single day equal one-half meeting; 4 to 8 hours equal one meeting). (See also Article 1.2.6 and 2.1.10 below.)

1.1.6.3.4 *General Requirements (also CM/GC Contract's General Requirements)*. This portion of the Construction Documents deals with the general requirements of the construction process. See also Section 1, Part 1, Article 1.1.4.

1.1.6.3.5 *Design Development Documents*. See Section 2, Part 1, Article 2.1.5.

1.1.6.3.6 *Project Development File*. This document includes the Program site analysis and other appropriate studies that provide essential information including Statements of Probable Construction Cost, to support and advance the decision-making process prior to the design and implementation phases of the project.

1.1.6.3.7 *Preliminary Design and Construction Schedule*. A schedule indicating proposed activity sequences and durations, major milestone dates for receipt and approval of pertinent information and for production of the schematic design development, construction drawings, and proposal documents, as well as estimated time required for construction. It includes the Owner's occupancy requirements showing portions of the Project (and the Phases thereof if any) having occupancy priority, and proposed date(s) of Material Completion and Final Completion. The Preliminary Design and Construction Schedule shall be in simplified critical path method format as might be appropriate for the Project, and shall be in such detail as Owner reasonably requires.

1.1.6.3.8 *Program*. The written and graphical definition of the Project's space requirements provided by the Owner to the Design Professional. The Using Agency's Program and the Project Development File are provided to the Design Professional together with other relevant predesign information, including the purposes and requirements of the Project for the purpose of creating the design and issuing the Construction Documents.

1.1.6.3.9 *Schematic Design*. See Section 2, Part 1, Article 2.1.4, paragraph 2.1.4.2.

1.1.6.2.10 *Site Visit*. A visit to the Site for performance of construction contract administration by the Design Professional or consultant, inclusive of all travel time, professional time, documentation time, travel expenses, meals, lodging, and incidental expenses. One site visit shall require a minimum of 4 hours. Site Visits may be accounted in half-day increments (i.e., less than 4 hours expended in a single day equal one-half visit;). (See also Paragraph 2.2.9.1 below.)

1.1.6.2.11 *GMP Cost Limitation*. The amount stipulated in the Design Professional Contract as the maximum sum to be specified in the CM/GC Construction Agreement for the construction of the Project prior to execution of the GMP Change Order. The GMP Cost Limitation does not include the cost of fixtures, furniture, or equipment unless expressly stated in the Project Development File or Program. Fixtures, furniture, or equipment not included in the Project Development File or Program may be added as a design requirement and included in the GMP Cost Limitation by an amendment to this Contract. GMP Cost Limitation does not include design costs, Owner contingency, or Site acquisition costs.

1.1.6.3.12 *CM/GC Supplementary General Requirements*. The portion of the Construction Documents dealing with specific requirements of the construction process that are unique to the Project and shall be drafted by the Design Professional based on specimens provided by the Owner.

1.1.6.3.13 *Using Agency*. The Unit of the University System of Georgia or the State agency, authority, or commission for which the Project is being constructed. The term is synonymous with the term "Institution" (e.g., The University of Georgia) and may include a tenant agency such as an agricultural extension office or experiment station.

1.1.6.3.14 *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.

PART 2 – RESPONSIBILITIES OF THE PARTIES

1.2.1 Cooperation and Working Relationships. The parties to this Contract agree to reasonably cooperate to fulfill their respective obligations under this Contract and shall endeavor to maintain good working relationships with the other members of the project team.

1.2.2 Owner-Furnished Information. The Design Professional may rely on the accuracy and completeness of Owner furnished information unless notified otherwise. The Design Professional shall notify the Owner upon discovery of any inaccuracies in the information furnished.

1.2.3 Responsibilities of the Owner.

1.2.3.1 Timely Decisions. The Owner represents that it will assure reasonable access to available necessary records, reasonable cooperation on the part of affected officials and employees, and expeditious decisions on matters that affect the progress of work under this Contract.

1.2.3.2 Project Development File. The Owner shall provide the Design Professional with the Project Development File, if any, as amended. (See Exhibit C.)

1.2.3.3 Program. In the event no Project Development File is available, the Owner shall provide the Design Professional with a Program that describes the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, special equipment, systems and site requirements. If additional information or programming is required to enable the Design Professional to design the Project, it shall be provided by the Owner or provided by the Design Professional as at Additional Service. (See Exhibit C.)

1.2.3.4 Modification of the Owner's Requirements. In the event the Statement of Probable Construction Cost, as updated by the Design Professional at the completion of each phase of Basic Services, exceeds the GMP Cost Limitation, the Owner may at its discretion modify the Owner's requirements sufficiently to permit balancing the Statement of Probable Construction Cost with the GMP Cost Limitation. In this event, the Design Professional agrees that the modifications made for the purpose of balancing the Statement of Probable Construction Cost with the GMP Cost Limitation shall not create a claim for Additional Services.

1.2.3.5 Surveys. The Owner shall furnish survey(s) describing physical characteristics, legal limitations, utility locations for the site of the Project, as well as a written legal description of the site. If such services are deemed necessary by the Design Professional and approved by the Owner as additional services, the Design Professional shall retain and compensate a qualified, registered land surveyor to prepare a certified land survey of the site giving, as applicable, grades and lines of streets, alleys, pavements, adjoining property; rights-of-way, restrictions, easement, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and all available data pertaining to existing buildings, other improvements, trees; and service and utility lines, both public and private, above and below grade, including inverts and depths. The Owner shall approve the selection of the surveyor before the surveyor may commence work.

1.2.3.7 Responding to the Design Professional. Owner will review and respond with reasonable promptness in accordance with the Preliminary Design and Construction Schedule to the Design Professional's requests for additional information, comments, or approvals that the Design Professional requires to complete the Construction Documents to maintain the schedule. Owner shall require its separate consultants, if any, to respond to the Design Professional within fourteen calendar days of any request by the Design Professional.

1.2.3.8 Royalties, Patents, Copyrights. Owner shall pay all royalties and license fees for copyrighted material or patented methods or systems required by the Owner to be in the Project.

1.2.3.9 Duty to Report. The Owner shall promptly report to the Design Professional any errors, inconsistencies, or omissions that the Owner discovers in the Construction Documents. However, nothing in this Paragraph shall relieve the Design Professional of responsibility for its own errors, inconsistencies, and omissions.

1.2.4 Responsibilities of the Design Professional.

1.2.4.1 Authority to Act.

1.2.4.1.1 Authorization. The Design Professional of Record is authorized to act on the Design Professional's behalf with respect to the Project.

1.2.4.1.2 Not an Agent of the Owner. The Design Professional is not a representative or agent of the Owner, and has no authority to act on behalf of the Owner except to the extent provided in the General Requirements of the construction contract unless otherwise specifically directed by the Owner in writing (see Exhibit A, Additional Services, Program Management Services).

1.2.4.2 Distribution of Project Information. No reports, information or other material given to or prepared by the Design Professional under this Contract shall be made available to any person not directly or indirectly involved with the construction or design of the Project by the Design Professional without the prior written approval of the Owner unless otherwise required to do so by law.

1.2.4.3 Written Approvals. The Design Professional shall comply with all applicable laws, codes, and regulations in effect at the time the Construction Documents are completed, and shall make reasonable efforts to obtain written approval of the appropriate authority of all proposed connections to private or public utility systems or public and private roads and streets, when such connections are planned as part of the Project. If no such approval can be obtained, the Design Professional shall so notify the Owner. The Design Professional shall design all connections to private or public utility systems or public roads and streets to comply with applicable ordinances, regulations and codes.

1.2.4.4 Applicable Building Codes. It is the professional responsibility of the Design Professional to provide Construction Documents that conform to applicable building codes, zoning codes, laws, regulations and generally accepted construction industry standards. The Design Professional shall signify its responsibility for the Contract Documents prepared pursuant to this Contract by affixing its signature, date and seal thereto. The Design Professional shall insert the following statement on the cover sheet of the drawings.

To the best of my knowledge, information and belief, the plans, specifications and addenda comply with the applicable building codes in effect at the time of issuance for construction.

1.2.4.5 Design Representation. The Design Professional represents to the Owner that its design and the Professional Design Services provided for the Project reasonably meet the intent of the Program, are consistent with sound design principles commonly used by Design Professionals under similar circumstances, and the resulting design is constructible by a qualified Contractor using appropriate construction methods. The Design Professional further represents to the Owner that the technical specifications of the equipment specified by the Design Professional meet industry standards (such as approval by UL, or other independent quality assurance rating agencies) and the design permits installation in a useable configuration with appropriate utilities. The Design Professional does not undertake to make any warranty as to its performance of professional services, or manufacturer's warranty, such as a warranty as to the materials, design, manufacture, or workmanship of the equipment. As between the Owner and the Design Professional, the sole remedy for Design Professional's negligence during the design and Construction Contract Administration phase of the Project by the Design Professional is that (i) the Design Professional shall redesign the defective design, consistent with the Program or Predesign Study, at no expense whatsoever to the Owner; and, (ii) if construction of the negligently designed component has commenced, to the extent its remediation cost exceeds the cost that the Owner would have reasonably incurred without the breach of this Design Representation, the Design Professional shall indemnify the Owner for such additional cost. This Design Representation does not enlarge or diminish the Design Professional's liabilities as the result of negligence in the performance of professional services.

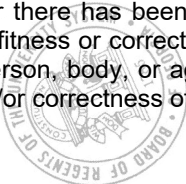
1.2.4.5.1 Standard of Care. To the extent that the Services required under this Contract are Professional Services, meaning those services performed by a licensed professional, the Design Professional agrees that in the performance of the Professional Services, it will exercise that degree of care, learning, skill, and ability as is ordinarily employed by licensed professionals under similar conditions and like circumstances and shall not be liable except for the failure to exercise such degree of care, learning, skill, and ability (hereinafter, the "Standard of Care").

1.2.4.6 Design Professional Services Indemnity. The Design Professional shall indemnify, release, and hold harmless the Owner, its officers, members, employees, and agents, from and against all liability or claims for damages, costs, expenses (including reasonable attorney's fees and expenses incurred by the Owner and any of the Owner's officers, members, employees or agents), to the extent caused by or resulting from the negligence, recklessness, or intentionally

wrongful conduct of the Design Professional or other persons employed or utilized by Design Professional in the performance of this Contract.

1.2.4.7 No Fee for Changes Caused by the Design Professional's Oversight. Notwithstanding any other provision in this Contract to the contrary, the Design Professional shall receive no fee for Change Orders caused by the Design Professional's failure to comply with the obligations set forth in this Contract.

1.2.4.8 The Owner's Approval. The Design Professional acknowledges and agrees that the Owner does not undertake to approve or pass upon matters of professional service and the Owner, therefore, assumes no responsibility for such. The Design Professional acknowledges and agrees that the Owner approval or acceptance of the Design Professional's services is limited to the function of determining whether there has been compliance with the Owner's Program. The Owner does not undertake to inquire into the adequacy, fitness or correctness of Professional Services. The Design Professional agrees that no approval of services by any person, body, or agency shall relieve the Design Professional of its responsibility for the adequacy, fitness, suitability, and/or correctness of its Professional Services.



1.2.4.9 Consultants. The Design Professional shall furnish those consultants as are normal and customarily necessary to complete the services as described in Section 2 as a part of the Design Professional's Basic Services. The Owner shall pay as Additional Services for other consultants to complete the services as described in Section 3 either through the Design Professional utilizing a change to this Contract or as a separate contract between the Owner and such outside consultant.

1.2.4.10 Tests. The Design Professional shall select and engage additional consultants and testing firms as necessary to perform surveys, geotechnical evaluations, including but not limited to borings, and test pits, as well as chemical or mechanical tests, or other tests proposed by the Design Professional. The Design Professional shall require that all tests called for in the Contract Documents be performed, and the Design Professional shall not be liable for errors on the part of the laboratory, engineer, surveyor, or other testing service. The Owner shall pay for all such tests as a reimbursable expense when approved by the Owner in advance.

1.2.4.11 Geotechnical Engineer. The Design Professional shall select a licensed geotechnical engineer to produce the Stage 1 Statement set forth in the Site Memorandum, to consult with the Owner and Design Professional and perform geotechnical evaluations of the Site, and ultimately produce the Stage 2 Statement. The Design Professional shall fully utilize the geotechnical engineer to identify to the extent practicable all adverse site conditions such that the Design Professional has sound information upon which to base the design of the Project and to minimize the risk of unforeseen site conditions upon commencement of construction. Information obtained from the geotechnical engineer may result, under certain conditions, in the establishment of unit prices in the Supplementary General Requirements or pre-proposal addenda.

1.2.4.12 Building Official. The Vice Chancellor for Facilities is the Building Official for the Board of Regents of the University System of Georgia. The Design Professional shall fully support the Building Official's code enforcement duties for the Project, for other than the Life Safety, Elevator, Building Accessibility and Fire Safety rules, regulations and codes administered by the State Fire Marshal and local health department. Accordingly, the coordination of the "Special Inspections" required under the Georgia State Minimum Standard Building Code, as adopted by the State of Georgia, and the associated record-keeping activities, are a part of the Basic Services of this Contract. The Design Professional shall keep two sets of the Record Documents and any other documents required by the building codes, zoning codes, regulations, or applicable laws, for a period of ten years.

1.2.4.13 Keeping the Project on Schedule. The Design Professional is responsible for timely completion of all its activities, responsibilities, and obligations under this Contract in accordance with the Preliminary Design and Construction Schedule as amended and approved by the Owner. The Owner shall seek the Design Professional's input if any change in the Owner's requirements affects the design schedule. The Design Professional acknowledges and agrees, absent fault of the Owner or *force majeure*, that if the agreed-upon design milestones in the Preliminary Design and Construction Schedule are not met, the Design Professional will, at its own expense, accelerate its work, accelerate or replace delinquent consultants, and retain such additional resources as necessary to return the Project to the Preliminary Design and Construction Schedule. Upon approval by Owner of the Construction Progress Schedule as contemplated by 3.3.5.2 of the General Conditions, the Preliminary Design and Construction Schedule shall be amended to include the Construction Progress Schedule. The amended schedule will become the Overall Project Schedule, which shall be utilized by the Design Professional, Owner, and Contractor.

1.2.4.14 Time Periods. If, because of events beyond its reasonable control, the Design Professional is not able to meet a specified time period, then it may ask for additional time from the Owner.

1.2.4.15 Compliance with Federal and State Work Authorization and Immigration Laws. The Design Professional, 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 the CM/GC Forms Packet. Upon contracting with a subcontractor or consultant, the Design Professional shall provide the Owner notice of the identity of any and all subcontractors or consultants. Design Professional 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 Design Professional, 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.

1.2.5 Access to Records and Documents.

1.2.5.1 Access and Audit. The Owner shall have reasonable access to all books, documents, papers, and records of the Design Professional concerning the Project in order to make audit examinations, excerpts, and transcripts relative to this Contract. Records of reimbursable expenses and expenses pertaining to services performed shall be kept on the basis of generally accepted accounting principles and shall be available to the Owner's representative at mutually convenient times, but in no event more than 72 hours after a written request from Owner.

1.2.5.2 Open Records Act. The Design Professional acknowledges the application of the Georgia Open Records Act (See O.C.G.A. §50-18-70) to the Design Professional's records concerning this Project and agrees to comply with all requirements thereunder and require same of all consultants. The Design Professional must promptly advise Owner in writing within 24 hours of a request for records falling under the Act.

1.2.5.3 Owner's Instructions to Design Professionals. Attached hereto as Exhibit G are the Owner's Instructions to Design Professionals. Design Professionals shall become familiar with The information in the Owner's Instructions to Design Professionals and shall follow the instructions and guidelines unless either impractical or inconsistent with professional standards as established by the Design Professional's licensing board. In the event of such impracticalities or inconsistencies, the Design Professional shall promptly notify the Owner and Using Agency in writing of the impracticality or inconsistency, along with the rationale and recommended practice the Design Professional desires to implement.

1.2.6 CM/GC Construction Management Delivery Requirements. The Design Professional shall coordinate its design and administrative duties with the CM/GC as a team with the following objectives and responsibilities:

During Pre-construction:

- Design review for validation
- Design review for constructability
- Design review for value engineering

During Design and Construction:

- As needed, design review for constructability and value engineering
- Develop a cost tracking methodology to advise all parties during design activities if the expected or projected costs may exceed the GMP Cost Limitation, and that provides realistic suggestions to regain balance between cost and scope
- Develop, or if a Program Manager is engaged, coordinate a cost tracking methodology to compare estimated costs with real time actual costs
- Document, or if a Program Manager is engaged, coordinate the documentation of all cost related decisions and their rationale and provide Owner with this record in a bound volume upon completion of the Project
- Development and issuance of construction documents for construction packages to implement Component Change Orders for the components identified in the Contract or directed by the Owner
- Review and coordinate the issuance of Component Change Orders
- Review and coordinate the issuance of the GMP Change Order
- Review and coordinate the issuance of the Lump Sum Change Order, if requested by Owner

SECTION 2 – BASIC SERVICES

PART 1 – DESIGN SERVICES

2.1.1 General.

Basic Services shall include all normal and customary professional services of the Design Professional and its consultants required in connection with the Schematic Design, Design Development, Construction Documents, Procurement of Construction Services and CM/GC Construction Contract Administration Phases of the Project. Design services shall be provided consistent with the Owner's Instructions to Design Professionals. (.)

The Design Professional shall furnish or provide the architectural and engineering services necessary to design the Project in accordance with the Owner's requirements as outlined in the Owner's Project Development File or Program. The Design Professional agrees to prepare drawings, specifications, and other documents that are adequate, complete, coordinated, and fit for construction. The Design Professional shall call for no result unless the Design Professional has furnished complete, definite, and clear drawings and specifications as to the construction results to be achieved. In particular, the Design Professional shall require of its Consultants the level of quality recommended by industry standards (e.g., ASCE for structural engineers). The Owner and Design Professional, in this regard, acknowledge and agree 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 into a completed structure. Where appropriate, the Design Professional shall indicate in the Contract Documents when particular shop drawings will require the seal of a specialty consultant before being submitted for review. The Design Professional shall prepare suitable Proposal Documents adequate for the preparation of proposals.

2.1.1.1 Considerations for Design. The Design Professional shall review the Project Development File with the Owner to confirm its understanding of the Owner's requirements. The Design Professional shall assist the Owner in refining or making clarifications to the Owner's requirements for the Project. If extensive changes from the Project Development File are required, the Design Professional's compensation and schedule may be equitably adjusted. In the event no Project Development File exists, the Design Professional shall design in accordance with the Program provided by the Owner, taking into consideration the value of alternative materials, building systems, equipment, maintenance costs, budget, and other considerations in its design. In the event the Project Development File or Program is more than one year old, the Design Professional shall consult with the Owner in order to update the Project Development File or Program, if required, as an Additional Service.

2.1.1.2 Meetings and Presentations. The Design Professional shall attend meetings, take appropriate minutes, distribute minutes to Owner, attendees and interested parties, and otherwise explain its work product as may be necessary to its implementation. Periodically during the initial phases of Schematic Design and Design Development, the Design Professional shall schedule meetings and presentations with the Owner and Using Agency to describe the work in progress, address questions and prepare for Owner/Using Agency approvals. The Design Professional shall take appropriate minutes and distribute them to the Owner, attendees, and other interested parties. After engagement of the CM/GC, the Design Professional will continue to schedule meetings with the Owner and Using Agency for the purpose of completing and securing approval of the Construction Documents. The CM/GC shall also be invited to all such design review meetings. The Design Professional shall also schedule design coordination meetings directly with the CM/GC for the purpose of collaborating and coordinating the development of Component Construction Documents, GMP Change Order Documents, final design and the Overall Project Schedule.

2.1.1.3 Approval of Governmental Authorities. The Design Professional shall assist the Owner in filing any required documents for the approval of governmental authorities having jurisdiction over the Project, when applicable.

2.1.1.4 Building Commissioning Support and Coordination Services. If a separate Commissioning Provider is retained, the Design Professional shall consult with, coordinate with, and support the Commissioning Provider throughout the Design and Construction Contract Administration phases of the Project. The Design Professional shall recognize that the ultimate purpose of Commissioning—the full, complete, and functional operation of the item or system being commissioned—is dependent upon the Commissioning Provider's ability to review the design and installation of the systems.

2.1.1.5 Subsurface Utility Engineering (SUE). The Design Professional, through its consultant engineers, undertakes to assist managing certain risks associated with subsurface utilities by mapping and assessing existing utilities at appropriate quality levels and coordinating the design and relocation of such utilities, in accordance with ASCE standards.

2.1.1.6 Master Planning Integration. The Design Professional shall integrate the Project into the master plan for the campus or facility. While master planning is normally done through a separate contract, where there is no master plan developed, the Design Professional may be requested to perform such services for the Owner.

2.1.1.7 Landscape Planning and Design. The Design Professional shall provide, or secure through a landscape architect, landscape and irrigation planning for the project and adjacent lands for the campus or facility.

2.1.1.8 Color Rendering of Project. To facilitate visualization and perceptions of the project, a color rendering must be made of the Project. If applicable, a model or video may be added or substituted.

2.1.1.9 Evaluation of Project Budget.

2.1.1.9.1 Preparation of Statements of Probable Construction Cost. All Statements of Probable Construction Cost required in this Contract shall be provided in the format shown in the CM/GC Forms Packet. All statements of Probable Construction Cost shall represent the facts existing as of the date of execution of the statement and shall represent the true state of the Design Professional's mind. Along with the Construction Documents, the Design Professional shall submit in writing to the Owner a Final Statement of Probable Construction Cost. The Design Professional shall keep the Owner informed of any adjustments to previous Statements of Probable Construction Cost necessitated by changes in scope, requirements, or market conditions. All Statements of Probable Construction Cost prepared by the Design Professional shall contain such provisions for inflation or deflation as may be reasonably anticipated within the construction industry. The inflation or deflation factor shall be applied based upon the anticipated start date of construction. In preparing all Statements of Probable Construction Cost, the Design Professional should consider, as a general reference, the information and matters required in current version of ASTM Standard Practice E 1804, "Performing and Reporting Cost Analysis During the Design Phase of the Project".

2.1.1.9.2 Details and Effect of the GMP Cost Limitation.

(a) The Design Professional recognizes and agrees that he will design this 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 Design Professional 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 and the Design Professional prior to, but not after, the award of the CM/GC Contract.

2.1.1.9.3 Revision or Redrafting, GMP Cost Limitation.

(a) After the award of the CM/GC Contract, the GMP Cost Limitation may be increased to include any additional costs for services required of the CM/GC not included in the GMP Cost Limitation, and shall become the GMP Cost Limitation. It shall be the responsibility of the Design Professional to design the Project so that the GMP or lump sum fixed price will not exceed the GMP Cost Limitation. It is in the best interest of the public, and the intent of the Owner is, that the entire Project be constructed within the funds allocated in the preliminary budget. Notwithstanding this overriding public policy, in the event that the Design Professional finds, in its opinion, that the price will potentially exceed the GMP Cost Limitation, the Design Professional shall immediately stop work and give written notice to the Owner, who will either revise the budget to increase the GMP Cost Limitation or direct the Design Professional to reduce the scope of the Project. If so directed by the Owner in writing, the Design Professional shall, at no additional cost to the Owner, revise or redraft any and all documents necessary for the construction award of the reduced scope project so as to bring the probable GMP within the GMP Cost Limitation and maintain the Preliminary Design and Construction Schedule; *provided, however*, if the cost of redesign is extensive, and the budget changes are the result of unexpected market forces, the Design Professional shall be equitably reimbursed for such design services.

(b) Notwithstanding the foregoing, if the design is within the GMP Cost limitation, and CM/GC or program manager propose, and the Owner approve, changes after approval of the design of a component, then the Design Professional shall be equitably reimbursed for such additional design services.

(c) The Design Professional shall promptly revise without additional compensation those documents that have not been previously approved by the Owner or to which the Owner has reasonable and timely stated objections.

2.1.1.4.4 Revision or Redrafting of Construction Documents After Receipt of the Proposed GMP.

(a) If the GMP Cost Limitation is exceeded by the CM/GC's proposed GMP, the Owner may.

i. Approve an increase in the GMP Cost Limitation; or

ii. Require the Design Professional, without additional compensation, to revise the Construction Documents to reduce the Cost of the Work to the original GMP Cost Limitation, with the Owner reducing the CM/GC non-construction services to reduce the GMP to the GMP Cost Limitation.

(b) If the CM/GC's proposed GMP is more than 5% but not less than \$200,000 below the GMP Cost Limitation, and if the Design Professional under Subparagraph 2.1.1.9.3 reduced components of the design of the Project to bring the probable cost of construction within the GMP Cost Limitation, then the Owner may require the Design Professional, without additional compensation, to revise the Construction Documents to restore such components of the design that were omitted, but without exceeding the GMP Cost Limitation. Such components of the design will be implemented by Change Order.

(c) After the CM/GC Contract has been awarded, if additional funding is obtained to increase the GMP Cost Limitation and components reduced or eliminated during design are desired to be reinstated, the Design Professional will be entitled to the same compensation as is provided for Change Orders not the fault of the Design Professional.

2.1.1.5 Contingencies. No Statements of Probable Construction Cost submitted by Design Professional shall include a construction contingency amount but shall include such design contingencies as are necessary to account for work for which the design has not been completed.

2.1.1.6 No Calculated Risks. The Design Professional agrees that budgetary limitations are not a justification for breach of sound principles of architectural and engineering design. The Design Professional shall take no calculated risks in the design of the work.

2.1.2 Instruments of Service.

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

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

2.1.2.3 Reserved Rights and License to the Design Professional. Notwithstanding the rights, ownership, grants, assignments, transfers, and quitclaims set forth in Paragraphs 2.1.2.1 and 2.1.2.2 of this Article above, the Design Professional shall retain its rights to all its previously created standard design elements included within the Instruments of Service, including its standard details, standard specifications and other standard design documents generated and authored by the Design Professional for its repeated and regular use in other instruments of service for its clients, *provided however*, that Design Professional grants and transfers an irrevocable license to Owner to use, reuse, and create derivative works of such standard design elements for use in the buildings, improvements, structures and the campus of the Project. In addition, the Owner expressly grants, assigns, and transfers a permanent and exclusive license to the Design Professional, its successors, and assigns, for the Design Professional's Instruments of Service, and to each consultant (including the consultant's successors and assigns) of the Design Professional for such consultant's Instruments of Service, to use, reproduce, sell, transfer, and accomplish derivative works therefrom, for any and all purposes.

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

2.1.2.5 Use of Instruments of Service. Except for the rights and licenses granted in this Article, no other license or right shall be deemed granted or implied under this Contract. The Owner permits and authorizes the Contractor, Subcontractors, sub-Subcontractors, and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work.

2.1.2.6 Documents in Electronic Format. Within sixty calendar days of the receipt of the marked-up Construction Documents that are required to be furnished by the Contractor pursuant to the Contract Documents, the Design Professional shall provide the Owner with Record Drawings and Final Documents as specified in Article 2.2.14. In the event that the Project is terminated prior to construction, the Design Professional, upon the Owner's request, shall provide in digital format copies of all drawings and Project Manual content then existent. Electronic drawings shall be made available for viewing in a format approved by the Owner. (See also Para. 4g, Contract, page Contract-2.)

2.1.2.7 Acknowledgement of Risks Concerning Electronic Media. The Owner acknowledges that the automated conversion or transfer of electronic documents may introduce inexactitudes, anomalies, or errors. Copies of documents that may be relied upon by the Owner are limited to printed copies (also known as hardcopies) that are signed or sealed by the Design Professional and its consultants. Files in electronic media format or text, data, graphic, or other types that are furnished by the Design Professional to the Owner, are only for the convenience of the Owner. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. When transferring documents in electronic media format, the Design Professional makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware different from those in use by the Design Professional and its consultants at the beginning of this assignment.

2.1.2.8 Copies of Contract Documents to CM/GC. Without charge to the CM/GC (but reimbursable to the Design Professional, pursuant to Paragraph 4.1.3.2), the Design Professional shall furnish to the CM/GC one set of completed Contract Documents in hardcopy, one set of reproducible and electronic background floor and reflected ceiling plan drawings, and one copy in read-only electronic format.

2.1.3 Site Evaluation and Planning Services.

2.1.3.1 Preliminary Evaluation. Site evaluation and planning functions should proceed concurrently with the accomplishment of Schematic Design, Design Development, and Construction Documents. The Design Professional shall conduct a preliminary review of the site based on information furnished by the Owner. The Design Professional will advise the Owner of potential site-related problems that the Design Professional notes from such review.

2.1.3.2 Plot Plan. The construction drawings must include a Plot Plan designated as such on the drawing and consisting of one sheet only. The Plot Plan serves as the basis for the Site Memorandum. All work shall be sited on the plot plan to scale. In the absence of written consent of the Owner in advance, the Plot Plan shall comply with The Policy.

2.1.3.3 Site Memorandum. The Design Professional agrees to comply fully with the requirements of the attached Exhibit F, Site Memorandum. The Design Professional agrees to notify the Owner, at once and in any event within ten calendar days after execution of this Contract, of the amount of money the Owner should budget in order to cover costs identified in the Site Memorandum. The Design Professional agrees that, without cost to the Owner, the Design Professional shall make such proper and reasonable changes in the Site Plan and preliminary foundation design that are either necessary or desirable as required by the Stage One statement and subsequent investigation by the geotechnical engineer (see Subparagraph 1.1.2.6.3) obtained pursuant to the Site Memorandum. All information should be incorporated into the final Site Plan and final foundation design for the Stage Two statement. The Design Professional shall file copies with the Owner and accompany them with a current Statement of Probable Construction Cost, in the format shown in the Forms Packet, as a part of the next submittal required by this Contract. (See current version of ASTM Standard Practice E 1804-02, Section 8.4 for guidance on information which is generally developed in site development documents.)

2.1.3.4 Land Disturbance Permitting.

2.1.3.4.1 General. The Design Professional and its consultants are responsible for providing the initial sealed Site Plan as a part of the Proposal Documents. The CM/GC is required by the General Requirements to commence its review of the initial Site Plan at the beginning of the Pre-Construction phase. The CM/GC, with the design assistance of the Design Professional, is contractually required to obtain the land disturbance permit(s) that comply with the National Pollution Discharge Elimination System (NPDES) general permit for storm water management for construction activities. As a general principle, compliance requires that there be properly designed Best Management Practices (BMPs), properly installed BMPs, and inspection and maintenance of the installed BMPs.

2.1.3.4.2 Implementation. The Design Professional and its consultants shall depict upon the Site Plan their initial recommendations as to elements of the erosion, sedimentation and pollution control plan, specifying its recommended design of BMPs for the Project, including storm water management facilities, and other like matters. It is the CM/GC's responsibility to review the design of the BMPs and submit any requested 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 will incorporate all reasonable changes and produce a final sealed Site Plan, including fully designed BMPs, for submission to the permitting officials that enables the land disturbance permitting of the Project. With assistance of the CM/GC, the Design Professional shall resolve with the local permitting official any deficiencies with a goal that all environmental permitting and plans be approved by the end of the Pre-commencement period.

2.1.3.4.3 Installation, Inspection, and Maintenance. The CM/GC is responsible for installation and maintenance of the BMPs as a part of its scope of Work. The Design Professional is responsible for and 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.

2.1.3.4.4 Unit Costs, Abnormal Weather Conditions, Changes. The Design Professional shall establish in the Supplementary General Requirements unit prices to cover the addition or reinstallation of BMPs, by type and linear foot, that would be compensable to the CM/GC in the event of *force majeure*, including abnormal weather conditions, and Owner Requested Changes, as set forth in Section 3 Part 3 of the General Requirements.

2.1.3.5 Additional Information. The Design Professional shall advise the Owner of the need for any information that the Design Professional determines should be provided by testing laboratory or similar third party provider. With prior written approval of the Owner as to cost and other business terms, the Design Professional shall contract for the information or, if the Owner elects, the Owner shall contract as advised by the Design Professional. The Design Professional shall not be liable to Owner for professional judgment of third party providers. The Design Professional shall inform the Owner if the Design Professional discovers any defect in the information so provided. Except as provided above as to tests, the retention of independent contractors or other assistance does not relieve the Design Professional of any responsibility under this Contract.

2.1.4 **Schematic Design Services.**

2.1.4.1 Concept Design Studies. In accordance with the approved Preliminary Design and Construction Schedule, the Design Professional shall prepare and submit to the Owner Concept Design Studies consisting of a site plan, building plans, sections, elevations, and such other graphic and narrative information as is necessary to describe fully the Design Professional's proposed solution to the Owner for review and approval in accordance with Paragraph 2.1.1.1. These studies shall consider land use, the environment, master plans, traffic, parking, transportation, utilities, and functional

relationships within the Project and building systems. With such studies, the Design Professional shall prepare and submit to the Owner an initial and subsequent updated Statements of Probable Construction Cost.

2.1.4.2 Schematic Design Documents. In accordance with the approved Preliminary Design and Construction Schedule and based upon approval of and comments made by the Owner regarding the Concept Design Studies, the Design Professional shall prepare and submit to the Owner Schematic Design Documents, including drawings and outline specifications. These documents shall represent a further development of the approved design concept, providing additional detail and specificity regarding the intended design solution. Typically, all such documents shall be drawn to scale, indicating materials and assemblies, as appropriate, to convey the design intent and to illustrate the Project's basic elements, scale and relationship to the Site. All major pieces of furniture and equipment to be fixed or supplied by the CM/GC shall be illustrated to scale. (See current version of ASTM Standard Practice E 1804-02, Sections 6.3, 8.2 and 8.3 for guidance on information which is generally developed in Schematic Design.)

2.1.4.3 Site Analysis. The Design Professional shall, in consultation with the geotechnical engineer and other project consultants, develop and submit to the Owner, in conjunction with the Site Memorandum (see Paragraph 2.1.3.2 above), an analysis of the site describing significant features of physical environment and characteristics of the site, (i.e., climate, topography, soils and conditions, ecology, utilities, circulation, views, noise and existing structures) stating the implication of the above factors on design.

2.1.4.4 Initial Statement of Probable Construction Cost. The Design Professional shall prepare and submit an initial Statement of Probable Construction Cost in the UniFormat™ Level I shown in Exhibit F. To the extent the Statement of Probable Construction Cost significantly deviates from the GMP Cost Limitation, the Design Professional shall discuss the deviations with the Owner and prepare and submit a plan to address the differences. As the design progresses, the Design Professional shall prepare and submit updated Statements of Probable Cost in like format.

2.1.4.5 Schematic Design Approval. The Design Professional shall, on the Preliminary Design and Construction Schedule, show the progress to date, confirm the remainder of the design portion of the schedule, and update the projected construction portion of the schedule. The Design Professional shall meet with the Owner and Using Agency for the purpose of presenting and reviewing the Schematic Design including the updated schedule and the initial Statement of Probable Construction Cost. The Design Professional shall obtain the written approval of the Owner of the Schematic Design Phase before proceeding with the next phase.

2.1.5 Design Development Services.

2.1.5.1 Design Development Documents. In accordance with the approved Preliminary Design and Construction Schedule and based upon approval of and comments made by the Owner regarding the Schematic Design Documents, the Design Professional shall prepare and submit to the Owner the Design Development Documents. (See current version of ASTM Standard Practice E 1804-02, Sections 6.4, 8.2 and 8.3 for guidance on information which is generally developed in Design Development Documents.) The Design Development Documents shall consist of a Site Plan, building plans, floor plans, sections, elevations, typical construction details, equipment layouts, and other drawings and outline specifications. These documents will fix and illustrate the size and character of the entire Project in its essentials, including but not limited to kinds of materials, criteria and sizing of major components, equipment sizes and capacities, approximate layouts including required spaces for clearances, type of structure, grade elevations, sidewalks, utilities, roads, parking areas, mechanical and electrical systems. The Design Professional shall also prepare Outline Specifications giving basic descriptions of essential components of all systems. The Outline Specifications shall identify major materials and systems and establish in general their quality levels. Upon the request of the Owner, the Design Professional shall furnish to the Owner perspective illustrations, physical models, and 3-D computer models at a specified size. Such illustrations and models shall be performed as an Additional Service to this Contract and shall be compensated at the rates shown in Exhibit A and Article 4.1.3, Reimbursable Expenses.

2.1.5.2 Floor Plans. The Design Professional shall prepare floor plans showing spaces by name, number, actual net area of each space, structural module, mechanical spaces, equipment, chases and circulation area. The Design Professional shall also prepare site plans (which show utilities), plumbing, electrical, mechanical, and structural plans, and equipment layouts, lists and schedules. Drawings shall show overall building dimensions and major lines of dimension.

2.1.5.3 Initial Code Compliance Review. The Design Professional shall submit the completed Design Development Documents for the State Fire Marshal's review to the GSFIC Plan Review Division.

2.1.5.4 Design Development Documents Approval. The Design Professional shall, on the Preliminary Design and Construction Schedule, show the progress to date, confirm the remainder of the design portion of the schedule, and update the projected construction portion of the schedule. The Design Professional shall meet with the Owner and Using Agency for the purpose of presenting and reviewing the Design Development Documents including the updated schedule and the updated Statement of Probable Construction Cost. The Design Professional shall obtain the written approval of the Owner of the Design Development Documents Phase before proceeding with the next phase.

2.1.6 Construction Documents.

2.1.6.1 General. In accordance with the approved Overall Project Schedule and based upon approved Design Development Documents, the Design Professional shall prepare and submit to the Owner the Construction Documents consisting of working drawings and specifications and setting forth in detail the architectural and engineering work required to result in a complete and fully functional Project. The Design Professional must provide all design documents required for regulatory approvals necessary to receive operating permits/authorizations and a Certificate of Occupancy (See current version of ASTM Standard Practice E 1804-02, Section 8.4 for guidance).

2.1.6.2 Basis of Construction Documents. The Construction Documents must be based upon the Project Development File, or if none exists, the Program. The Construction Documents must indicate, in detail, the requirements for the construction of the Project (including all on-site and off-site work).

2.1.6.3 Conflicts. If there is any conflict between the Project Development File (or if none exists, the Program) and the Construction Documents, the Project Development File (or Program) shall prevail and govern, except in the following circumstances:

- (a) When the Project Development File (or Program) causes a code violation; or
- (b) When the Project Development File (or Program) shows or calls for a result that, based on evidence presented to the Owner, will not function properly, will not be suitable for the purposes intended, or includes requirements for processes or equipment that are subsequently determined to be unsuitable; or
- (c) When a change was made during the design and approval process that modified the Owner's requirements. In such case, the Design Professional and the Owner must have approved this modification in writing.

2.1.6.4 Free from Leaks. The Design Professional shall design the work in a non-negligent manner such that the building will be free from leaks if all components are installed in accordance with the Construction Documents.

2.1.6.5 Specification Format. The Construction Specifications must be in the full Construction Specifications Institute (CSI) Format Level 3 or greater as established in the CSI Manual of Practice covering required materials, products and equipment, their installation and operation, quality assurances, reference standards and submittal requirements. The Construction Specifications must provide all supplemental information and requirements included but not elsewhere covered by the Contract Documents.

- (a) Submission of Statement of Probable Construction Costs. The Design Professional shall submit a Statement of Probable Construction Cost along with the Schematic Design Documents, Design Development Documents, and the Construction Documents. The Design Professional shall keep the Owner informed of any adjustments to previous Statements.

2.1.6.6 Working Drawings. Working Drawings shall consist of those drawings necessary to describe the size and character of the Project and its design, construction, materials, finishes, fixtures, civil, structure, mechanical systems and electrical systems and other related work. The Working Drawings must include, where applicable, at least the following:

- (a) Civil Engineering documents to consist of grading, storm drainage, erosion control, paving, fencing, Site sanitary system, and Site water system;
- (b) Architectural floor plans, exterior elevations, interior elevations, building sections, wall sections, reflected ceiling plans, interior and exterior details, door and finish schedules, and roof plans. All Architectural Floor Plans shall be at not less than 1/8" = 1' 0" scale, must be fully coordinated with all other disciplines and all required equipment, and must show all required partitions, partition types, doors and door numbers, windows, room names and numbers, dimensions and any other required notes and information for complete floor plans;

- (c) Detailing and dimensions that comprehensively describe the design of the building and Site development in a consistent and coordinated manner;
- (d) Wall sections and interior elevations at scales appropriate to illustrate with sufficient detail and clarity the intended work and thereby facilitate its construction;
- (e) Reflected ceiling plans at the same scale as the respective floor plans. All reflected ceiling plans must be fully coordinated with all the engineering disciplines and must show all required ceiling lights, diffusers, access panels, returns, fans, smoke detectors and any other required devices on the ceiling. The architectural reflected ceiling plan takes precedence over all the other engineering plans in regards to fixture and device locations. Sprinkler head requirements shall be per NFPA requirements and coordinated with the reflected ceiling plan;
- (f) Structural construction drawings and specifications, e.g. structural steel and cast-in-place concrete work, as well as for foundation reinforcing steel and any other structural elements, must include top of foundation elevation and complete structural details at not less than 1/2" = 1' scale;
- (g) HVAC, plumbing, and fire protection layouts showing major equipment and mains as well as typical distribution branches, riser diagrams, supply and return grilles, fire dampers, and a schedule of plumbing fixtures valves, and all other "end product" elements and features. All HVAC, plumbing and fire protection plans must be fully coordinated with the architectural floor plans and reflected ceiling plans. All such drawings shall be at not less than 1/8" = 1' 0" scale;
- (h) Electrical systems and separate signal and data/telecom conduit systems layouts, as well as riser diagrams for the building, and all other "end product" elements and fixtures. All electrical power and lighting plans must be fully coordinated with the architectural floor plans and reflected ceiling plans; and
- (i) Electrical site plans at not less than 1" = 50' scale.
- (j) Any specialty products, materials and supplies specified by the Design Professional must be available.

2.1.6.7 Contractor's Responsibilities. The Design Professional shall not require the Contractor to provide professional services that constitute the practice of architecture or engineering in the Construction Documents unless such services are proprietary for that portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Design Professional will specify all performance and design criteria that such services must satisfy.

2.1.6.8 Review of Construction Documents. If requested by the Owner the Construction Documents shall be submitted by the Design Professional to a designated third-party reviewer for review of constructability and or completeness.

2.1.6.9 Construction Documents Approval. The Design Professional shall, on the Preliminary Design and Construction Schedule, show the progress to date, confirm the remainder of the design schedule, and update the projected construction schedule. The Design Professional shall meet with the Owner and Using Agency for the purpose of presenting and reviewing the Construction Documents including the updated schedule and a final Statement of Probable Construction Cost. The Design Professional shall obtain the written approval of the Owner of the Construction Documents before proceeding with the next phase. (See current version of ASTM Standard Practice E 1804-02, Section 8.4 for guidance on information which is generally contained in Construction Documents.)

2.1.7 Construction Proposal Documents.

2.1.7.1 Proposal Submission Date. The date(s) for receipt of qualifications and proposals for selection of the CM/GC shall be established by the Owner after consultation with the Design Professional. No changes shall be made in the Program or the various documents prepared by Design Professional after proposals have been invited except by formal addendum approved by the Owner and issued by the Design Professional.

2.1.7.2 Issuance of Documents. Upon receipt of the review comments from the Owner, the Design Professional shall complete the Construction Documents for any Component Change Order or the final Construction Documents to respond to the review comments and furnish final copies to the Owner prior to release of Construction Documents for a Component Change

Order. The Contract Documents for submission of proposals shall be bound into a Project Manual, including the Invitation to Propose, the RFQ, the RFP, Proposal Form(s), Contract Form, General Requirements, Supplementary General Requirements and, to the extent required, the Specifications.

2.1.8 CM/GC Construction Procurement Services.

2.1.8.1 Assist the Owner. The Design Professional shall assist Owner in obtaining proposals from qualified firms to act as CM/GC and construct the Project and shall assist in the selecting and awarding of the CM/GC Contract. Assistance may include the determination of daily amounts for liquidated damages to be assessed the CM/GC for failure to complete the project on time and determination of appropriate daily amounts to compensate the CM/GC for time dependent costs associated with approved extensions of time.

2.1.8.2 Prospective Proposers. If requested by the Owner, the Design Professional shall assist the Owner in preparing a list of prospective proposers. Assistance may include the review and initial determination of qualifications of the CM/GC candidates and selected Trade Contractors. The Design Professional shall accumulate an attendance roster of firms attending any mandatory pre-proposal meeting and shall provide a copy of the roster to the Owner prior to the date set for receiving qualifications or proposals. The Design Professional shall provide the Owner with a list of the plan holders of record as of the date set for receiving proposals.

2.1.9 Selecting the CM/GC. The Design Professional shall advise and assist the Using Agency and the Owner with respect to the preparation of documents necessary and appropriate for the process of selection of the CM/GC for the Project, including, but not limited to, the following:

2.1.9.1 Request for Qualifications. Using a format provided by the Owner, provide project specific requirements for the approval of the Owner and Using Agency, to be utilized in the Request for Qualifications (RFQ), following the State guidelines for selection procedures, that will solicit responses from private organization(s) that believe they are qualified to perform all the duties expected of the CM/GC.

2.1.9.2 Shortlist. Develop, or if a Program Manager is engaged, coordinate for approval by Owner and Using Agency the criteria for selection of the CM/GC, following the State guidelines for selection procedures, that will result in a “short list” of qualified organizations created from the pool of respondents to the RFQ.

2.1.9.3 Request for Proposals. Using a format provided by the Owner, provide project specific requirements for the approval of the Owner and Using Agency, to be utilized in a Request for Proposal (RFP), following the State guidelines for selection procedures, that will be provided to the short-listed organizations that responded to the RFQ. Among other topics, review the RFP for clarity and practicality concerning the following matters:

2.1.9.3.1 A complete description of the process that will be used to select the CM/GC;

2.1.9.3.2 A complete listing of the duties and expectations that will be required by the organization selected to be the CM/GC;

2.1.9.3.3 The criteria by which the selection of the CM/GC will be determined;

2.1.9.3.4 A complete but brief description of the project’s goals (project description);

2.1.9.3.5 The program and budget constraints data (including photographs, maps, etc.) from the approved Using Agency’s Program; and

2.1.9.4 Evaluation Criteria. Develop, or if a Program Manager is engaged, coordinate for approval by Owner and Using Agency the criteria that will be used to evaluate the short-listed candidates for the CM/GC; arrange site visit and interview schedules, and coordinate as necessary to assure a successful interview process.

2.1.9.5 Reproduction of Documents. The Design Professional shall arrange for the reproduction of proposal documents for distribution to prospective proposers as required.

2.1.9.6 Pre-Proposal Meeting. If so directed by the Owner, the Design Professional shall attend a pre-proposal meeting at the location designated by the Owner. If so requested by the Owner, the Design Professional shall assist the Owner in determining the following items for the CM/GC Contract.

- a. The Contract Time;

- b. The daily rate for Liquidated Damages;
- c. The CM/GC fees;
- d. The Guaranteed Maximum Price;
- e. The maximum amount allowable for CM/GC Overhead costs and Expenses;
- f. The daily rate for Time Dependent Overhead Costs;
- g. Any Unit Prices to be added to the Proposal Documents by addenda; and
- h. Any other units or percentages required to be set by the Proposal Documents.

2.1.9.6.1 Responses to Questions. The Design Professional will issue clarifications and/or addenda to prospective proposers.

2.1.9.6 CM/GC Contract Execution. Coordinate execution of the CM/GC's contract that will be executed between Owner and CM/GC utilizing contract documents provided as a part of the state-wide construction manual and coordinated through the Department of Law. The Program must be fully approved by Owner prior to execution of the CM/GC's contract, and must be incorporated and made a part of the CM/GC's contract.

2.1.9.7 Kick-off Meeting. Coordinate a "kick off" meeting with the selected CM/GC and all interested parties, including the Using Agency and identified user-group. The Owner or Program Manager will schedule the meeting and provide the location.

2.1.10 Pre-Construction Design and Related Services. The following services are to be provided by the Design Professional during the pre-construction period leading to issuance of any Component Change Order and the GMP Change Order.

2.1.10.1 CM/GC Design Coordination Meetings. The Design Professional shall from time to time meet with the CM/GC and shall, with the Using Agency and the Owner, attend scheduled meetings for the purpose of collaborating and coordinating the final design and Construction Documents.

2.1.10.2 Coordination. The Design Professional, together with the Owner and Program Manager, is responsible for coordination and cooperation with the CM/GC for 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 occupancy by the Using Agency.

2.1.10.3 Overall Project Schedule. The Design Professional shall develop with the CM/GC from its Construction Progress Schedule an Overall Project Schedule for approval by the Owner of a realistic sequence of design, construction, and procurement activities necessary to achieve completion of design and commencement and completion of construction of the Project in accordance with the Using Agency's Program. The Overall Project Schedule shall include, but is not limited to, the following:

- i. a schedule for completion of Construction Documents for the entire Project;
- ii. a schedule for the anticipated commencement and completion of construction and procurement activities under Contract Documents for each Component for which separate Component Construction Documents are to be prepared;
- iii. a schedule showing the date by which the CM/GC anticipates CM/GC shall propose a GMP Change Order to the CM/GC Contract;
- iv. a schedule showing the date by which the CM/GC anticipates CM/GC shall propose a lump sum price Change Order to the CM/GC Contract;

- v. a schedule for approval times for shop drawings and submittals required of the CM/GC, keeping in mind that the CM/GC shall be instructed to take into account large submittal documents that will require longer review times, e.g., submittals with over fifty sheets of drawings;
- vi. a schedule of dates for the submittal of approval documents to the Using Agency and the Owner;
- vii. a schedule of dates for the submittal of approval documents to other state agencies

2.1.10.4 Changes Prior to GMP Change Order. In the event the Owner and Using Agency propose a change to the Using Agency's Program, the Design Professional shall review the proposed revision to determine whether the change requires a change in the GMP Cost Limitation.

2.1.11 Georgia Energy Efficiency and Sustainable Construction Act of 2008 Related Services. The following services are to be provided by the Design Professional if this project is subject to the Georgia Energy Efficiency and Sustainable Construction Act of 2008 ("Energy Act"). See paragraph 13 of the Contract to determine if the Energy Act is applicable.

2.1.11.1 Commissioning. The systems listed on the Commissioning Checklist, included in the CM/GC Forms Packet, must be commissioned.

2.1.11.2 Water Use Reductions. The project shall be designed, constructed, and commissioned or modeled to achieve a 15 percent reduction in water use when compared to water use based on plumbing fixture selection in accordance with the Energy Policy Act of 1992. The Design Professional shall complete the Water-Use Reduction Checklist included in the CM/GC Forms Packet to certify compliance with the Water Use Reduction provisions.

2.1.11.3 Georgia Based Materials and Products. The project shall be designed so that not less than 10 percent of all building materials used in the project are materials that are harvested, extracted, or manufactured in the State of Georgia where such products are commercially available. The Design Professional shall include the 10 percent minimum requirement in the specifications to ensure that sufficient Georgia based materials and products are incorporated into the project.

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PART 2 – CONSTRUCTION CONTRACT ADMINISTRATION SERVICES

2.2.1 - General Administration.

2.2.1.1 Overall Administration. This function covers the overall Project administrative duties performed by the Design Professional during the construction phase and includes the use of the Design Professional's powers to require that the Contractor comply with the Contract Documents. It includes all duties that constitute the Design Professional's administration of the Construction Contract. The Design Professional acknowledges that all definitions and terms of trade usage set forth in the General Requirements of the CM/GC Contract are incorporated into this Contract by reference. The CM/GC, however, shall be solely responsible for safety as well as the means and methods of construction. The Construction Contract Administration services described in this Part are to be distinguished from the continuous services of the CM/GC and the services of a third party construction inspector or quality control specialist.

2.2.1.2 Duration. The Construction Contract Administration Services phase begins with the award of the CM/GC Contract and is concerned with both "office" and "field" professional services required to direct the Construction Contract Administration. The Construction Contract Administration services of the Design Professional shall commence upon receipt of a letter from the Owner requesting the Design Professional to proceed and shall continue until completion of the project.

2.2.1.3 Cost Control Prior to GMP. At appropriate intervals prior to agreement on the GMP change order, the Design Professional shall review the Construction Cost Estimate provided by the CM/GC and with the CM/GC develop the Reconciled Construction Cost Estimate, consisting of a composite of the Design Professional's Estimate of Probable Construction Cost and the CM/GC's Construction Cost Estimate, each separately derived and each based upon the Program and design documents prepared by the Design Professional. If at any time the Design Professional's Estimate of Probable Construction Cost and the Construction Cost Estimate of the CM/GC, are, in the Owner'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, to recommend to the Owner such actions as may be necessary or appropriate to resolve such differences. Cost accounting shall comply with GASB 34 accounting requirements.

2.2.1.4 Site Visits. During the Construction Administration phase, the Design Professional and its professional consultants shall make Site Visits to the project site to discharge their professional obligations as stipulated in the Contract, Paragraph 5 - Site Visits. The Design Professional shall submit, for review and approval of the Owner, a schedule of anticipated site visits, for each design discipline, that is compatible with the approved construction schedule. Additional Site Visits shall be treated as Additional Services, except that additional Site Visits caused by any error or omission of the Design Professional shall be part of Basic Services and shall not be an Additional Service. Additional Site Visits caused or necessitated by unforeseen construction conditions or non-compliant Work of the Contractor shall normally be approved by the Owner.

2.2.1.5 Accessibility. The Design Professional shall designate a readily accessible representative (either on Site or by computer, phone, fax, or otherwise) who shall have authority promptly to convey decisions and to furnish information required of the Design Professional.

2.2.2 Basic Office Services. The basic office services performed during the construction phase include:

- Administering the construction contract
- Monitoring the status of Owner's construction funds
- Requiring receipts from all known subcontractors and all known suppliers (1) if Design Professional has evidence of delinquency on the part of the CM/GC in making payments or (2) if he is requested to do so by the Owner
- Recommending withholding payments to the CM/GC, as appropriate
- Issuing certificates of payments
- Reviewing and commenting on shop drawings and submittals for conformance with design intent
- Making revisions, corrections or clarifications to the Contract Documents by bulletins or change orders
- Maintaining correspondence and records
- Performing associated clerical services
- Reviewing / evaluating and processing of Change Order requests and claims.
- Issuing change orders as described in the General Requirements for changes in the work (No changes in the Contract Documents shall be made except with the prior written consent of the Owner.)
- Responding to all RFI's (Requests For Information)

- Executing all other duties required of the Design Professional in the General Requirements
- Reviewing the certificates, manuals and guarantees assembled by the CM/GC as provided in the Contract Documents
- Recommending acceptance of the completed project

2.2.3 Basic Field Services. The professional services performed during the construction administration comprise on-site observation, evaluation, and documentation by the Design Professional and its consultants to guard against nonconformity of the work with the Contract Documents. In addition, the Design Professional shall observe and document appropriately any compliance concerns with agreed construction schedules, the superintendence of the work, and the qualifications of skilled workers.

2.2.3.1 Observations, Evaluations and Documentation. A principal of the Design Professional's firm and/or each consultant's firm, or a qualified employee of each firm approved by the Owner shall perform observations, evaluations and documentation. The Design Professional shall not knowingly certify Work for payment that has been improperly installed. The Design Professional shall engage registered professional consultants licensed in the State of Georgia to make periodic observations and evaluations and a final observation and evaluation of the work and to assist its in administration of the construction contract. The Design Professional shall not accept, authorize the covering of, or certify for payment Work in a field or trade in which the Design Professional is not skilled and competent, except upon the personal advice and written approval of said consultants. The Design Professional shall arrange, as a part of its services, for registered professional consultants responsible to the Design Professional to make periodic observations and evaluations and to advise the Owner in writing from time to time and as the work progresses, as to the concurrence on the part of the consultants in (i) the accepting, (ii) the consenting to the covering of, and (iii) the certifying for payment of Work in their fields of practice. The Design Professional is fully responsible for any Work designed, approved, certified, or accepted by its consultants the same as if the said Work were designed, approved, certified, or accepted by the Design Professional. Once a month a written report shall be submitted to the Owner apprising it of the progress and condition of the Work

2.2.3.2 Construction Progress Meetings. The Design Professional shall attend Construction Progress Meetings periodically held by the CM/GC at the job site on a schedule determined by the CM/GC. The Design Professional shall review the minutes of the meeting and provide his written comments to the minutes to the Owner and CM/GC within seven (7) calendar days after the meeting.

2.2.3.3 Contracts with Consultants. Upon demand of the Owner, the Design Professional shall furnish the Owner a copy of each contract between the Design Professional and its consultants, and such contracts must indicate (i) completely, definitely and clearly the Construction Contract Administration services to be performed by the consultants, and (ii) bind the consultant to the terms of this Contract which apply to the services of the consultants.

2.2.3.4 Owner's Quality Control Inspector. When desired by the Owner, a quality control inspector may be engaged by the Owner, or upon direction of the Owner, by the Design Professional for and on behalf of the Owner, and paid or reimbursed by the Owner. The individual or firm shall be one to whom the Design Professional has no reasonable objection.

2.2.4 Component Change Orders. When the use of a Component Change Order and Component Construction Documents are contemplated, the Design Professional shall request that the CM/GC submit a Component Change Order under the CM/GC's Agreement for the construction or procurement of the Component under the Component Construction Documents. Upon receipt of the proposed Component Change Order, the Design Professional shall review the proposed Component Change Order to determine its compliance with the CM/GC Contract.

2.2.4.1 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 Design-Builder to price the Work;
- c. The Component Construction Documents shall meet all regulatory and Fire Marshal requirements (Refer to Owner's Instructions to Design Professionals for Fire Marshal CCO permit approval 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; and
- e. The Component Construction Documents (CCO) shall be stamped by the licensed/registered Design Professional of record or his licensed/registered engineering consultant.

2.2.4.2 If the CM/GC requests and the Owner approves a redesign of Component Construction Documents the Design Professional shall undertake such redesign. (See Paragraph 2.1.1.4.3).

2.2.4.3 With respect to any Component Change Order proposed prior to the execution of a GMP Change Order, Design Professional shall recommend to the Owner and Using Agency approval or disapproval of the Component Change Order. With its recommendation, Design Professional shall (i) provide to Owner and Using Agency any analysis of the Component Change Order price as it relates to Estimates of Probable Construction Cost submitted by the Design Professional and to the Stated Cost Limitation, and (ii) shall recommend to Owner the amount to be established by Owner as an Owner's contingency reserve with respect to the work governed by the Component Change Order if the Component Change Order is approved by the Owner. If the proposed Component Change Order proposes a price for the work governed by the Component Construction Documents to which the proposed Component Change Order relates which materially exceeds the Design Professional's Estimate of Probable Construction Cost corresponding to such work, the Design Professional shall recommend such corrective action, if any, which the Design Professional shall deem necessary or appropriate such that the Project Cost shall not exceed the Stated Cost Limitation.

2.2.4.4 Cost accounting shall comply with GASB 34 accounting requirements.

2.2.4.5 Upon approval by the Owner of a Component Change Order, the Owner shall issue to the CM/GC a Proceed Order under the Component Change Order

2.2.5 The GMP Change Order. The Design Professional is responsible for, or if a Program Manager is engaged, coordinates the development of a framework for negotiating the guaranteed maximum price (GMP) and, if appropriate the subsequent lump sum contract with the CM/GC. These duties include, but are not limited to:

2.2.5.1 Monitoring the GMP and/or lump sum contract on behalf of the Owner and taking appropriate actions to assure that the CM/GC maintains consistency with the terms and conditions of the contract(s).

2.2.5.2 Monitoring construction activities to assure consistency with the Program's project and quality specifications expectations.

2.2.5.3 Maintaining an "on-site" presence and accessibility (e.g., telephone, facsimile) through a qualified representative during all construction activities to assist in clarifying design or construction issues where the Owner's input is required, and in general, assuring the Owner that the project is well and duly constructed.

2.2.5.4 Cost accounting shall comply with GASB 34 accounting requirements.

2.2.6 Processing the GMP Change Order. When the Construction Documents for the entire project reach the stage of completion at which the CM/GC is required to propose a GMP Change Order, the Owner shall request the CM/GC to submit a GMP Change Order under the CM/GC's Agreement for the construction of the entire Project under the Construction Documents. Design Professional shall confer with CM/GC in CM/GC's development of a GMP Change Order proposed in connection with those matters that affect the services of the Design Professional under this Agreement. Upon receipt of the proposed GMP Change Order, Design Professional shall review the proposed GMP Change Order to determine its compliance with the Using Agency's Program and the CM/GC's Agreement and shall recommend to the Owner approval or disapproval of the GMP Change Order. With its recommendation, Design Professional shall (i) provide to Owner any analysis of the GMP Change Order price as it relates to the prior Estimates of Probable Construction Cost submitted by the Design Professional and to the GMP Cost Limitation; (ii) shall recommend to Owner the amount to be established by Owner as an Owner's contingency reserve with respect to the work governed by the GMP Change Order if the Owner approves the GMP Change Order; (iii) shall determine whether the proposed GMP Change Order is consistent with the CM/GC's Agreement, including the Project Schedule to the extent any changes to the Project Schedule proposed by the GMP Change Order affects the activities of the Design Professional under this Agreement and, if there is a variance, whether Design Professional agrees to such variance; and (iv) shall determine whether the proposed GMP Change Order and the assumptions on which it is based are consistent with the Using Agency's Program or subsequent revisions, prepared by the Design Professional and theretofore approved by the Owner.

2.2.6.1 If the GMP Change Order proposes a Guaranteed Maximum Price which, taking into account recommended contingency reserves, exceeds the GMP Cost Limitation for construction of the Project, Design Professional shall recommend such corrective action which the Design Professional believes is necessary to reduce such price so that it is within the GMP Cost Limitation or which is necessary to alternatively procure such work. If the Owner agrees to a Guaranteed Maximum Price that exceeds the GMP Cost Limitation, then the GMP Cost Limitation shall be thereafter equal to the Guaranteed Maximum Price but there shall be no increase in the compensation of Design Professional under this Agreement as a result of such change to the GMP Cost Limitation.

2.2.6.2 If the GMP Change Order is based on a design prepared by the Design Professional on behalf of the CM/GC which has not been approved by the Owner or upon assumptions concerning such design, said assumptions having not been approved by the Owner, the Design Professional shall identify such design or assumptions that require Owner's approval.

2.2.6.3 The Design Professional shall issue GMP Construction Documents meeting the following minimum criteria:

- a. The GMP Construction Documents shall reasonably show the intent of the Work to be accomplished;
- b. The GMP Construction Documents shall be sufficient for the CM/GC to price the Work;
- c. The GMP Construction Documents shall meet all regulatory and Fire Marshal requirements; (Refer to the Owner's Instructions to Design Professionals for Fire Marshal permit approval requirements).
- d. The GMP Construction Documents shall be sufficiently detailed to preclude the necessity for rework as the Construction Documents proceed to 100% completion; and
- e. The GMP Construction Documents shall be stamped by the licensed/registered Design Professional of record or his licensed/registered engineering consultant

2.2.6.4 Upon approval of the GMP Change Order, the Owner will issue to the CM/GC a Proceed Order.

2.2.6.5 Upon approval by the Owner of the GMP Change Order, any revision of the Project Schedule proposed thereby shall be incorporated into this Agreement and shall govern the schedule of activities of the Design Professional

2.2.6.6 Upon approval by the Owner of the GMP Change Order, the Design Professional on behalf of the CM/GC shall complete its design of the Project. This design shall include Construction Documents, developed in accordance with the basis stated in the GMP Change Order.

2.2.7 Monitoring CM/GC Performance. The responsibility of Design Professional for enforcing the performance of the contract is not affected in any respect by the presence of a contract compliance specialist at the site or by inspections by other employees or contractors of the Owner. The Design Professional agrees that its responsibility for approving, accepting, consenting to the covering of, and certifying Work for payment is not shared with employees or other contractors of the Owner.. If a contract compliance specialist or quality control inspector has been assigned to the Project, the Design Professional shall direct same to enter into the Project Diary the date on which the Design Professional approves or consents to covering of given Work together with precise identification of the Work.

2.2.8 Responding to the CM/GC.

2.2.8.1 Requests for Information (RFI). 2.211 The Design Professional will review and respond with reasonable promptness normally five (5) business days from receipt to properly prepare any reasonable requests from the CM/GC for additional information about the Contract Documents. The Design Professional shall prescribe the format for such requests and shall instruct and assist the CM/GC in adhering to this format. (See, however, Article 2.2.8 concerning Submittals.)

2.2.8.2 Supplemental Drawings. The Design Professional shall prepare all supplemental drawings to the Contract Documents as required for the successful completion of the Project or as requested by the Owner. The Design Professional agrees he will not issue any verbal or written orders for omission from, additions to, or changes in the CM/GC Contract until approved in writing by the Owner.

2.2.8.3 The Design Professional as Interpreter. The Design Professional shall act as the initial interpreter of the Construction Documents and shall make decisions within fourteen (14) calendar days after proper presentation of an issue, claim or complaint by either party to the CM/GC Contract. In the event of noncompliance, including omission of work or faulty workmanship, the Design Professional shall recite in the decision the paragraph number or article of the specifications and/or the detail or drawing which has been violated, indicating the deviation from the design. The Design Professional will include suitable specifications and/or drawings indicating the design to be used in executing the correction or remedy of non-complying work in its decision.

2.2.8.4 Impartial Decisions. Design Professional is the interpreter of the conditions of the 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 under the contract to enforce its performance by both.

2.2.8.5 Aesthetic Effect. The Design Professional's decisions in matters relating to aesthetic effect shall be final if the decision is within the terms of the Contract Documents.

2.2.9 Evaluations of the Work.

2.2.9.1 Site Visits. The Design Professional shall see that he and its consultants make field observations and evaluations as called for in this Contract and during the critical phases of construction. To the extent practicable for visits not on the schedule established under Paragraph 2.2.1.4 above, the Design Professional shall provide advance notice to the Owner and Using Agency of its site visits and by its consultants. The services of the Design Professional's field representative, if any, shall not be utilized for checking shop drawings unless the field representative is a design professional of the firm or has a specific approval of the Owner. The Design Professional shall maintain a log of all its visits to the site and by its consultants. The Design Professional shall not be responsible for construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Work, and shall not be responsible for a CM/GC's failure to carry out the work in accordance with the Contract Documents. However, where such deficiencies are observed or where the Design Professional observes the CM/GC failing to execute the Work in accordance with the Contract Documents, the Design Professional shall promptly notify the CM/GC in writing of all such deficiencies and shall issue such notices of Non-Compliant Work he deems appropriate, including, when necessary, issuing a stop work order over such part of the Work as is necessary and expedient. The Design Professional shall promptly inform the Owner of all such actions, including copies of all notices and back up documentation.

2.2.9.2 Deviations from the Contract Documents. The Design Professional shall report deviations from the Contract Documents and the construction progress schedule to the Owner and the CM/GC through site observations and evaluations appropriate to the stage of completion of the work or as otherwise agreed to by the Owner. The Design Professional shall issue Notices of Non-Compliant Work for nonconforming work in accordance with the General Requirements. The Design Professional is responsible for its acts and its consultants, but shall not have control over and shall not be responsible for the acts or omissions of the CM/GC, subcontractors or their agents or employees.

2.2.9.3 Access to the Work. The Design Professional and its representatives shall have access to the Work at all times while it is in progress, and shall comply with all job site safety rules.

2.2.9.4 Owner Communications. Both the Design Professional and the Owner agree that most communications on the project should be through the Design Professional in order to keep the Design Professional informed of the status of the project. The Owner also agrees that communications concerning matters relating to the Contract Documents with the Design Professional's consultants will be through the Design Professional. The Owner, through its Program Manager (if engaged), shall coordinate all such communications and shall endeavor to keep the Design Professional informed of all communications between the Owner and the CM/GC and vice versa.

2.2.9.5 Rejection of Work. The Design Professional shall reject work which does not comply with the requirements of the Contract Documents or is not in compliance with the applicable laws and codes by utilizing the Notice of Non-Conforming Work procedures outlined in the General Requirements. The Design Professional shall have authority to order testing of the work as is provided in the Contract Documents or as otherwise required in its judgment, whether such Work is fabricated, installed or completed.

2.2.10 Certification of Payments to the CM/GC.

2.2.10.1 Issuance of Certification. Based on project site observation, the Design Professional shall review the CM/GC's Application for Payment and determine the amount owed to the CM/GC and shall certify the CM/GC's Application and Certificate for Payment. Such issuance shall constitute a representation by the Design Professional to the Owner that to the best of the Design Professional's knowledge, information or belief, the Work has progressed to the point indicated, and that the quality of Work is in accordance with the Construction Documents, and that the CM/GC is entitled to payment in the amount requested. If the Design Professional declines to certify all or a portion of the amounts requested by the CM/GC, he shall state the reasons therefore, in its certification, and shall provide written notice to the CM/GC of the same. When requested by the Owner, the Design Professional shall require lien waivers prior to approving the CM/GC's Application for Payment.

2.2.10.2 Record. The Design Professional shall maintain a record of the CM/GC's Applications for Payment.

2.2.10.3 Accounting Format. Applications for Payment shall comply with the General Requirements.

2.2.10.4 Advice on Construction Progress. To each Application for Payment forwarded to the Owner, the Design Professional shall attach its Advice on Construction Progress, in the format provided in the CM/GC Forms Packet, and provide a copy to the CM/GC.

2.2.11 Submittals.

2.2.11.1 The Design Professional's Review. Within fourteen calendar days from receipt, the Design Professional shall review and give comment or approval regarding the submittal schedule as detailed in the CM/GC's General Requirements. The Contract Documents shall specify when shop drawings or submittals require the seal of a specialty consultant. The Design Professional shall then 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, confirmation of conformance with the design concept of the Project and with the Contract Documents. The Design Professional shall respond to the CM/GC and return said items to the CM/GC within fourteen calendar days from receipt, provided that the Contractor submits the submittals in accordance with the required submittal schedule. In establishing the Submittal Schedule the CM/GC shall be instructed to take into account large submittal documents that will require longer review times, e.g., submittals with over fifty sheets of drawings.

2.2.11.2 Record. The Design Professional shall maintain a record of submittals and copies of submittals supplied by the CM/GC.

2.2.11.3 Re-submittals. The Design Professional shall be responsible for an initial submittal review and one re-submittal review. Where the re-submittal is not accepted due to noncompliance with the specifications, the CM/GC shall be responsible for payment of the additional time required by the Design Professional to complete the submittal review.

2.2.11.4 The Design Professional shall not redesign, add or change scope on submittals without first requesting a change request and approval by the Owner.

2.2.12 Changes in the Work after the GMP Change Order.

2.2.12.1 The Design Professional's Review of Change Orders. The Design Professional shall review and submit for approval of the Owner, Change Orders to the CM/GC Contract, as conditions warrant, utilizing the forms provided in the CM/GC General Requirements. If the Change Order is Owner-directed, the Design Professional shall coordinate the preparation of the Change Order with the CM/GC and Program Manager, if engaged.

2.2.12.2 Determination of Cost. The Design Professional shall review the CM/GC's proposed cost of the work, time to complete, effect upon the construction progress schedule, and effect upon time dependent costs, and provide appropriate comments within 14 calendar days concerning such proposed costs and expenses.

2.2.12.3 Approval of the Owner. The Design Professional shall order no changes in the Work without the approval of the Owner.

2.2.12.4 Accounting Format. Cost breakdowns for Change Orders shall comply with the General Requirements.

2.2.12.5 Advice on Construction Progress. To each Change Order which grants an extension in the Contract Time, the Design Professional shall attach its Advice on Construction Progress, in the format provided in the Forms Packet, and provide a copy to the CM/GC.

2.2.13 Project Completion. Project Completion is more fully addressed in Section 5 of the CM/GC General Requirements.

2.2.13.1 Inspection for Material Completion. Material Completion is specifically defined in the General Requirements and all references to substantial completion or the concept of substantial completion are deleted and of no force and effect in the Contract Documents. The Design Professional shall cooperate with the CM/GC in preparing for and implementing the Inspection for Material Completion, and shall conduct and document its inspections and evaluations for Material Completion within ten business days from notice of request. Upon successful completion of the Inspection for Material Completion as specified in the General Requirements, the Design Professional shall issue a Certificate of Material Completion on the form included in the CM/GC Forms Packets. The Certificate of Material Completion shall include the Final Punch List that shall specify each item that constitutes either a Minor Item or Permitted Incomplete Work, as defined in the General Requirements, and shall additionally specify a value for each. It is the responsibility of the Design Professional to have its representative and representatives of its major consultants present for the inspection and evaluation for Material Completion. Otherwise, the inspection and evaluation will be canceled and rescheduled at the Design Professional's expense. The Design Professional who executes the Certificate of Material Completion must be the person who has executed the Design Professional's Contract or its successor.

2.2.13.2 Payment for Material Completion. Upon receipt of the Certificate of Material Completion, the CM/GC may make Application for Payment for Material Completion (which includes retainage) with supporting documentation as required in the General Requirements. Before certifying such payment, the Design Professional shall withhold from the amount certified 200 percent of the value of each Minor Item or Permitted Incomplete Work and shall require the CM/GC to provide the Statutory Affidavit, the Non-Influence Affidavit, and supporting documentation called for in the General Requirements. If the CM/GC has shown any exceptions on the Statutory Affidavit, the Design Professional shall also make appropriate deductions to the Certificate of Payment.

2.2.13.3 Final Inspection and Evaluation. Upon receipt of the request for Inspection for Final Completion, the Design Professional shall conduct and document its inspections and evaluations for Final Completion in accordance with the General Requirements. The Design Professional shall confirm that the Final Punch List and all Minor Items and Permitted Incomplete Work are successfully accomplished. Upon successful completion of such inspection, the Design Professional shall certify to the best of its knowledge and belief to the Owner that the Project has been completed in compliance with the Contract Documents. The Design Professional then shall issue to the Owner and to the CM/GC a Certificate of Final Completion on the form included in the CM/GC Form Packet. The Design Professional who executes the Certificate of Final Completion must be the person who has executed the Design Professional's Contract or its successor.

2.2.13.4 Final Payment. Upon issuance of the Certificate of Final Completion and receipt of an application for Final Payment, the Design Professional, shall certify Final Payment for the funds withheld at Material Completion.

2.2.13.5 Effect of Certificates. Neither the issuance of any certificate as to any Application for Payment, achievement of Material Completion or Final Completion, or certification of any payment by the Design Professional, nor any other provision in the Contract Documents, shall relieve the CM/GC of the responsibility for faulty materials or faulty workmanship.

2.2.14 Record Drawings, Final Documents and Closeout Services.

2.2.14.1 Record Drawings and Final Documents. The Design Professional shall, upon final completion of the Project, revise the original drawings and specifications based upon documents incorporated by Change Orders, additional sketches, answered RFI's and marked up documents provided by the CM/GC to show the project "as built". The Design Professional shall furnish and deliver to the Owner after the entire work is completed, and not later than sixty (60) calendar days after execution of its Certificate of Final Completion, the Record Drawings. (Record Drawings and Final Documents shall reflect all changes caused by addenda, field changes, change orders or observed changes by the Design Professional, the CM/GC or the subcontractor(s) to the extend such CM/GC or Subcontractor observations are communicated in writing to the Design Professional. The Design Professional shall furnish the Owner, at no additional cost, three bound sets of specifications, complete with all addenda and authorized Change Orders and the following sets of Contract Drawings:

- (a) One set of full-size reproducible documents,
- (b) Three sets of full-size blue or black line prints, and
- (c) Digital media including CADD files in PDF Format, AutoCad, Autoview or other approved equal

Based upon additional information provided by the CM/GC, the Record Drawings and Final Documents shall show the Design Professional's understanding of the locations of all utility lines and shall be altered to conform to all changes made in the building during its construction. The Design Professional shall furnish additional copies of the aforesaid documents or reproducible documents as requested by Owner, for which the Owner shall pay the actual cost of reproduction.

2.2.14.2 Review of Operating Instructions. The Design Professional review and confirm that all equipment and systems operation and maintenance manuals provided by the CM/GC are in compliance with the Specifications and shall forward to the Owner all equipment and systems operation and maintenance manuals provided by the CM/GC in compliance with the Specifications.

2.2.14.3 Cooperation with Facility Operation and Training Services. The Design Professional shall cooperate with the CM/GC to provided operations instructions and training for the Owner's facilities personnel to include normal operation of all building systems, emergency operations, and normal maintenance operations.

2.2.14.4 Facility Observation and Evaluation – Warranty Services. The Design Professional shall observe and evaluate the function of building systems during the warranty period to identify actual and potential warranty items, as well as any deficiencies or defects that require correction. Reports shall be rendered in sufficient time for the Owner to secure corrections under applicable warranties

2.2.14.5 Capital Cost Accounting. Pursuant to the General Requirements, the CM/GC shall provide a Final Certificate of Costs for Capital Asset Accounting, to enable the Owner and Using Agency to accurately reflect the Project as a capital asset in accordance with generally accepted government accounting principles (GASB – 34). The Design Professional, using its final Statement of Probable Costs and the guides to useful life of capital assets contained in the CM/GC Forms Packet, shall complete the certification on the CM/GC's Certificate (the format for the Certificate is included in Exhibit L). Should there be a disagreement with the categorization of any cost between the CM/GC and the Design Professional, both should consult with the Owner. The Vice Chancellor for Facilities, in consultation with the Director, Construction Division, GSFIC, shall make the final decision consistent with established State accounting policies and the Certificate shall be adjusted accordingly.

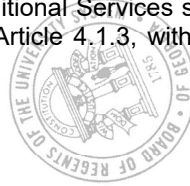


SECTION 3 – ADDITIONAL SERVICES
PART 1 – ADDITIONAL DESIGN SERVICES

3.1.1 General. Supplemental to those services described under Basic Design Services and Basic Construction Contract Administration Services, the Design Professional and its consultants may be called upon to provide certain Additional Design Services and Construction Contract Administration Services during the course of the Project. For the purposes of this Contract, a list of sample Additional Design Services and Construction Contract Administration Services is set forth in Exhibit A including any stipulated payment amounts for those Additional Design Services and Construction Contract Administration Services for which compensation can be projected and agreed upon in advance. The parties agree that other Additional Design Services and Construction Contract Administration Services may be required or requested by the Owner, with the compensation to be agreed upon prior to the Design Professional undertaking the Additional Design Services or Construction Contract Administration Services; provided, however, that if such compensation cannot be agreed, the Additional Design Services or Construction Contract Administration Services shall be performed at the hourly rates set forth listed in Exhibit A-1, plus reimbursable expenses pursuant to Article 4.1.3, with a limitation as to maximum amount specified.

PART 2 – ADDITIONAL CONSTRUCTION CONTRACT ADMINISTRATION SERVICES

3.2.1 General. Supplemental to those services described under Basic Construction Contract Administration Services, the Design Professional and its consultants may be called upon to provide certain Additional Construction Contract Administration Services during the course of the Project. These Additional Construction Contract Administration Services shall be listed on Exhibit A including any stipulated payment amounts for those Additional Construction Contract Administration Services for which compensation can be projected and agreed upon in advance. The parties agree that other Additional CM/GC Construction Contract Administration Services may be required or requested by the Owner and set forth on Exhibit A, with the compensation to be agreed upon prior to the Design Professional undertaking the Additional Construction Contract Administration Services; provided, however, that if such compensation cannot be agreed, the Additional Services shall be performed at the hourly rates set forth listed in Exhibit A-1, plus reimbursable expenses pursuant to Article 4.1.3, with a limitation as to maximum amount specified.



SECTION 4 – COMPENSATION AND CONTRACT ADJUSTMENTS

PART 1 - COMPENSATION

4.1.1 Compensation for Basic Services.

4.1.1.1 Compensation for Basic Design Services. The Design Professional agrees to perform for the Owner the work and the professional services hereinbefore denominated as Basic Design Services. The Owner agrees to pay the Design Professional for such services a LUMP SUM FEE specified in the Contract, hereinafter known and referred to as the "Basic Design Services Fee". The Basic Design Services Fee shall include all professional Basic Design Services for design (Schematic Design, Design Development, Construction Documents, Proposal Documents, and Phased Services) and the design of all Change Orders during the Construction phase that are not a result of a Change of Scope. Compensation for services related to Change Orders that result from a Change of Scope shall be in accordance with Contract, paragraph 4e. If the Owner does not elect to procure construction services, then there shall be no payment for construction procurement services.

4.1.1.2 Compensation for Basic Construction Contract Administration Services. If the Owner elects to require the Design Professional to provide Basic Construction Contract Administration services the Owner agrees to pay the Design Professional for such services rendered, an additional LUMP SUM FEE specified in the Contract, hereinafter known and referred to as the "Basic CM/GC Construction Contract Administration Services Fee".

4.1.1.2.1 Basic Construction Contract Administration Services Fee. The Basic Construction Administration Services Fee shall include all Basic Construction Contract Administration Services, whether consisting of professional or non-professional services including, without limitation, the Administration of Change Orders. Compensation for services related to Change Orders that result from a Change of Scope shall be in accordance with Paragraph 4e of this Contract. The Basic Construction Contract Administration Services of the Design Professional shall commence upon receipt of a letter from the Owner requesting the Design Professional to administer the Construction Contract and shall continue until completion of the Project.

4.1.1.2.2 Extended Additional Construction Contract Administration Services. If the completion of the Project is delayed by more than sixty calendar days past the established Contract time as amended by extensions of time, the Design Professional and its consultants shall be paid for any necessary Extended Additional Construction Contract Administration Services, *provided* that the facts indicate that the delay is not the result of the delinquency of the Design Professional. If the Owner and the Design Professional cannot agree upon an appropriate lump sum fee, then compensation shall be based upon the hourly rates set forth listed in Exhibit A, plus reimbursable expenses pursuant to Article 4.1.3 below, with a limitation as to maximum amount specified, *provided* that services rendered as a part of any remaining authorized Additional Site Visits shall be compensated as set forth on Exhibit A and not included within the compensation for such Extended Additional Construction Contract Administration Services.

4.1.2 Compensation for Additional Services.

4.1.2.1 Compensation for Additional Services. Additional Services shall be compensated as set forth on Exhibit A for the stipulated payment amounts set forth therein. Other Additional Services not set forth on Exhibit A that are required or requested by the Owner shall be compensated as agreed, utilizing the methodology set forth on Exhibit A, prior to the Design Professional undertaking such Additional Services; provided, however, that if such compensation cannot be agreed, the Additional Services shall be performed at the hourly rates set forth listed in Exhibit A-1, plus reimbursable expenses pursuant to Article 4.1.3 below, with a limitation as to maximum amount specified.

4.1.2.2 Annual Adjustment of Additional Services Hourly Rates. Each year on the anniversary date of the execution of this Contract, the Design Professional shall be allowed to submit a request for an adjustment of its hourly rates and its consultant's hourly rates for Additional Services as shown on Exhibit A-1, supported by appropriate cost indices, for approval by the Owner. The Owner is not obligated to adjust hourly rates that are not, in the Owner's reasonable discretion, required or adequately supported.

4.1.3 Reimbursable Expenses

4.1.3.1 Additional Site Visits and Miscellaneous Travel.

4.1.3.1.1 Site Visits. Additional s (those in addition to visits stipulated in Contract, paragraph 5) shall be reimbursed at the unit prices established on Exhibit A, in compliance with Paragraph 2.2.1.3.

4.1.3.1.2 Miscellaneous Travel. Upon the express prior written approval of the Owner, miscellaneous travel and subsistence shall be reimbursed to the Design Professional and its consultants at the same rates and conditions for state employees.

4.1.3.2 Reproduction of Documents. In addition to the Design Professional's Basic Services fee as hereinbefore established, the Design Professional shall be reimbursed at actual cost, but not greater than the most competitive market rate, for reproductions of drawings and project manuals (specifications), for review and use of Owner and Program Manager, if any; for reviews by authorities having jurisdiction.

4.1.3.3 Advertisements. In addition to the Design Professional's fee herein established, the Design Professional shall be reimbursed at cost for advertisements for proposals, if any. This reimbursement shall be requested on the same document as reimbursement for printing of drawings and project manuals. The Design Professional shall provide the Owner with a copy of the billing(s) for the advertisements for proposals. Advertisements for proposals shall appear in at least 3 locations including a local county organ (newspaper).

4.1.3.4 Other Direct Expenses. Other such project direct expenses as are approved in advance in writing by the Owner.

4.1.3.5 Accounting Records. Accounting records of the Design Professional pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the Owner no later than seven (7) calendar days after a written request is delivered to the Design Professional. Such records shall remain available to the Owner for eight (8) years after material completion of Project.

4.1.4 Payments to the Design Professional.

4.1.4.1 Basic Design Services Fee Payment Schedule. Upon completion and approval by the Owner of each phase of documents and services specified herein, the Design Professional shall be entitled to payment of a percentage of the Basic Design Services Fee substantially in accordance with the following schedule.

(a)	Schematic Design Phase	(20%)
(b)	Design Development Phase	(25%)
(c)	GMP Construction Documents	(30%)
(d)	100% Construction Documents	(25%)

4.1.4.1.1 Partial Payments. Partial payments for (a), (b) and (c) may be made monthly with the amount of the payment prorated over the anticipated time required to complete a particular phase. In no case shall the total of the partial payments for a particular phase exceed the fee established for that phase.

4.1.4.1.2 Payments to Consultants. The Design Professional shall make payments to its consultants within five (5) business days following receipt of payment from the Owner.

4.1.4.2 Basic Construction Contract Administration Services Fee Payments. Payments to the Design Professional on account of the Basic Construction Contract Administration Services Fee shall be made as follows.

4.1.4.2.1 Monthly. On a monthly basis during the execution of the Work by the CM/GC and in equal proportions to the amount of Work certified for payment by the Design Professional on the CM/GC's Application for Payment, which may be adjusted to account for design activities such as reviews of submittals, until such monthly payments equal 95% of the Basic Construction Contract Administration Services Fee.

4.1.4.2.2 Final Payment. When the certificate for Final Payment has been executed by the Design Professional pursuant to Section 6 of the CM/GC General Requirements and the Design Professional has completed all requirements of the Contract including the furnishing of Record Documents, final payment shall be made in a sum sufficient to increase payment to 100% of the Basic Construction Contract Administration Services Fee, provided that the entire fee has not been previously paid pursuant to Paragraph 4.1.4.2.1 above.

4.1.4.3 Additional Services Fees. Payments to the Design Professional on account of Additional Services shall be made as follows.

4.1.4.3.1 Lump Sum Additional Services. Payments shall be made monthly to commensurate with the percentage of the completion of the services.

4.1.4.3.2 Hourly Additional Services. Payments shall be made monthly based on the time records of the Design Professional and the Design Professional's consultants.

4.1.4.4 Reimbursable Expenses. Payments for authorized reimbursable expenses incurred by the Design Professional and the Design Professional's consultants shall be paid monthly based on documented costs.

4.1.4.5 Payment Due Dates and Interest. Should the Owner fail to pay a proper invoice within thirty calendar days of receipt, the Design Professional 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 Design Professional shall receive, in addition the sum named in the proper invoice, interest thereon at the rate of one half ($\frac{1}{2}$) percent per month on the unpaid balance as may be due.

4.1.4.6 Statement Requirements. Statement or invoices for the Design Professional fees before award of the CM/GC Contract must be accompanied by a current Statement of Probable Construction Cost.

4.1.4.7 Deductions; Payments Withheld. No deduction shall be made from payments to the Design Professional on account of penalties, liquidated damages or other amounts assessed against the CM/GC. The Owner reserves the right to withhold payments to the Design Professional for losses connected with the Project caused by the negligent errors, omissions, delinquencies or wrongful acts of the Design Professional in performing its duties under this Contract. Upon receipt of written request from the Design Professional, the Owner agrees to discuss the amounts and reasons for which the payments are withheld, to include participation in mediation with a neutral third party to assist in resolving the issues involved.

PART 2 - CONTRACT ADJUSTMENTS

4.2.1 General

4.2.1.1 Change in Duties. The duties, responsibilities and limitations of authority of the Design Professional under this Contract shall not be restricted, modified or extended without written Contract between the Design Professional and the Owner.

4.2.1.2 Other Consultants. The Owner may contract with other consultants to perform services directly to the Owner without voiding this Contract. In the event the Design Professional is caused additional coordination or effort through the involvement of such consultants, the Design Professional shall be entitled to charge for such Additional Services at a lump sum amount or the rates stipulated in Exhibit A-1 plus reimbursable expenses as set forth in Article 4.1.3. The Design Professional shall give notice to the Owner prior to incurring these additional costs.

4.2.2 **Modifications and Supplemental Fee Agreements**. Changes in the Design Professional fees resulting from a modification in the scope of services defined in this Contract are not valid or effective until executed by the Owner and the Design Professional. Until the modifications and supplemental fee agreement is executed, there shall be no liability upon the Owner for payment, nor shall there be an obligation on the part of the Design Professional to commence services on the modified work.

4.2.3 **Change in the Construction Cost Limitation or GMP Cost Limitation**. If the Construction Cost Limitation or GMP Cost Limitation is (i) changed by the Owner and (ii) the need for that change was not caused by the Design Professional and (iii) the Design Professional has commenced design, as previously authorized by the Owner and (iv) the SCL change causes a re-design or additional design, then the Design Professional may request an adjustment in compensation for the cost of redesign or additional design. The Design Professional and the Owner shall negotiate and agree upon a lump sum adjustment prior to initiating any design change.

4.2.4 **Claims for Additional Fees**. Any claim for additional fees shall be made to the Owner no more than twenty (20) calendar days after the occurrence of the event giving rise to the claim. The Owner may not honor claims made after twenty (20) calendar days. If the Owner and the Design Professional cannot agree on the additional fee requested, the dispute will be resolved according to Section 5.



SECTION 5 – DISPUTES, TERMINATION AND MISCELLANEOUS PROVISIONS

PART 1 - DISPUTES

5.1.1 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 Owner and the Design Professional representatives, who shall have the authority to settle the dispute. If the Owner and the Design Professional representatives are not able to promptly settle the dispute, the senior executives of the Owner and the Design Professional, who shall have the authority to settle the dispute, shall meet within twenty-one (21) calendar days after the dispute first arises. If the dispute is not settled within seven (7) calendar days from the referral of the dispute to the senior executives, the Owner and the Design Professional may submit the dispute to mediation in accordance with Paragraph 5.1.2.

5.1.2 Mediation. Any claim, dispute or other matter in question arising out of or related to this Contract may be subject to mediation.

5.1.2.1 Requests for Mediation. The Owner and the Design Professional shall endeavor to resolve claims, disputes, and other matters in question between them by impartial mediation. Requests for mediation shall be filed in writing with the other party to this Contract.

5.1.2.2 Fees and Enforceability. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Atlanta, Georgia, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

5.1.3 Arbitration. Arbitration is not contemplated nor allowed under this Contract.

5.1.4 Claims for Consequential Damages. The Owner retains its right to claim for consequential damages in the event the Design Professional fails to perform under this Contract.



PART 2 - TERMINATION

5.2.1 Termination or Suspension by the Design Professional.

5.2.1.1 Suspension by the Design Professional for Nonpayment. If the Owner should fail to pay the Design Professional or provide a proper notice of dispute of the invoice within sixty (60) calendar days of presentation of a proper notice pursuant to paragraph 4.1.4.5, then the Design Professional may, upon seven (7) calendar days written notice to the Owner, suspend services or terminate this Contract and recover from the Owner payment for all services properly performed and expenses properly incurred through the date of suspension. Upon payment, all drawings, specifications and other documents relating to the design of the Project or Construction Contract Administration of the work shall be surrendered forthwith by the Design Professional to the Owner. The Design Professional shall have no liability to the Owner for damage or the delay of the Project resulting from a proper suspension or termination. The Owner will pay reasonable costs incurred by the Design Professional as a result of the proper suspension or termination. If the services are resumed, reasonable adjustments to the Design Professional's compensation and the Project schedule will be made.

5.2.1.2 Termination by the Design Professional due to Lengthy Suspension of the Work. If the Work should be stopped under an order of any court or other superior public authority or by the Owner for a period of one hundred twenty (120) calendar days through no act or fault of the Design Professional or by anyone employed by its, then the Design Professional may, upon seven (7) calendar days written notice to the Owner, stop work or terminate this Contract and recover from the Owner payment for all services properly performed and expenses properly incurred through the date of suspension. Upon payment, all drawings, specifications and other documents relating to the design of the Project or Construction Contract Administration of the work shall be surrendered forthwith by the Design Professional to the Owner.

5.2.2 Termination or Suspension by the Owner.

5.2.2.1 Suspension of Contract by the Owner. Upon receipt of a notice to suspend services from the Owner, the Design Professional shall immediately suspend services and may request payment for all services performed and expenses incurred through the date of suspension. The Design Professional shall have no liability to the Owner for damage or the delay of the Project resulting from the suspension. Owner will pay reasonable costs incurred by the Design Professional as a result of the suspension. Upon payment, all drawings, specifications, and other documents relating to the design of the Project or Construction Contract Administration of the Work shall be surrendered forthwith by the Design Professional to the Owner. If the services are resumed, reasonable adjustments will be made to the Project schedule and the Design Professional's compensation and reimbursable expenses for the balance of its services.

5.2.2.2 Termination Without Cause or For Convenience of the Owner. The Owner may at any time, and for any reason or without any reason or cause, terminate this Contract by written notice to the Design Professional specifying the termination date that shall be no less than seven (7) calendar days after receipt of the notice of termination. In event of termination under this paragraph, the Owner shall pay to the Design Professional any fee properly due (i) for services already properly performed prior to the effective date of the termination and (ii) for any reimbursable expenses properly incurred. In the event of such termination the Design Professional shall have no claim in excess of what is allowed in this paragraph for any sum of money, however denominated, as a result of or relating to such termination. All instruments of service, including all drawings, models, specifications and other documents relating to the design of the Project or Construction Contract Administration of the Work shall be surrendered forthwith by the Design Professional to the Owner. The Design Professional shall be entitled to make and retain copies of all such documents and use all such design as set forth pursuant to Article 2.1.2, Instruments of Service.

5.2.2.3 Termination by the Owner for Nonperformance. In the event the Design Professional through any cause fails to perform any of the material terms, covenants or provisions of this Contract, or if he for any cause fails to make progress in the services hereunder in a reasonable manner, the Owner shall have the right to terminate this Contract by giving notice in writing of the fact and date of such termination to the Design Professional. The termination date shall be no less than seven (7) calendar days after receipt of the termination notice. Upon termination, all instruments of service, including all drawings, models, specifications and other documents relating to the design of the Project or Construction Contract Administration of the Work shall be surrendered forthwith by the Design Professional to the Owner. In such case, the Design Professional shall receive proper compensation for such services that have been satisfactorily performed by the Design Professional up to the date of termination of this Contract. In the event of a dispute, proper compensation shall be determined by an independent auditor, to whom the Design Professional shall have no reasonable objection, selected and paid for by the Owner. The Owner may take over the services to be provided hereunder and may prosecute the same to completion by contract or otherwise, and the Design Professional shall be liable to the Owner for any excess cost occasioned the Owner thereby.

5.2.2.4 Use of Documents After Termination. In the event the Design Professional is terminated without cause or for convenience of the Owner and the Project continues the Owner will be required to retain another qualified Design Professional to complete the Project, and the Owner will release the Design Professional from any and all damage had the Design Professional exercised the appropriate standard of care in the performance of its services.

5.2.3 Force Majeure. If the Design Professional shall be unable to perform or shall be delayed in the performance of any of the terms and provisions of this Contract as a result of (i) governmental preemption of materials or services in connection with a national emergency declared by the President of the United States; (ii) riot, insurrection, or other civil disorder, acts of terror or terrorism affecting performance of the Work; or (iii) 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 this Contract, the Project (and the entire Project, if applicable) shall be extended for such reasonable period of time as the delay has affected the performance of the Work hereunder. The Design Professional shall take all reasonable actions to minimize the delay caused by any of the above factors, and shall notify the Owner in writing of any event allowing for excuse or delay not later than seven (7) calendar days after the event the Design Professional first becomes aware of the event, or should have become aware, of the event; otherwise the Design Professional will be deemed to have waived the excuse or delay.

PART 3 – MISCELLANEOUS PROVISIONS

5.3.1 Matters of Interpretation.

5.3.1.1 Using Agency. The Design Professional hereby acknowledges that the Owner shall require the agency that will make use of the Project to cooperate with the Design Professional during the progress of design, subject to the provisions of this Contract, and to provide the Owner with written recommendations for approval of the services of the Design Professional. In other documents related to this Project, the Using Agency may have been referred to as “Using Agency,” “Department,” “Institution,” or “Lessee.”

5.3.1.2 Masculine Gender. Throughout this document, both the Owner and the Design Professional are referred to in the masculine gender for the convenience of both parties. The use of the masculine gender is not intended to and does not exclude Owners or the Design Professionals of the feminine gender.

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

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

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

5.3.1.6 Project Name and Number. The Design Professional shall use the identical and full name and number of the Project on all correspondence, Contract Documents and invoice for fees.

5.3.2 Matters of Law

5.3.2.1 Drug Free Work Place. The Design Professional acknowledges that he is fully aware of the contents and requirements of Chapter 24 of Title 50 of the Official Code of Georgia concerning the maintenance of a Drug Free Workplace. The Design Professional by execution of this Contract does hereby certify that, to the best of its knowledge, information and belief, the Design Professional and its consultants are in compliance with the aforesaid code section.

5.3.2.2 Prohibition Against Contingent Fees. As required pursuant to O.C.G.A. §50-22-6(d), the Design Professional warrants that he has not employed or retained any company or person, other than a *bona fide* employee working solely for its, to solicit or secure this contract and that he has not paid or agreed to pay any person, company, corporation, individual or firm, other than a *bona fide* employee working solely for its, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or the making of this Contract.

5.3.2.3 Minority Participation. It is the policy of the State of Georgia that minority business enterprises shall have the maximum opportunity to participate in the State purchasing and contracting process. Therefore, the State of Georgia encourages all minority business enterprises to compete for, win, and receive contracts for goods, services, and construction. Also, the State encourages all companies to sub-contract portions of any State contract to minority business enterprises. Design Professionals who utilize qualified minority subcontractors may qualify for a Georgia state income tax deduction for qualified payments made to minority subcontractors. See O.C.G.A. Section 48-7-38.

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

5.3.2.5 Gratuities. The Design Professional agrees that neither he nor any of its employees nor consultants shall accept any gratuities nor receive any compensation from the CM/GC, subcontractors or material suppliers involved in the construction of the Project. The Design Professional shall notify each of its employees and all consultants of the Design Professional's commitments under this provision of this Contract. This provision expressly precludes any compensation to the Design Professional, including any employee and consultant, by the CM/GC, subcontractors or material suppliers involved in the construction of the Project for preparation of detail drawings, preparation of shop drawings, checking shop drawings or any other service for work performed by the Design Professional under the Contract without prior written approval of the Owner.

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

5.3.2.7 Statute Of Limitations/Statute Of Repose. The Statute of Limitations/Repose on any cause of action by either party to this Contract shall commence to run on the date of the Design Professional's Certificate of Final Completion or upon a judicial determination of substantial completion of the Project.

5.3.2.8 Compliance with Executive Orders Concerning Ethics. The Design Professional warrants that he and its 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 Design Professional certifies that any lobbyist employed or retained by the Design Professional or its firm has both registered and made the required disclosures required by the Executive Orders, as amended.

5.3.2.9 Compliance with Federal and State Work Authorization and Immigration Laws. The Design Professional and all subcontractors, suppliers and consultants must comply with all federal and state work authorization and immigration laws, and must certify compliance using the form set forth in the Forms Packet. The required certificates must be filed with the Owner and copied maintained by the Design Professional as of the beginning date of this contract and each subcontract, supplier contract, or consultant contract, and recertified upon final payment to the subcontractor or consultant. State officials, including officials of the Georgia Department of Audits and Accounts, officials of the Owner, retain the right to inspect and audit the Project Site and employment records of the Design Professional, subcontractors and 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.

5.3.3 Other Contract Provisions.

5.3.3.1 **Third Party Beneficiary.** The Design Professional 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. The Design Professional 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.

5.3.3.2 Hazardous Materials. Unless specifically provided otherwise in this Contract, the Design Professional shall have no responsibility concerning the discovery, removal or handling of hazardous materials, including but not limited to, asbestos or lead paint, or hazardous waste in soil or ground water.

5.3.3.3 Advertising by the Design Professional. The Design Professional shall not use any photographic representation or verbal description of the Owner, the Using Agency nor the Project in a derogatory manner.

5.3.3.4 Successors and Assigns.

5.3.3.4.1 Jointly Bound. The Design Professional binds itself jointly and severally, its successors, executors, administrators and assigns to Owner and all covenants of this Contract. The Design Professional shall not assign, sublet or otherwise transfer its interest in this Contract without the prior written consent of the Owner.

5.3.3.4.2 Assignment. The Design Professional hereby agrees that the Owner may, if he wishes to do so, assign this Contract to another state agency, authority, or commission and agrees further that, upon notice in writing to the Design Professional of such assignment, the Design Professional is and shall be bound to the state agency, authority, or commission by all the terms and conditions hereof the same as if said Contract had originally been entered into with the state agency, authority or commission.

5.3.3.5 Modifications or Changes. Modifications to this Contract, if any, must be by written amendment executed with the same formalities as the original Contract.

5.3.3.6 Time of Essence. Time is of the essence in the performance of the duties and obligations of this Contract.

