



CITY OF MILTON REQUEST FOR PROPOSAL (THIS IS NOT AN ORDER)

RFP Number: 18-PW04	RFP Title: <u>City of Milton Court/Police and Fire Facilities CM@Risk Services</u>
RFP Due Date and Time: <u>January 25, 2018 @ 2:00pm local time</u>	

ISSUING DEPARTMENT INFORMATION	
Procurement Office Contact: Honor Motes	Issue Date: <u>December 14, 2017</u>
City of Milton 2006 Heritage Walk Milton, GA 30004	Phone: 678-242-2500 Website: www.cityofmiltonga.us

INSTRUCTIONS TO OFFERORS	
Return Proposal to: City of Milton Attn: Honor Motes, Purchasing Office 2006 Heritage Walk Milton, GA 30004	Mark Face of Envelope/Package: Bid Number: 18-PW04 Name of Company or Firm Special Instructions: Deadline for Written Questions <u>January 15, 2018 @ 5:00PM</u> Email questions to Honor Motes at honor.motes@cityofmiltonga.us

OFFERORS MUST COMPLETE THE FOLLOWING	
Offeror Name/Address:	Authorized Offeror Signatory:
	(Please print name and sign in ink)
Offeror Phone Number:	Offeror FAX Number:
Offeror Federal I.D. Number:	Offeror E-mail Address:

OFFERORS MUST RETURN THIS COVER SHEET WITH RFP RESPONSE

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OFFEROR'S RFP CHECKLIST

The Most Critical Things to Keep in Mind When Responding to an RFP for the City of Milton

1. _____ **Read the entire document.** Note critical items such as: mandatory requirements; supplies/services required; submittal dates; number of copies required for submittal; funding amount and source; contract requirements (i.e., contract performance security, insurance requirements, performance and/or reporting requirements, etc.).
2. _____ **Note the procurement officer's name, address, phone numbers and e-mail address.** This is the only person you are allowed to communicate with regarding the RFP and is an excellent source of information for any questions you may have.
3. _____ **Attend the pre-proposal conference** if one is offered. These conferences provide an opportunity to ask clarifying questions, obtain a better understanding of the project, or to notify the City of any ambiguities, inconsistencies, or errors in the RFP.
4. _____ **Take advantage of the “question and answer” period.** Submit your questions to the procurement officer by the due date listed in the Schedule of Events and view the answers given in the formal “addenda” issued for the RFP.
5. _____ **Follow the format required in the RFP** when preparing your response. Provide point-by-point responses to all sections in a clear and concise manner.
6. _____ **Provide complete answers/descriptions.** Read and answer **all** questions and requirements. Don't assume the City or evaluation committee will know what your company capabilities are or what items/services you can provide, even if you have previously contracted with the City. The proposals are evaluated based solely on the information and materials provided in your response.
7. _____ **Use the forms provided**, i.e., cover page, sample budget form, certification forms, etc.
8. _____ **Review and read the RFP document again** to make sure that you have addressed all requirements. Your original response and the requested copies must be identical and be complete. The copies are provided to the evaluation committee members and will be used to score your response.
9. _____ **Submit your response on time.** Note all the dates and times listed in the Schedule of Events and within the document, and be sure to submit all required items on time. Late proposal responses are never accepted.

This checklist is provided for assistance only and should not be submitted with Offeror's Response



City of Milton
RFP# 18-PW04
PROPOSAL LETTER
(Bidder to sign and return with proposal)

We propose to furnish and deliver any and all of the deliverables and services named in the Request for Proposal (18-PW04) City of Milton Court/Police and Fire Facilities CM@Risk Services.

It is understood and agreed that we have read the City's specifications shown or referenced in the RFP and that this proposal is made in accordance with the provisions of such specifications. By our written signature on this proposal, we guarantee and certify that all items included meet or exceed any and all such City specifications. We further agree, if awarded a contract, to deliver goods and services which meet or exceed the specifications. The City reserves the right to reject any or all proposals, waive technicalities, and informalities, and to make an award in the best interest of the city.

PROPOSAL SIGNATURE AND CERTIFICATION

I understand collusive bidding is a violation of State and Federal Law and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of the proposal and certify that I am authorized to sign for my company. I further certify that the provisions of the Official Code of Georgia Annotated, Sections 45-10-20 et. seq. have not been violated and will not be violated in any respect.

Authorized Signature _____ Date _____

Print/Type Name _____

Print/Type Company Name Here _____



CITY OF MILTON DISCLOSURE FORM
(Bidder to complete and return with proposal)

This form is for disclosure of campaign contributions and family member relations with City of Milton officials/employees.

Please complete this form and return as part of your RFP package when it is submitted.

Name of Company _____

Name and the official position of the Milton Official to whom the campaign contribution was made (Please use a separate form for each official to whom a contribution has been made in the past two (2) years.)

List the dollar amount/value and description of each campaign contribution made over the past two (2) years by the Applicant/Opponent to the named Milton Official.

Amount/Value

Description

Please list any family member that is currently (or has been employed within the last 12 months) by the City of Milton and your relation:



**CONTRACTOR AFFIDAVIT AND AGREEMENT
(Bidder to complete and return with proposal)**

STATE OF GEORGIA

CITY OF MILTON

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation which is engaged in the physical performance of services on behalf of the City of Milton has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b).

Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

eVerify Number

Signature of Authorized Officer or Agent

Date of Authorization

Printed Name and Title of Authorized Officer or Agent
SUBSCRIBED AND SWORN BEFORE ME ON THIS THE
____ DAY OF _____, 201__.

Name of Contractor

NOTARY PUBLIC

Milton Court/Police and Fire Facilities CM@Risk Services
Project

[NOTARY SEAL]

City of Milton
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

My Commission Expires:

Executed on _____, ____, 201__ in _____ (city),
_____ (state).

SCHEDULE OF EVENTS

EVENT

DATE

RFP Issue Date..... **December 14, 2017**

Deadline for Receipt of Written Questions 5 PM on **January 15, 2018**

Response to Questions by the City **January 17, 2018**

RFP DUE..... No Later than 2 PM on **January 25, 2018**

Interviews (Only if required by the City)..... **February 12-16, 2018**

SECTION 1: PROJECT OVERVIEW AND INSTRUCTIONS

1.0 BACKGROUND AND STATEMENT OF INTENT

The City of Milton is requesting proposals from qualified Construction Management Firms (CM) to manage the construction, provide technical review during the pre-construction period, and provide cost evaluation assistance to the architectural team for the proposed Court/Police and Fire facilities. The CM firm will assume responsibility for project construction cost by issuing a guaranteed maximum price (GMP) and the GMP will be a contractual obligation. CM will also develop an overall final project schedule, which will be a contractual obligation. In addition, CM will be responsible for methods of construction, safety, and the scheduling and coordination of the work of all construction and miscellaneous contracts required for completion of the project within its predetermined budget and schedule.

All Offerors must comply with all general and special requirements of the RFP information and instructions enclosed herein.

1.1 SINGLE POINT OF CONTACT

From the date this Request for Proposal (RFP) is issued until an offeror(s) is selected, **offeror(s) are not allowed to communicate with any City staff or elected officials regarding this procurement, except at the direction of Honor Motes.** Any unauthorized contact may disqualify the offeror from further consideration. Contact information for the single point of contact is as follows:

Procurement Office: Honor Motes
Address: 2006 Heritage Walk
Milton, GA 30004
Telephone Number: 678-242-2507
E-mail Address: honor.motes@cityofmiltonga.us

1.2 REQUIRED REVIEW

A. Review RFP.

Offerors should carefully review the instructions; mandatory requirements, specifications, standard terms and conditions, and standard contract set out in this RFP and promptly notify the procurement office identified above via e-mail of any ambiguity, inconsistency, unduly restrictive specifications, or error which they discover upon examination of this RFP.

B. Form of Questions.

Offerors with questions or requiring clarification or interpretation of any section within this RFP must submit their questions in writing via email to Honor Motes on or before **5:00 PM on January 15, 2018.** Each question must provide clear reference to the section, page, and item in question. Questions received after the deadline may not be considered.

C. City's Answers.

The City will provide an official written answer to all questions on **January 17, 2018**. The City's response will be by formal written addendum. Any other form of interpretation, correction, or change to this RFP will not be binding upon the City. Any formal written addendum will be will be posted alongside the RFP at <http://www.cityofmiltonga.us> and http://ssl.doas.state.ga.us/PRSapp/PR_index.jsp. Offerors must sign and return any addendum with their RFP response.

D. Standard Contract.

The City of Milton will select a single CM to supply both pre-construction services and construction services to complete the project and place the City in occupancy of the project in a “turnkey” fashion. The City has contracted with the Architect separately from the CM. It is critical to the success of the project that the selected CM be integrally involved in the design process. The City will require attendance at design team meetings throughout the design phase of the project.

The selected CM will begin work with the Design Team on a fixed fee basis to provide pre-construction services as may be outlined in this RFP and further defined in the contract documents. The subsequent construction services will be based on a Guaranteed Maximum Price (GMP) basis. At a given point, the CM will be required to develop a GMP. Once a GMP is agreed to between the City and the CM, the CM is “at risk” for project price, project schedule, and completion of all construction as set forth in the Contract Documents. The CM holds all trade contracts and trade supplier contracts.

There is one contingency amount under the GMP. It is the “construction contingency” while the use of the contingency is largely under the control of the CM it is subject to the terms of the Agreement, and subject to City’s approval which will “not unreasonably be withheld.”

E. Mandatory Requirements.

To be eligible for consideration, an offeror must meet the intent of all mandatory requirements. The City will determine whether an offeror’s RFP response complies with the intent of the requirements. RFP responses that do not meet the full intent of all requirements listed in this RFP may be subject to point reductions during the evaluation process or may be deemed non-responsive.

1.3 Reserved

1.4 SUBMITTING A PROPOSAL

A. Submittal Requirements.

Proposals shall include the following:

1. City of Milton request for proposal cover page (information entered and signed: first page of this document),

2. City of Milton Proposal Letter (signed),
3. City of Milton Fee Proposal form (information entered),
4. City of Milton Disclosure Form,
5. City of Milton Contractor Affidavit and Agreement (eVerify) Form,
6. Applicable Addenda Acknowledgement Forms (if necessary),
7. Firm's Ability to Perform and Financial Responsibility
 - a. Firm Description with the history and growth of your firm(s), *as succinctly as possible*.
 - b. Describe your experience with litigation, including administrative proceedings, with Owners, subcontractors, and Architects. List any previous, active or pending litigation and explain. *Administrative Proceedings* shall include: (i) any action taken or proceeding brought by a governmental agency, department, or officer to enforce any law, regulation, code, legal, or contractual requirement, except for those brought in state or federal courts; (ii) any action taken by a governmental agency, department, or officer imposing penalties, fines, or other sanctions for failure to comply with any such legal or contractual requirement, or (iii) any other matter before an administrative body.
 - c. Provide a listing of each and every project on which the firm was terminated or failed to complete the work.
 - d. List five (5) major trade contractor references (company, contact, and phone number).
 - e. Supply financial references including (company, contact, and phone number).
 - f. List main banking references including (company, contact, and phone number).
 - g. List any project where the firm has failed to complete any work awarded to it, or been removed from any project awarded to the firm.
 - h. List the firm's current annual billing volume and average billing volume the past three (3) years.
 - i. List the contact persons, addresses, and phone numbers for your insurance carrier and agent.
 - j. Include a letter from a surety company that is licensed to do business in the State of Georgia and whose name appears on United States Treasury Department Circular 570 on the surety company's letterhead (or a letter from a surety agent with attorney in fact authority and an original power of attorney accompanying the letter) confirming that it will provide respondent firm with payment and performance bonds on the Project in an amount equal to or greater than 110 per cent of the estimated construction cost of the Project. For the purpose of this section the estimated construction cost to be used is \$11,500,000. This letter can either reference the joint venture's bonding or submit separate letters for each individual joint venture partner. List the contact persons, addresses, and phone numbers for the firm's bonding company and agent.
 - k. Include a current license showing respondent is licensed as a General Contractor by the State of Georgia.
8. Experience
 - a. Provide the following information for at three (3) similar sized Court/Police or Fire facilities where your firm served and the prime contractor and that were completed in the last five (5) years:
 - i. Photographs.
 - ii. An owner reference familiar with your performance on the project.

- iii. An architect/engineer reference (with current phone number) familiar with your performance on each project.
 - iv. List the individual who served as the Project Manager, Superintendent, and Cost Estimator. Please note whether or not these individuals are still employed with your firm.
 - v. Project start and completion dates.
 - vi. Budgets. For projects that were delivered under a CM@Risk method, list the original GMP and the final construction costs.
- b. Indicate those projects that included architect, engineering consultant and contractor serving a corporate or public client as a team.
 - c. Provide any additional relevant information.
 - d. Include any examples of prior experience on sustainable construction and/or LEED certified buildings.

9. Management Plan

- a. Describe your firm's proposed organization for the construction management team including principals, project directors, project managers, superintendents, etc. who will manage the project. Indicate specific experience for Superintendent and Project Manager related to this project. Please designate the specific individuals to fill the following key roles on your team:
 - i. Project Executive
 - ii. Project Manager
 - iii. Superintendent
 - iv. Cost Estimator
 - v. Other (please describe, if applicable.)

For each position listed above please provide, at a minimum, current resumes listing relevant project experience and percent of time to be committed to this project.

- b. Identify the individual who, *from project start to finish*, will be the leader of your construction team and the principal point of contact between your firm and the Owner, the Architect, and other consultants. This individual's competence, his leadership, and his ability to achieve *customer satisfaction* will be heavily considered in the selection of a CM.
- c. Describe your firm's quality assurance program.
- d. Describe how your firm implements cost control and scheduling activities during pre-construction.
- e. Should the Owner decide to request a Guaranteed Maximum Price, describe the process to be used to obtain a Guaranteed Maximum Price and for providing bonding for the project.
- f. Describe any policies or requirements for bonding subcontractors.
- g. Describe your trade subcontractor selection process.
- h. Describe your close out and final documentation process.

10. Services

- a. Provide one page overview of services typically performed for similar projects using Construction Management At-Risk.
- b. Describe how you would implement these services to ensure the success of this project?
- c. Describe your firm's approach to providing pre-construction services.
- d. Define value engineering; describe your approach to providing value engineering with relevant examples where the design documents are approximately 50% complete.

11. Schedule

- a. Describe your general approach to the schedule for this project.
- b. Describe your firm's scheduling systems and how your firm intends to manage the pre-construction schedule.
- c. Describe your firm's scheduling systems and how the firm intends to manage the construction schedule.
- d. Describe alternatives that may be explored to shorten the schedule.
- e. Describe your approach to schedule control and cost control.

B. Failure to Comply with Instructions.

Offerors failing to comply with these instructions may be subject to point deductions. The City may also choose to not evaluate, may deem non-responsive, and/or may disqualify from further consideration any proposals that do not follow this RFP format, are difficult to understand, are difficult to read, or are missing any requested information.

C. Copies Required and Deadline for Receipt of Proposals.

One original, four (4) copies and a digital version (on CD or flash drive) of each proposal should be provided to the City. ***Proposals must be received at the receptionist's desk prior to 2:00PM, local time, January 25, 2018. Facsimile or emailed responses to requests for proposals are not acceptable.***

City of Milton

Attn: Honor Motes

2006 Heritage Walk

Milton, GA 30004

***Important to remember when submitting digital files:**

1. Mark all CD's or Flash Drives with Offeror's name and RFP number and title.
2. All digital files must be in either (unless otherwise specified within this document):
 - a. Microsoft Office file format or
 - b. Portable Document Format (PDF).
3. Use caution in creating the electronic files. If the Cities are unable to open files due to data-corruption, password or encryption error, etc., the Offeror's proposal may be considered incomplete.
4. **NOTE:** All digital copies must include exactly the same information as provided in the hard copy "Original".

D. Late Proposals.

Regardless of cause, late proposals will not be accepted and will automatically be disqualified from further consideration. It shall be the offeror's sole risk to assure delivery to the receptionist's

desk at the designated office by the designated time. Late proposals will not be opened and may be returned to the offeror at the expense of the offeror or destroyed if requested.

1.5 OFFEROR'S CERTIFICATION

A. Understanding of Specifications and Requirements.

By submitting a response to this RFP, offeror agrees to an understanding of and compliance with the specifications and requirements described in this RFP.

B. Offer in Effect for 120 Days.

A proposal may not be modified, withdrawn or canceled by the offeror for a 120-day period following the deadline for proposal submission as defined in the Schedule of Events, or receipt of best and final offer, if required, and offeror so agrees in submitting the proposal.

The City of Milton may, in the event the selected proposer fails to perform and/or the contract is terminated within forty-five days of its initiation, request the proposer submitting the next acceptable proposal to honor its proposal.

1.6 COST OF PREPARING A PROPOSAL

A. City Not Responsible for Preparation Costs.

The costs for developing and delivering responses to this RFP and any subsequent presentations of the proposal as requested by the City are entirely the responsibility of the offeror. The City is not liable for any expense incurred by the offeror in the preparation and presentation of their proposal.

B. All Timely Submitted Materials Become City Property.

All materials submitted in response to this RFP become the property of the City of Milton and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the City and offeror resulting from this RFP process.

SECTION 2: RFP STANDARD INFORMATION

2.0 AUTHORITY

This RFP is issued under the authority of the City of Milton. The RFP process is a procurement option allowing the award to be based on stated evaluation criteria. The RFP states the relative importance of all evaluation criteria. No other evaluation criteria, other than as outlined in the RFP, will be used.

2.1 OFFEROR COMPETITION

The City encourages free and open competition among offerors. Whenever possible, the City will design specifications, proposal requests, and conditions to accomplish this objective, consistent with the necessity to satisfy the City's need to procure technically sound, cost-effective services and supplies.

2.2 RECEIPT OF PROPOSALS AND PUBLIC INSPECTION

A. Public Information.

All information received in response to this RFP, including copyrighted material, is deemed public information and will be made available for public viewing and copying after the time for receipt of proposals has passed, and the award has been made, with the following four exceptions: (1) bona fide trade secrets meeting confidentiality requirements that have been properly marked, separated, and documented; (2) matters involving individual safety as determined by the City of Milton; (3) any company financial information requested by the City of Milton to determine vendor responsibility, unless prior written consent has been given by the offeror; and (4) other constitutional protections.

B. Procurement Officer Review of Proposals.

Upon opening the proposals received in response to this RFP, the procurement office will review the proposals and separate out any information that meets the referenced exceptions in Section 2.2(A) above, providing the following conditions have been met:

1. Confidential information is clearly marked and separated from the rest of the proposal.
2. The proposal does not contain confidential material in the cost or price section.
3. An affidavit from an offeror's legal counsel attesting to and explaining the validity of the trade secret claim is attached to each proposal containing trade secrets. Please contact Honor Motes for additional information.

Information separated out under this process will be available for review only by the procurement office, the evaluation committee members, and limited other designees. Offerors must be prepared to pay all legal costs and fees associated with defending a claim for confidentiality in the event of a "right to know" (open records) request from another party.

2.3 CLASSIFICATION AND EVALUATION OF PROPOSALS

A. Initial Classification of Proposals as Responsive or Nonresponsive.

Proposals may be found nonresponsive at any time during the evaluation process or contract negotiation, if any of the required information is not provided; the submitted price is found to be excessive or inadequate as measured by criteria stated in the RFP; or the proposal is not within the specifications described and required in the RFP. If a proposal is found to be nonresponsive, it will not be considered further.

B. Determination of Responsibility.

The procurement office will determine if an offeror has met the standards of responsibility. Such a determination may be made at any time during the evaluation process and through contract negotiation if information surfaces that would result in a determination of nonresponsive.

C. Evaluation of Proposals.

The evaluation committee will evaluate the remaining proposals and recommend whether to award the contract to the highest scoring offeror or, if necessary, to seek discussion/negotiation or a best and final offer in order to determine the highest scoring offeror. All responsive proposals will be evaluated based on stated evaluation criteria. In scoring against stated criteria, the City may consider such factors as accepted industry standards and a comparative evaluation of all other qualified RFP responses in terms of differing price, quality, and contractual factors. These scores will be used to determine the most advantageous offering to the City.

D. Completeness of Proposals.

Selection and award will be based on the offeror's proposal and other items outlined in this RFP. Submitted responses may not include references to information located elsewhere, such as Internet websites or libraries, unless specifically requested. Information or materials presented by offerors outside the formal response or subsequent discussion/negotiation or "best and final offer," if requested, will not be considered, will have no bearing on any award, and may result in the offeror being disqualified from further consideration.

E. Opportunity for Discussion/Negotiation and/or Oral Presentation/Product Demonstration.

After receipt of all proposals and prior to the determination of the award, the City may initiate discussions with one or more offerors should clarification or negotiation be necessary. Offerors may also be required to make an oral presentation and/or product demonstration to clarify their RFP response or to further define their offer. In either case, offerors should be prepared to send qualified personnel to Milton, Georgia to discuss technical and contractual aspects of the proposal. Oral presentations and product demonstrations, if requested, shall be at the offeror's expense.

F. Best and Final Offer.

The “Best and Final Offer” is an option available to the City under the RFP process which permits the City to request a “best and final offer” from one or more offerors if additional information is required to make a final decision. Offerors may be contacted asking that they submit their “best and final offer,” which must include any and all discussed and/or negotiated changes. The City reserves the right to request a “best and final offer” for this RFP, if any, based on price/cost alone.

G. Evaluation Committee Recommendation for Contract Award.

The evaluation committee will provide a written recommendation for contract award.

H. Request for Documents Notice.

Upon concurrence with the evaluation committee’s recommendation for contract award, the procurement officer may issue a “Request for Documents Notice” to the highest scoring offeror to obtain the required insurance documents, contract performance security, and any other necessary documents. Receipt of the “Request for Documents Notice” does not constitute a contract and no work may begin until a contract signed by all parties is in place.

I. Contract Negotiation.

The procurement officer and/or city department representatives may begin contract negotiation with the responsive and responsible offeror whose proposal achieves the highest score and is, therefore, the most advantageous to the City. If contract negotiation is unsuccessful or the highest scoring offeror fails to provide necessary documents or information in a timely manner, or fails to negotiate in good faith, the City may terminate negotiations and begin negotiations with the next highest scoring offeror.

J. Contract Award.

Contract award, if any, will be made to the highest scoring offeror who provides all required documents and successfully completes contract negotiation.

2.4 RIGHTS RESERVED

While the City has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the City of Milton to award and execute a contract. Upon a determination such actions would be in its best interest, the City, in its sole discretion, reserves the right to:

1. Reject any or all Proposals received. The City is not obligated to request clarifications or additional information, but may do so at its discretion. The City reserves the right to extend the deadline for submittals or to cancel or modify this RFP at any time.
2. Waive any undesirable, inconsequential, or inconsistent provisions of this RFP which would not have significant impact on any proposal,

3. Not award if it is in the best interest of the City not to proceed with contract execution,
4. The City may elect not to negotiate further with the selected CM at the conclusion of the preconstruction services phase and may elect to terminate, rebid or select other options that may be deemed to be in the best interest of the City,
5. If awarded, terminate any contract in accordance with the terms and conditions of the contract if the City determines adequate funds are not available.

SECTION 3: SCOPE OF PROJECT

A. Description of Services

The City currently owns a 3.63 acre tract at 13690 Alpharetta Highway (SR 9) that was purchased with the intent of constructing new Court/Police and Fire facilities. The site is currently undeveloped; however, the access road along the southern property line and the stormwater facility in the southwest corner where constructed as part of the Cambridge High School project and will be used as part of this project. It is anticipated that the facilities will consist of multiple buildings which include a 19,500 sf combined court/police building and a 13,800 sf 3-bay fire station. These buildings will house the following City functions:

Court/Police

- Ground Floor (approximately 14,500 sf)
 - Court Room and associated court operations
 - Emergency Operation Center
 - Police Operations Facilities
 - Fueling center
- Lower Floor (approximately 5,000 sf)
 - Exercise room
 - Locker rooms
 - Bulk Evidence Storage

Fire Station

- Fire administration
- 3 bay fire station
- Community meeting room
- Training facilities
- Living facilities for on duty fire staff

The project site development will include public parking, vehicular circulation and on-site above and below ground stormwater management. The existing stormwater management facility will also be utilized for a portion of the site.

The City is considering the services of a Construction Management Firm (CM) to manage the construction, provide technical review during the pre-construction period, and provide cost evaluation assistance to the architectural team. The CM firm will assume responsibility for project construction cost by issuing a Guaranteed Maximum Price (GMP). The GMP will be a contractual obligation. CM will also develop an overall final project schedule, which will be a contractual obligation. In addition, CM will be responsible for methods of construction, safety, and the scheduling and coordination of the work of all construction and miscellaneous contracts required for completion of the project within its predetermined budget and schedule.

The CM will be expected to work closely with the Architect to develop final construction documents

and separate bid packages as may be needed.

The CM will function as a CM-At-Risk. During Pre-Construction, the CM will be responsible for pricing, value engineering, and maintainability and constructability issues. When the design documents for the project have been developed in sufficient detail, the CM, with the support and assistance of the Architect, will commit to a Guaranteed Maximum Price for all construction and site development. Construction will commence with the issuance of the first bid package while the remaining bid packages are being finalized. The CM shall competitively select construction subcontracts and other work appropriate for competitive selection using cost and other factors. The successful CM can perform work with his own forces, but shall not be eligible to enter into contracts or subcontracts for any of the construction or other services of any nature on the project without the specific approval of the City of Milton.

Proposals should demonstrate the experience of the firm and the assigned personnel on projects of similar magnitude and complexity as the proposed project. Firms should demonstrate a depth, knowledge, and resources in principles of contracting, scheduling, contract coordination and compliance, budget control, familiarity with State, County and City laws, ordinances and codes.

The Construction Manager should prepare his proposal with the understanding that he will provide, at a minimum, a full time Project Superintendent and an overall Project Manager.

The Construction Manager, as a part of his Preconstruction Services, will assist in the development of a strategy for the best approach to the successful completion of the Project as a whole. For example without limitation, the Construction Manager will provide guidance and assistance in the preparation of a schedule, a reliable cost estimate, construction methods and value engineering.

B. Construction Budget

The construction budget for the project is estimated at \$11,500,000 dollars.

C. Construction Schedule

The project shall be completed and ready for occupancy on May 1, 2019. The CM will be responsible for developing the detailed schedule and coordinating activities to complete the project within that timeframe.

D. Sustainability Requirement

The CM will be responsible for assisting the City in the evaluation of building and site development practices and systems that are consistent with nationally recognized sustainable building standards. The evaluation may include, but not be limited to, the development of life cycle and payback analysis for various design features.

E. Scope of Work During Project Phases

The CM services shall include a pre-construction design phase, and a construction phase. During the design phase, the CM will provide cost estimates and cost evaluation, value engineering recommendations, design analysis, constructability reviews and technical input on methods of

construction, materials, details, and bidding formats and types of separate bidding packages. CM shall issue a GMP backed by a surety bond and the Project shall be constructed within this GMP. CM shall also develop and maintain a master project schedule. During the construction phase, CM will be responsible for methods of construction, safety programs, general conditions, prequalification of potential subcontractors and bidding of all work, certification of work in place and monthly payment requests, coordination and scheduling of all work of all construction contracts and miscellaneous contracts required for the completion of the project within the predetermined budget and schedule. CM will assist City and the Architect in management and administration of the project except that City shall at all times retain complete contractual control of all prime CM and A/E contracts, project funds and disbursements.

The Managing Architect shall retain all normal responsibilities for professional design, cost control, schedule and quality assurance including normal construction administration responsibilities.

The following is a listing of some of the representative services to be provided by the CM:

Design and Pre-Construction Phase

- a. Regularly attend project planning and coordination meetings with the City and Design Consultant, as required.
- b. Develop a provisional critical-path method (CPM) schedule.
- c. Develop requirements for safety, quality assurance, and schedule adherence.
- d. Perform constructability and maintainability reviews at each major design phase submission of the documents.
- e. Provide detailed construction cost estimates to achieve City's budget.
- f. Develop a construction budget to be maintained throughout construction.
- g. Identify possible value engineering and architecting (life cycle costs) options.
- h. Provide alternate systems evaluation and constructability studies.
- i. Maintain and update the Project Schedule.
- j. Evaluate options for cost implications.
- k. Assist in permitting processes.
- l. Develop a Guaranteed Maximum Price.
- m. Actively participate in the sustainability evaluation process.

Bidding and Award Phase

- a. Arrange major equipment purchase packages.
- b. Develop requirements to assure time, cost and quality control during construction.
- c. Provide a provisional construction schedule (CPM) for issuance with bid packages.
- d. Identify bidders and generate bidder documents.
- e. Schedule and conduct pre-bid conferences in conjunction with the Architect.
- f. Advertise and distribute bidding documents.
- g. Monitor bidder activity.
- h. Review and analyze bids.
- i. Award contracts to City approved subcontractors and suppliers.
- j. Maintain and update the project schedule.

Construction Phase

- a. Maintain qualified and sufficient on-site staff, acceptable to the City, for Construction Management @ Risk.
- b. Manage the construction of the project.
- c. Establish and maintain coordinating procedures.
- d. Develop and maintain a detailed CPM schedule including delivery, approval, inspections, testing, construction and occupancy.
- e. Complete the works performed by his own forces and supervise the work of subcontractors.
- f. Provide a Project Safety Plan to meet OSHA requirements. Monitor the subcontractor compliance without relieving them of responsibility to perform work in accordance with the best acceptable practices.
- g. Conduct and record job meetings.
- h. Prepare and submit change order documents for approval of the Architect and the City.
- i. Maintain a system for review and approval of shop drawings.
- j. Maintain records and submit daily reports, bi-weekly reports and formal monthly reports to Architect and the City.
- k. Maintain quality control and ensure conformity to plans.
- l. Provide cost control through progress payment review and verifications according to the approved schedule and contract amounts.
- m. Coordinate post-completion activities, including the assembly of guarantees, manuals, closeout documents, training, and the City's final acceptance.
- n. Maintain record documents on site. Update and develop on a continuous, basis.
- o. Surrounding buildings, streets and parking lots must stay in full operation during the entire length of the construction project.
- p. Coordinate construction activities with the existing building operations and functions.
- q. Maintain documentation associated with all sustainability efforts.
- r. Site staging and lay-down areas will be limited. Coordinate construction staging plans with the City and the Architect's Project Team.
- s. Coordinate with the City and the Architect during the fundamental commissioning of the building.
- t. Coordinate and schedule the services of City provided independent testing laboratories and provide the necessary testing of materials to ensure conformance to contract requirements.
- u. Develop as-built drawings and deliver to Architect for inclusion into a CADD disk to be submitted by the Architect for maintenance and operations use.
- v. Coordinate post-completion activities including the assembly of guarantees, manuals, close-out documents, training, and City's final acceptance.

Warranty Phase

- a. Coordinate and monitor the resolution of remaining "punch-list" items.
- b. Coordinate, monitor and resolve all warranty complaints to the satisfaction of the City and the Architect during the one-year general warranty period.

F. Fee Proposal

The City may, at its discretion, elect to contract with the CM for the preconstruction and construction services separately. The fees for this project shall be provided in the following format. No other fees, exclusions or exceptions will be considered. The cost proposal shall be submitted in the format provided in Section 5.0 of this RFP.

A. Cost Proposal for Pre-Construction Services

The proposing CM shall include with the other requirements described above, a fixed Cost Proposal for the Pre-Construction Services. The Cost Proposal shall be a lump sum covering all of the CM's expected costs to complete the work including the CM's personnel fees and "reimbursable expenses" and the fees and expenses of all sub-contractors. The Cost Proposal shall be based on the scope of work described herein, and shall not be qualified or subject to exceptions. While fee is an important criterion, a fee skewed unusually low or high relative to the other proposals, or a CM's failure to demonstrate the fee is adequate for the required work may result in a reduction in score.

B. Cost Proposal for General/Required Conditions

The proposing CM shall include a fixed cost proposal for General/Required Conditions. The General/Required Conditions fee shall include all direct, indirect and incidental fees and expenses, project supervision (Executive manager, Project Manager, Assistant Project Manager, Project Engineer, Project Superintendent, etc...) site office and associated costs (trailer rental, telephone, temporary sanitary facilities, ice, water, computers, power, etc...), supplies, delivery services (FedEx, UPS, etc...) cell phones, radios and other items necessary for the completion of this project.

C. Cost Proposal for Construction Services

The subsequent construction services shall include all expenses associated with the contract documents and the completion of this project outside those fees provided for the preconstruction and general conditions. This fee will be based on a Guaranteed Maximum Price (GMP) basis with the CM's fee included as a percentage of the GMP. This fee shall be expressed as a percentage of the GMP and shall be inclusive of all overhead and profit.

SECTION 4: OFFEROR QUALIFICATIONS

4.0 CITY'S RIGHT TO INVESTIGATE

The City may make such investigations as deemed necessary to determine the ability of the offeror to provide the supplies and/or perform the services specified.

4.1 OFFEROR INFORMATIONAL REQUIREMENTS

Firms interested in providing the services described in this RFP should be able to demonstrate experience in the areas described in Section 3.

SECTION 5: COST PROPOSAL



MUST BE RETURNED WITH PROPOSAL IN A SEPARATE SEALED ENVELOPE

One (1) original and four (4) copies shall be submitted in a separate sealed envelope before the required deadline. **The offerors cost proposal shall be signed by an authorized agent of the company.** There is no maximum page limit to section 5.0.

Print/Type Company Name Here:

Preconstruction Services Fee

For the preconstruction services provided by the CM, as set for in the General Requirements, the City shall pay to the CM a fixed, lump sum fee for all costs associated with the preconstruction phase of this project.

Service	Unit	Total
Preconstruction Fee	Lump Sum	

Print Preconstruction Fee Lump Sum in Words

General/Required Conditions

The City shall pay to the CM a fixed, lump sum fee for General/Required Conditions associated with this project.

The CM shall provide an itemized breakdown of all services and fees included in the General/Required Conditions on a separate sheet(s).

Service	Unit	Total
General/Required Conditions	Lump Sum	

Print General/Required Conditions Lump Sum in Words

[COST PROPOSAL CONTINUED ON THE FOLLOWING PAGE]

Construction Services Fee

The City shall pay to the CM a percentage fee based on the agreed upon Guaranteed Maximum Price (GMP).

Service	Unit	Fee Percentage
Construction Services Fee	%	

Print Construction Services Fee Percentage in Words

Authorized Signature _____ **Date** _____

Print/Type Name _____

SECTION 6: EVALUATION CRITERIA

All proposals will be reviewed for technical merit based on the criteria indicated below. Following the technical review process those firms that have scored within 10% of the highest ranked firm may be selected for an interview process. The City reserves the right to award a contract to the highest ranking firm without conducting interviews.

Selection will be based on a combination of qualifications, interview (if conducted) and price (consisting of the Pre-construction Fee, General/Required Conditions Fee and Construction Services Fee). At the conclusion of the process the City will then present a contract to the highest-ranked firm. If execution of this agreement with the selected firm is not successful, the City will then present the agreement to the second-ranked proposer, and so on until a satisfactory agreement has been reached.

The evaluation committee will review and evaluate the offers according to the following criteria:

Proposal Evaluation Criteria

Technical Evaluation

Firms Ability and Financial Responsibility **20 pts**

- Financial stability
- Organization strength and stability
- Previous ability to successfully work with a team and complete projects
- Current and projected work load

Experience of the CM Firm **25 pts**

- Experience and technical competence on similar projects
- Previous experience with CM@Risk delivery method
- Previous experience with sustainable development
- Ability to meet project work schedules
- Quality of final work product

Management Plan **20 pts**

- Flexibility to operate successfully within various work environments
- Subcontractor selection and procurement process
- Close out and project documentation process
- Qualifications of the assigned staff
- Key personnel's level of involvement
- Location and proximity of key personnel

Services **20 pts**

- Services approach to similar facilities
- Approach and ability to provide preconstruction services
- Experience and approach to value engineering

- Schedule** **10 pts**
- Ability to provide schedule control
 - Alternatives to reduce projects schedules

- Overall Fit of the Firm and its Key Team Members to the Project** **5 pts**
- Ability of the firm to demonstrate an understanding of the project requirements
 - Firm's communication and problem solving methods and abilities.
 - Previous experience with City of Milton projects

Total Points Available for Technical Evaluation **100 pts**

Interview (if required) **20 pts**

Interviews may be conducted with those firms that score within 10% of the highest scoring technical evaluation. The City may elect, at its sole discretion, to interview additional firms if there are not 2 additional firms within 10% of the highest scoring technical evaluation.

Cost Evaluation

Cost evaluations will only be considered for the highest scoring firm and those firms scoring within 10% of the top firm after the technical evaluation or after the interviews, if interviews are conducted.

Evaluation of the CM/GC Cost Proposal **30 pts**

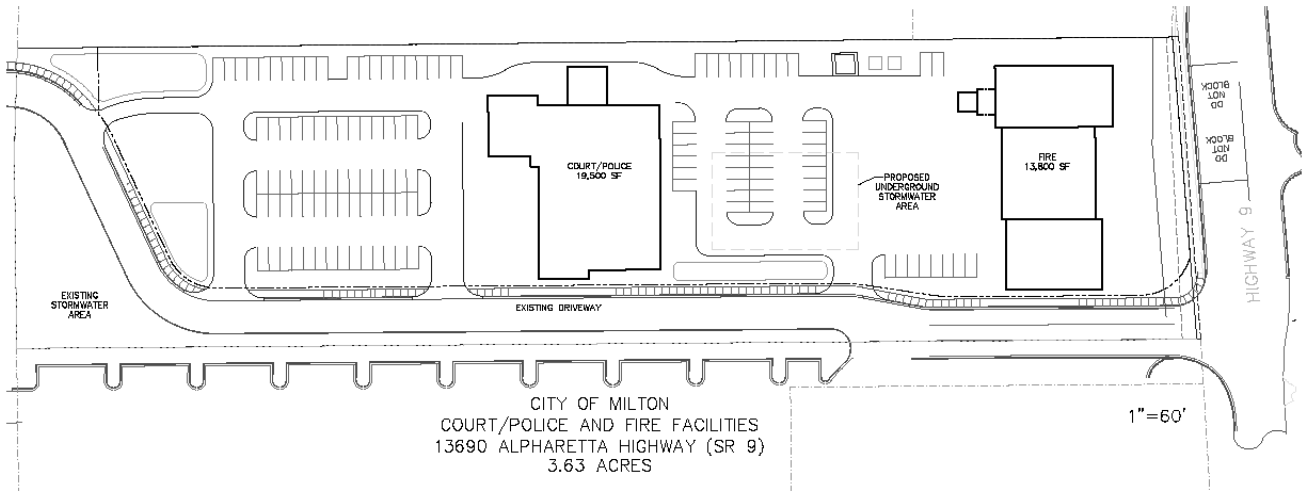
Total Possible Points Available **150 pts**

SECTION 7: STANDARD CONTRACT INFORMATION

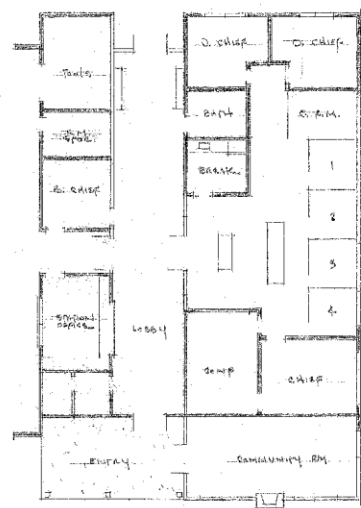
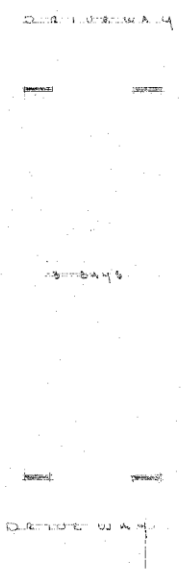
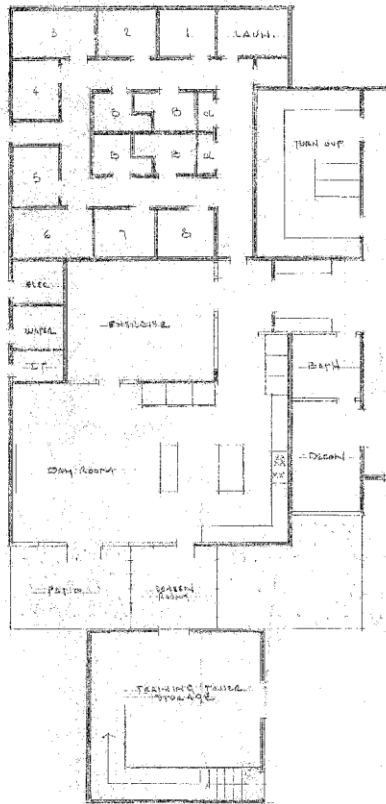
7.0 ADDITIONAL CONTRACT PROVISIONS AND TERMS

This RFP and any addenda, the offeror's RFP response, including any amendments, a best and final offer, any clarification question responses, and any negotiations shall be included in any resulting contract. The City's standard contract contains the contract terms and conditions which will form the basis of any contract negotiated between the City and the highest scoring offeror. In the event of a dispute as to the duties and responsibilities of the parties under this contract, the contract, along with any attachments prepared by the City, will govern in the same order of precedence as listed in the contract. The City reserves the right to address any non-material, minor, insubstantial exceptions to the standard contract with the highest scoring offeror at the time of contract negotiation.

Attachment "A"
Preliminary Site Layout

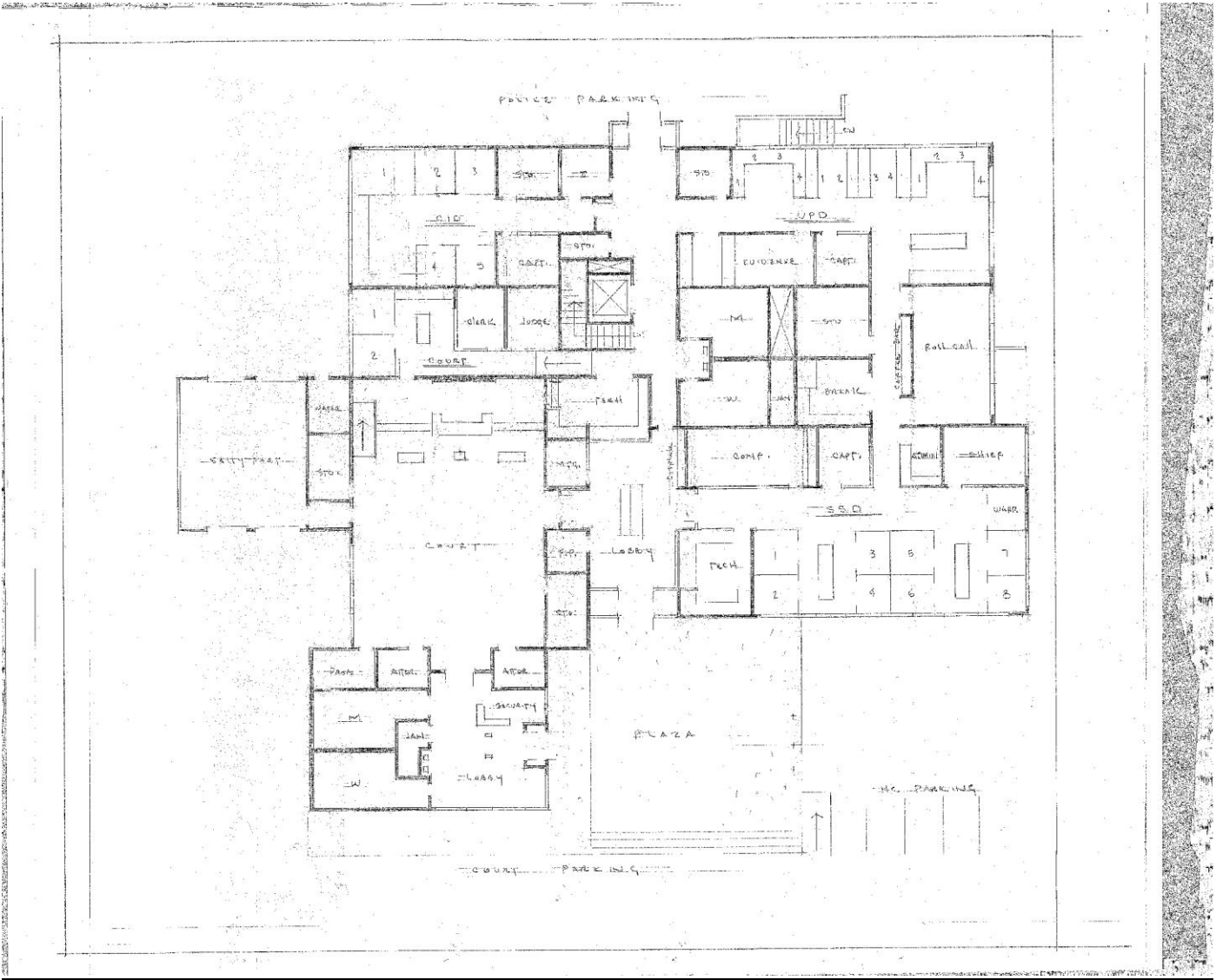


Attachment "B"
Preliminary Fire Station Layout

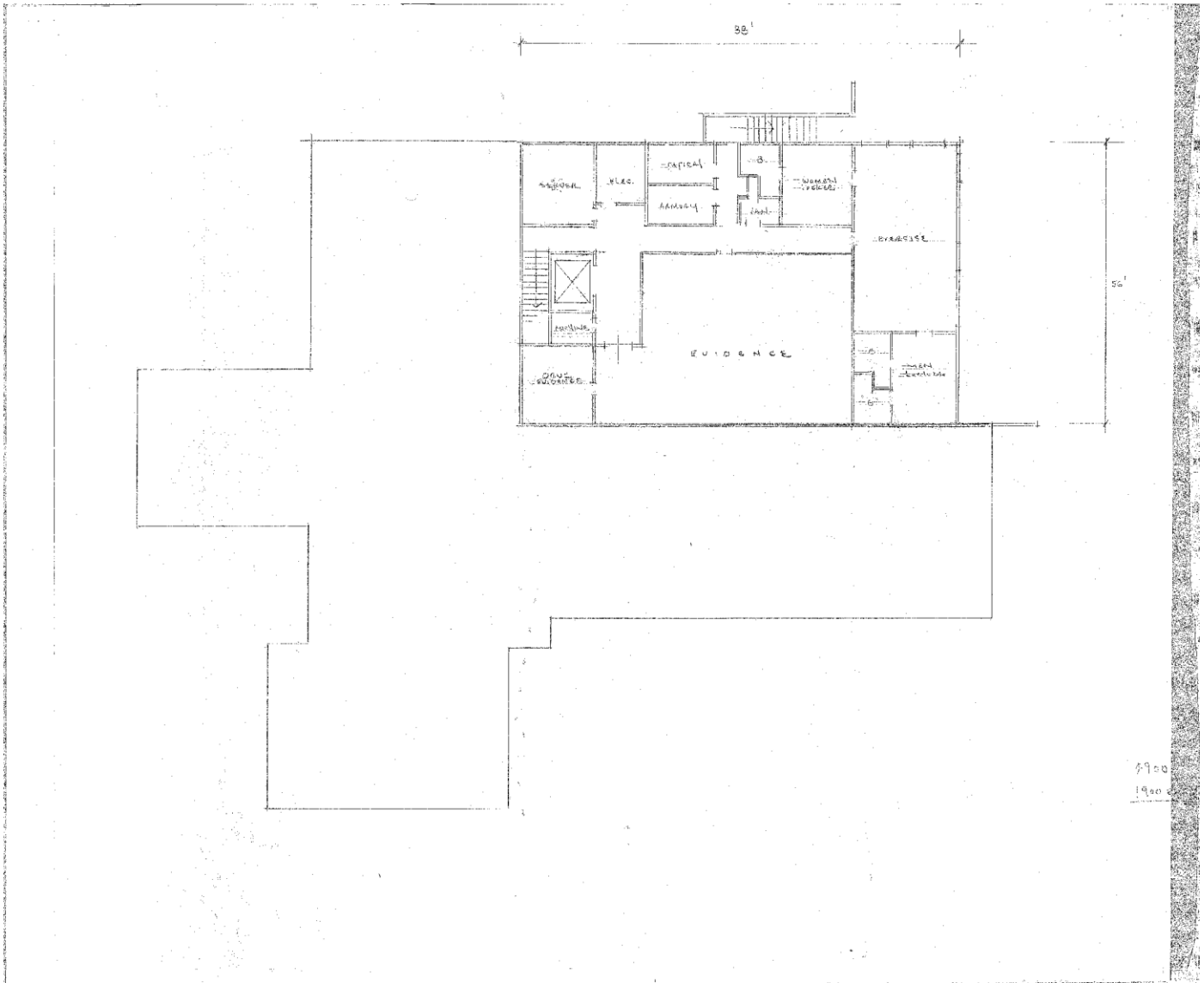


Fire Station

Attachment "C"
Preliminary Court/Police Layout



Court/Police Ground Level



Court/Police Lower Level

Attachment “D”
Construction Management Agreement

**CONSTRUCTION MANAGEMENT AT RISK
AGREEMENT
(CM/GC)**

BETWEEN

(the “CM/GC”)

AND

**City of Milton, Georgia
(the “OWNER”)**

FOR

PROJECT NO. _____

INCLUDES:

**Executive Summary of Contents
Basic Tenets of Contract
CM/GC Form of Contract
Table of Contents
General Requirements
Forms
Exhibits**

**Preface
Preface
Contract 1 to Contract 7
Pages i to vi
Pages 1 to 116
Forms 1 to Forms 16
A-i to P**

PREFACE

EXECUTIVE SUMMARY

Basic Tenets of the Contract

This Contract implements the “construction management at risk” or “CM/GC” Project delivery method. The usual method of procurement is by solicitation of competitive sealed proposals, although other procurement methods may be utilized, as permitted by law.

The CM/GC is under contract to supply both preconstruction services and construction services to complete the Project and place the Owner in occupancy of the Project in a “turnkey” fashion. The Owner contracts with the Design Professional separately from the CM/GC using the Design Professional Contract. The design and construction progress in a coordinated fashion using one or more Component Change Orders to direct construction of a Component package (such as Site work, foundations, etc.) while the design progresses toward complete Construction Documents. Once either a Guaranteed Maximum Price (GMP) or a Lump Sum Price is agreed upon between the Owner and the CM/GC, the CM/GC is “at risk” for Project price, Project schedule, and completion of all construction as set forth in the Contract Documents. The CM/GC holds all trade contracts and trade Supplier contracts.

The pricing and financial structure for this CM/GC Contract is the “cost-plus” method, with a fixed dollar cap on the total price of the contract (the GMP). The sole basis for the “plus” portion of the Contract is the CM/GC’s Fee, which is defined as the CM/GC’s “gross profit” as set forth in Section 4, Part 1, Compensation. The basis for “cost” throughout this Contract is the combination of the Actual Cost, as defined in Section 4, Part 4, allowed payments from the Construction Contingency, and Overhead Costs and Expenses. In addition to the GMP, there are total cost limitations imposed on Actual Costs allowed for salary and labor costs, both as to type of cost and allowable amounts. Actual Cost, Construction Contingency, Overhead, and the agreed upon CM/GC’s Fee are the only basis for payments to the CM/GC under this Contract, unless a Lump Sum Price is agreed between the Owner and CM/GC.

EXECUTIVE SUMMARY OF CONTENTS

CM/GC FORM OF AGREEMENT

GENERAL REQUIREMENTS

SECTION 1 – GENERAL

- Part 1 – General Provisions
- Part 2 – CM/GC's General Responsibilities and Duties
- Part 3 – Owner's Responsibilities and Rights
- Part 4 – Protection Of Persons And Property

- Part 5 – Bonds, Indemnity and Insurance
- Part 6 – Hazardous Conditions And Materials
- Part 7 – Miscellaneous Provisions

SECTION 2 – PRECONSTRUCTION PHASE

- Part 1 – Preconstruction Phase Services
- Part 2 – Construction Documents and Site Plan

SECTION 3 – CONSTRUCTION PHASE

- Part 1 – Construction Services
- Part 2 – Component Change Orders
- Part 3 – GMP Change Order
- Part 4 – Changes To The Work
- Part 5 – Time
- Part 6 – Correcting the Work; Inspections; Covering And Uncovering Work
- Part 7 – Trade Contractors; Self-Performance

SECTION 4 – COMPENSATION

- Part 1 – General
- Part 2 – Payment For Preconstruction Phase Services
- Part 3 – Payment For Construction Phase Services
- Part 4 – Cost Of The Work
- Part 5 – Liens

SECTION 5 – CONTRACT ADJUSTMENTS, DISPUTES, AND TERMINATION.

- Part 1 – Owner's Right to Suspend the Work
- Part 2 – Contract Adjustments and Disputes
- Part 3 – Termination

SECTION 6 – PROJECT COMPLETION

- Part 1 – Material Completion
- Part 2 – Final Completion
- Part 3 – Inspections for Completion of the Work
- Part 4 – Final Documents
- Part 5 – Payment for Material Completion and Final Payment
- Part 6 – Correction of the Work after Final Payment

SECTION 7 – CONTRACT FORMS

- Performance Bond
- Payment Bond
- Certificates of Compliance – Federal and State Work Authorization Programs
- Non-Collusion Affidavit
- Final Affidavit

Five Year Bond on Roofs and Walls
Specimen Certificate of Manufacturer
Certificate of Insurance
Subcontractor Retainage Release Certificate

EXHIBITS

Exhibit A Owner's Program and Existing Documents
Exhibit B [Intentionally Omitted]
Exhibit C Budget Format
Exhibit D Monthly Report Format
Exhibit E CM/GC's Proposal
Exhibit F Preliminary Outline Schedule
Exhibit G Specimen Component Change Order
Exhibit H Specimen GMP Change Order
Exhibit I Specimen Change Order
Exhibit J Wage Rates and Labor Cost
Exhibit K Application for Payment
Exhibit L Final Cost Certification
Exhibit M Certificate of Material Completion
Exhibit N Certificate of Final Completion
Exhibit O Project Documents
Exhibit P Key Personnel

CONSTRUCTION MANAGEMENT CONTRACT
BETWEEN CM/GC AND OWNER

THIS CONSTRUCTION MANAGEMENT AT RISK AGREEMENT (hereinafter the "Contract") made this ____ day of _____, 20____ (hereinafter the "Effective Date"), by and between _____, a Georgia corporation with an office at _____, (which shall perform the services of the CM/GC provided in this Contract and shall hereinafter be referred to as the "CM/GC"), and **CITY OF MILTON, GEORGIA**, a political subdivision of the State of Georgia, acting by and through its governing authority, the City of Milton City Council City Council (hereinafter the "Owner"), collectively referred to as the "Parties".

WHEREAS, the Owner desires to employ a contractor to perform services for the construction of a Project, as defined below; and

WHEREAS, the Owner solicited proposals for construction of the Project pursuant to City of Milton Request for Proposal, Project Number _____, dated _____; and

WHEREAS, the CM/GC submitted a complete and timely proposal and met all proposal requirements such that the Owner awarded Project Number _____ to the CM/GC; and

WHEREAS, the Owner finds that specialized knowledge, skills, and training are necessary to perform the services contemplated under this Contract; and

WHEREAS, the CM/GC has represented that it is qualified by training and experience to perform the services; and

WHEREAS, based upon CM/GC's proposal to perform the services of CM/GC related to the Project Number _____, the Owner has selected CM/GC as the successful proposer; and

WHEREAS, CM/GC desires to perform the services as set forth in this Contract under the terms and conditions provided in this Contract; and

WHEREAS, the public interest will be served by this Contract.

NOW THEREFORE, the CM/GC and the Owner, for and in consideration of the mutual promises set forth herein and other good and adequate consideration, the adequacy and sufficiency of which is hereby acknowledged by each party, do mutually agree as follows:

PROJECT NO. _____

PROJECT NAME AND DESCRIPTION: Milton Court/Police and Fire Facility (hereinafter the "Project").

1. Existing Documents. The Owner's Program and Existing Documents, which the CM/GC has reviewed and taken into consideration in preparing his proposal for fees and general conditions, are set forth on Exhibit A.

2. Notice. Notice in accordance with Section 1.1.5 shall be given to the following addresses:

CM/GC: LEGAL CM Firm Name
Mailing Address
City, State Zip
Attention:
Phone Number:

OWNER: City of Milton, Georgia
City of Milton City Council
2006 Heritage Walk
Milton, GA 30004Attention: City Manager
Phone Number: 678 242-2500

DESIGN PROFESSIONAL:

Design Professional Name
Mailing Address
City, State Zip
Attention:
Phone Number:

3. Owner's Representative: All notices sent to the Owner at the above address shall also be sent to the Owner's Representative. The Owner's Representative for this Project shall be:

OWNER'S REPRESENTATIVE:

2006 Heritage Walk
Milton, Georgia 30004
Attention: Robert Buscemi
Phone Number: 678 242-2500

4. GMP Cost Limitation (Total CM/GC Contract Cost Limitation): The total amount paid under this Contract as compensation for Work performed and reimbursement for costs incurred, the Guaranteed Maximum Price, including but not limited to the CM/GC's Fee, shall in no event exceed the following amount:

except as such amount may be amended pursuant to a Change Order, as described herein; provided that the GMP has not been established as of the Effective Date and will be established using a Change Order pursuant to this Contract. Such amount represents Owner's maximum allowable amount for construction and the Designer shall produce a final design within such amount.

5. CM/GC Fee:

a. *Preconstruction Fee:* The Preconstruction Fee component of the CM/GC Fee shall be the following fixed amount:

INSERT PRECONSTRUCTION FEE

b. *Construction Fee:* The Construction Fee component of the CM/GC Fee shall be the following fixed amount:

INSERT CONSTRUCTION FEE

c. *Total CM/GC Fee:* The Construction Fee shall the following fixed amount:

INSERT CM/GC FEE

6. CM/GC Overhead Costs and Expenses: The amount allowable for the CM/GC's Overhead Costs and Expenses shall be the following fixed amount:

INSERT FEE

a. *Preconstruction Phase Costs and Expenses:* The Preconstruction Costs & Expenses component shall in no event exceed the following amount:

INSERT FEE [if applicable and not included in CM/GC Preconstruction Fee]

b. *Construction Phase Overhead Costs and Expenses:* The Construction Phase Overhead costs component shall in no event exceed the following amount:

INSERT FEE

- 7.
- a. The Material Completion Date is INSERT DATE, or as otherwise modified in accordance herewith.
 - b. The Final Completion Date is thirty (30) days after the Material Completion Date.
8. **The agreed daily amount for Liquidated Damages is \$_1,200 per day.**
9. **Scope Of Basic Services And The Work.** The CM/GC shall perform all of the Basic Services and furnish all of the materials and perform all of the Work described in the Contract Documents and shall do everything required by the Contract Documents, unless the Contract Documents specify that the relevant portion of the Work shall be completed by another entity.
10. **Schedule And Completion.** The Work to be performed under the Contract Documents shall be commenced upon execution of this Contract and shall be completed in accordance with the approved Overall Project Schedule not later than 30 days after the Material Completion Date set forth above.
11. **The Guaranteed Maximum Price (GMP).** A GMP will be established in accordance with Section 3, Part 3 of the General Requirements. The GMP may be replaced by a Lump Sum Price as set forth in Article 3.3.6 of the General Requirements.
12. **Payments.** Payments on account of the Contract shall be made in accordance with Section 4 of the General Requirements. The Payment for Final Completion shall be made by a check payable jointly to the CM/GC and Surety and shall be mailed to the Surety.
13. **Final Payment.** Final payment will be made in accordance with Section 6, Part 5 of the General Requirements, provided that all other requirements of the Contract Documents shall have been met in full.
14. **The Contract Documents.** The Contract Documents include this executed Contract, any Component Construction Documents, the Construction Documents, and all Change Orders as defined in the General Requirements. (See Article 1.1.9).
15. **Surety Bonds.** The CM/GC shall furnish both a performance bond and a payment bond specified in the General Requirements and shall pay the premiums thereon as a Cost of the Work. The performance bond shall guarantee the full performance of the Contract and Contract Documents.
16. **Full Performance.** The Owner and the CM/GC hereby agree to all the requirements, conditions and stipulations contained in the Contract Documents, and the CM/GC hereby agrees to fully perform the Basic Services and the Work described herein and in the Contract Documents.
17. **Applicable Law.** This Contract and all rights, privileges and responsibilities shall be interpreted and construed according to the laws of the State of Georgia.
18. **No Conflict Of Interest.** The CM/GC covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance required under this Contract. The CM/GC further covenants that, in the performance of this Contract, no person having any such interest shall be employed or contracted with.
19. **Authority to Contract.** CM/GC covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners, or similar authorities to simultaneously execute and bind CM/GC to the terms of this Contract, if applicable. Ratification of this Contract by a majority of the City of Milton City Council shall be authority for the mayor to execute on behalf of the council but shall not preclude execution by the full council.
20. **No Assignment.** The CM/GC covenants and agrees not to assign or transfer any interest in, nor delegate any duties of this Contract, including but not limited to the proceeds of this Contract, without the prior express written consent of the Owner. As to any approved Subcontractors, the CM/GC shall be solely responsible for reimbursing them, and the Owner shall have no obligation to them.
21. **No Waiver.** No failure of the Owner at any time to require performance by the CM/GC of any provision hereof, or to enforce any right or power granted under this Contract, or insist upon strict compliance by CM/GC with this

Contract, and no custom or practice of the Owner at variance with the terms and conditions of this Contract shall constitute a general waiver of any future breach or default or affect the right of the Owner to demand exact and strict compliance by the CM/GC with the terms and conditions of this Contract.

22. Severability. If any article(s), section(s), term(s) or provision(s) of this Contract, or any part thereof, or the application thereof to any person or circumstance shall be deemed invalid or unenforceable by a court of competent jurisdiction, the offending portion of the Contract should be severed, and the remainder of this Contract, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and shall remain in full force and effect to the extent possible as if this Contract had been executed with the invalid portion hereof eliminated, it being the intention of the parties that they would have executed the remaining portion of this Contract without including any such part, parts, or portions which may for any reason be hereafter declared invalid.

23. Full Agreement. The Contract Documents supersede all prior negotiations, discussion, statements, and agreements between Owner and CM/GC and constitute the full, complete, and entire agreement between Owner and CM/GC. There can be no changes to this Contract by oral means, nor by course of conduct of the parties, nor by custom of the trade. No changes to this Contract will be binding on either party hereto unless such change is properly authorized, in writing, in accordance with Section 3 of the General Requirements. Except where specifically provided, in the event of a conflict between language in this Agreement and any other part of or exhibit to this Agreement, the provisions most favorable to the Owner shall govern.

24. Sovereign Immunity. Nothing contained in this Contract shall be construed to be a waiver of the Owner's sovereign immunity (except as otherwise required by law, including but not limited to G.A. CONST. art. I, § II, para. IX(c) related to breach of contract) or any individual's qualified good faith or official immunities.

25. No Personal Liability. Nothing herein shall be construed as creating any individual or personal liability on the part of any Owner Party (defined in Article 1.1.9.47 of the General Requirements). No Owner Party shall be personally liable to the CM/GC or any successor in interest in the event of any default or breach by the Owner or for any amount which may become due to the CM/GC or successor or on any obligation under the terms of this Contract. The CM/GC agrees that its sole and exclusive remedy, claim, demand, or suit shall be directed and/or asserted only against the Owner and not against any Owner Party.

[SIGNATURES ON FOLLOWING PAGE]

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

CM/GC: INSERT NAME

By: _____

Print: _____

Title: _____

[CORPORATE SEAL]

Attest:

By: _____

Print: _____

Title: _____
(Corporate Secretary or Assistant Secretary)

SIGNED, SEALED, AND DELIVERED
In the presence of:

Witness

Notary Public

My Commission Expires:

[NOTARY SEAL]

OWNER:
CITY OF MILTON, GEORGIA

By: _____

Print: _____

Title: _____

[CITY SEAL]

SIGNED, SEALED, AND DELIVERED
In the presence of:

Witness

Notary Public

[NOTARY SEAL]

My Commission Expires:

Approved as to form: _____
City Attorney

Acknowledgment and Ratification by Design Profession (also referred to as the "Architect"):

Design Professional hereby acknowledges and ratifies this Contract and agrees to fulfill, and that it is required to fulfill, the obligations of the Design Professional, as set forth herein (and as may be set forth in the Contract Documents), in performance of the Architectural Agreement, dated _____, 20__.

Design Professional ("Architect")

By: _____
Title

ATTEST

By: _____
Title

Attachments:

- 1. General Requirements, Forms and Exhibits

GENERAL REQUIREMENTS CONTENTS

SECTION 1 – GENERAL

PART 1 – GENERAL

- 1.1.1 General Matters.
- 1.1.2 Project Team, Cooperation, Partnering.
- 1.1.3 Intentionally Omitted.
- 1.1.4 Third Party Beneficiary.
- 1.1.5 Notice.
- 1.1.6 Liquidated Damages.
- 1.1.7 Documents.
- 1.1.8 Defined Terms.
- 1.1.9 Basic Definitions.

PART 2 – CM/GC'S GENERAL RESPONSIBILITIES AND DUTIES

1.2.1 General Responsibilities.

- 1.2.2 General Duties.
- 1.2.3 General Consultation Services.
- 1.2.4 Other Actions.
- 1.2.5 Existing Documents.
- 1.2.6 Duty to Give Notice to Owner.

PART 3 – OWNER'S RESPONSIBILITIES AND RIGHTS

1.3.1 Owner's Representative.

- 1.3.2 Design Professional.

1.3.3 Permits, Licenses, and Inspections.

- 1.3.4 Testing.

1.3.5 Owner's Independent Consultants.

1.3.6 No Partial Occupancy.

1.3.7 Disqualification of Potential "Prequalified" Subcontractors.

1.3.8 Owner's Right to Perform Work.

PART 4 – PROTECTION OF PERSONS AND PROPERTY

- 1.4.1 Reasonable Precautions.
- 1.4.2 Duty to Protect Property.
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- Non-Collusion Affidavit
- Final Affidavit
- Five Year Bond on Roofs and Walls
- Specimen Certificate of Manufacturer
- Certificate of Insurance
- Subcontractor Retainage Release Certificate

EXHIBITS

- Exhibit A Owner's Program and Existing Documents
- Exhibit B [Intentionally Omitted]
- Exhibit C Budget Format
- Exhibit D Monthly Report Format
- Exhibit E CM/GC's Fee Proposal
- Exhibit F Preliminary Outline Schedule
- Exhibit G Specimen Component Change Order
- Exhibit H Specimen GMP Change Order
- Exhibit I Specimen Change Order
- Exhibit J Wage Rates and Labor Cost
- Exhibit K Application for Payment
- Exhibit L Final Cost Certification
- Exhibit M Certificate of Material Completion
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- Exhibit O [Intentionally Omitted]
- Exhibit P Key Personnel

**GENERAL REQUIREMENTS
OF THE CONSTRUCTION MANAGEMENT CONTRACT**

**SECTION 1 – GENERAL
PART 1 – GENERAL PROVISIONS**

1.1.1 General Matters.

1.1.1.1 This Contract and Affiliated Agreements – Requirement for Written Agreements. Affiliated Agreements are any agreement required by this Contract or deemed necessary, efficient, or expedient by CM/GC, between the CM/GC and any party other than the Owner. All Affiliated Agreements, including but not limited to any subsequent modifications, must be in writing, dated, and executed by the parties. Affiliated Agreements, including but not limited to financial arrangements with respect to this Project, must be promptly and fully disclosed to the Owner upon their execution or modification. The Affiliated Agreements shall be executed in conformance with the requirements in Section 3, Part 7.

1.1.1.2 Basic Statement of Owner Objectives. The Owner's basic objectives are to develop Construction Documents based on the Documents listed in Exhibit A, which are incorporated herein by reference, so as to permit construction of the Project within the limits of the funds available to Owner for construction of the Project as established by the Owner (but in no event in excess of the GMP Cost Limitation set forth in Paragraph 4 of the Contract) and to construct the Project in accordance with the approved Construction Documents. The basic tenets of this Contract, which shall form the basis of interpretation of this Contract, are set forth in the Preface and incorporated by reference herein.

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

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

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

1.1.1.3.2.1 The basis of the Owner's engagement of the Design Professional is the "Design Professional Contract", also known as the Architectural Contract. The CM/GC acknowledges that both the Owner and the Design Professional have on file, at their respective places of business, copies of that executed agreement, and that both the Owner and the Design Professional will make available for review by CM/GC those copies at the CM/GC's request. The Design Professional is not the agent of the Owner, except to the extent so specified in writing, but is employed as a consultant to the Owner to assist the Owner in determining if the conditions of this Contract have been met.

1.1.1.3.2.2 A copy of the Design Professional Contract is attached hereto in Exhibit A and incorporated herein by reference. CM/GC shall become familiar with the respective services, authorities, obligations, and responsibilities of the parties as provided in the Design Professional Contract. CM/GC agrees to coordinate, assist, and develop a working relationship with the Design Professional to effect the purposes of the Project in accordance with the terms of this Contract and the Design Professional Contract.

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

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

1.1.1.3.3 [RESERVED]

1.1.1.3.4 Owner's Representative. Owner shall from time to time in writing designate one person as Owner's Representative under this Contract. Owner's Representative so designated in writing shall serve as Owner's Representative under this Contract unless or until Owner gives notice in writing of the appointment of his successor. Owner or Owner's Representative may designate in writing assistants to serve as Owner's Representative with respect to the Project governed by this Contract or in different phases or in specific areas of responsibility with respect to the Project. All requests for consents and approvals required of Owner in connection with the Project, whether by Design Professional, or CM/GC, shall be submitted to Owner's Representative, or if the matter is within the written designation of authority of his assistant, to his designated assistant. Design Professional and CM/GC may rely upon written consents and approvals signed by the Owner's Representative, or his designated assistant acting within the scope of his written designation, as the consent and approval of Owner, provided that CM/GC acknowledges that Owner's Representative may not bind the Owner to any decision, written statement or representation materially altering the terms of the Contract Documents or increasing the total amount paid under this Contract in excess of Guaranteed Maximum Price, as such changes must be approved by resolution of the City of Milton City Council.

1.1.1.3.5 Intentionally Omitted.

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

1.1.1.3.7 Owner's Construction Inspector. From time to time, in writing, the Owner may hire and/or designate an individual or firm as Owner's Construction Inspector under this Contract. The Owner's Construction

Inspector may be hired by Owner or Design Professional's contract and shall provide up to 100% inspection services of the Work on behalf of the Owner. The presence of an Owner's Construction Inspector does not relieve the CM/GC of any of its responsibilities for quality control and independent testing set forth in the General Requirements. The Owner's Construction Inspector has the authority to report any deviations from the Contract Documents directly to the CM/GC's superintendent at the job Site for immediate action, and also to report same to the Design Professional, and Owner.

1.1.1.3.8 Representatives. The designated representatives of the CM/GC and the Owner shall have full authority to act (other than for the receipt of notices that must be given as specified in Paragraph 1.1.5) in matters relating to this Contract until notice is given that such authority has been revoked; provided that CM/GC acknowledges that Owner's Representative may not bind the Owner to any decision, written statement or representation materially altering the terms of the Contract Documents or increasing the total amount paid under this Contract in excess of the Guaranteed Maximum Price, as such changes must be approved by resolution of the City of Milton City Council, and that the Owner's Representative must act within the guidelines of the Contract Documents and Construction Documents, and all Change Orders thereto. CM/GC and the Owner may each rely upon the written certification of the other as to the appointment of a designated representative or the revocation of his authority. The CM/GC shall designate, in writing, a representative authorized to act on the CM/GC's behalf with respect to the Project. The CM/GC's initial authorized representative shall be the Project Superintendent identified in the CM/GC's proposal. CM/GC shall employ the Project Superintendent and necessary assistants who shall be in attendance at the Site during the progress of the Work. CM/GC shall be represented by an officer of the CM/GC. All written communications given to such officer shall be binding upon the CM/GC.

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

1.1.1.3.10 Commissioning Authority. Owner may select and employ a Commissioning Authority to perform building commissioning activities and monitor testing activities. The Commissioning Authority shall perform and coordinate and accomplish its work as set forth in Articles 1.3.4 and 2.1.7.

1.1.2 Project Team, Cooperation, Partnering.

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

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

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

1.1.3 Intentionally Omitted.

1.1.4 Third Party Beneficiary. CM/GC acknowledges, stipulates, and agrees that the Owner is political subdivision of the State of Georgia acting by and through the City Council of City of Milton, Georgia, and that the Owner is performing an essential public and governmental function by means of the Contract. There are no third party beneficiaries of this Contract.

1.1.5 Notice.

1.1.5.1 General Requirement. Any notice, election, demand, request, consent, approval, or other communication required or permitted to be given under this Contract shall be in writing signed by an officer or duly authorized representative of the party making same and shall be deemed received, and shall be effective when: (1) personally delivered, or (2) on the third day after the postmark date when mailed by certified mail, postage prepaid, return receipt requested, or (3) upon actual delivery when sent via national overnight commercial carrier to the address shown in the Contract. The persons and addresses to which notices should be given may be changed by notice given in accordance with this Article.

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

1.1.6 Liquidated Damages.

1.1.6.1 Time of the Essence. Time being of the essence of this Contract, and a material consideration thereof, it is mutually agreed by the parties hereto that in the case of the CM/GC's failure to complete the construction within the time specified, the Owner will be damaged thereby. The CM/GC shall commence performance of the Work on the Site under this Contract as of the Proceed Order Date. The CM/GC shall complete construction, except for Minor Items and Permitted Incomplete Work (see Article 6.1.2), not later than the Material Completion Date, as adjusted by Change Order.

1.1.6.2 Liquidated Damages. Because it is difficult to definitely ascertain and prove the amount of actual damages likely to result if CM/GC fails to complete the construction within the time specified, inclusive of, but not limited to, expenses for inspection, superintendence, loss of use, and necessary traveling expenses, the Owner and CM/GC hereby agree that, instead of requiring any such proof, as liquidated damages for delay (but not as a penalty), the CM/GC shall pay the daily amount for Liquidated Damages specified in Paragraph 8 of the Contract for each and every calendar day that expires after the Material Completion Date, as provided herein, or as agreed by both parties in a Change Order. The CM/GC shall be responsible for payment of the Liquidated Damages, accrued daily, beginning upon the contractually required Material Completion Date and ending on the date that the Certificate of Material Completion is issued. The parties agree that the specified Liquidated Damages are not established as a penalty but are calculated and agreed upon in advance as a fair and equitable amount reasonably estimated in advance to cover losses to be incurred by the Owner for such delay or interruption in view of the uncertainty and impossibility of ascertaining actual damages that would be incurred.

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

1.1.6.2.2 Deducted as They Accrue. Liquidated Damages shall be deducted from periodic payments as they accrue, and such deduction shall be in addition to the retainage provided for in the Contract. The remaining balance of any Liquidated Damages shall be deducted from the Payment for Final Completion to the CM/GC or its Surety. If the unpaid balance of the Contract Sum is less than the total amount to be deducted for Liquidated Damages as herein above provided, the CM/GC shall promptly pay to the Owner, upon the Owner's demand, the amount by which such sum exceeds the unpaid balance of the Contract Sum.

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

1.1.7 Documents.

1.1.7.1 Precedence of Documents and Changes. In the event of conflict within or between this Contract, the Contract Documents, and the General Requirements, the provision most beneficial to the Owner, as determined by the Owner in its sole discretion, shall govern, provided that any Change Order executed after the date of this Contract shall control over any contrary terms contained in this Contract and any other Contract Documents existing at the time of this Contract. No change to the Contract Documents is effective unless notice shall have been issued by the Owner.

The Design Professional has no authority to amend the Contract Documents, orally or in writing, either expressly or by implication. The Contract Documents are to be taken as a whole and are intended to be complementary with one another. It is also intended that they include all items necessary for the proper execution and completion of the Work.

1.1.7.2 Copies of Contract Documents to CM/GC. Without charge to the CM/GC, the Design Professional shall furnish to the CM/GC electronic access to current Drawings and Specification files and Rivit Model in accordance with the Design Professional's contract for CM/GC's use in planning, estimating, bidding, contract administration and other construction management activities. The CM/GC may obtain such additional sets of Contract Documents, as the CM/GC deems necessary and shall pay the cost of reproduction of such additional sets to the Design Professional.

1.1.7.3 Marked-Up ("As-Built") Documents. Prior to Final Completion, the CM/GC shall provide one (1) complete set of Marked-Up Documents to the Design Professional. The Marked-Up Documents shall consist of the Drawings and Specifications, Change Orders, field instructions, answers to RFIs, clarifications, sketches, etc. annotated and changed to reflect the as-built condition of the Project, all Change Orders, field instructions, answers to Requests for Information ("RFI's"), clarifications, sketches, delegated CM/GC design Drawings and locations of utilities and other hidden elements.

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

1.1.8. Defined Terms. Wherever used in the Contract Documents, the terms defined in this Contract will have the meanings indicated that are applicable to both the singular and plural, and to the masculine and feminine thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents may include references to identified articles and paragraphs, and the titles of other documents or forms.

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

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

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

1.1.8.4 Articles Not Plenary. This Article and Article 1.1.9 are not entire, plenary, or exhaustive of all terms used in the Contract and General Conditions that require definition. There may be definitions of other terms

under articles to which the terms are related. Terms defined in the Design Professional Contract shall have the meanings set forth in those documents, unless otherwise specifically provided.

1.1.9 Basic Definitions.

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

1.1.9.2 *Affiliate*. With respect to CM/GC, any firm, partnership, corporation or other legal entity that is owned by, under common ownership or control with, or having a common principal or shareholder with, the CM/GC, whether such relationship is direct or indirect. In addition, unless the consequences of such relationship for the purposes of this Contract are expressly waived in writing by the Owner after full disclosure by the CM/GC, the term "Affiliate" also includes any entity currently affiliated with CM/GC as a partner or joint venturer with respect to any commercial venture, whether or not such venture includes the Project. See O.C.G.A. §36-91-53.

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

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

1.1.9.5 *Asbestos*. Any material that contains more than one (1) percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

1.1.9.6 *As Built Documents*. Documents showing actual locations of all utility lines and altered to conform to all changes made in the building during its construction, including but not limited to all Drawing changes made by Addendum and by Change Order. For field changes not documented through addendums, RFIs or Change Orders, the Design Professional shall rely on marked up Drawings prepared by the CM/GC to prepare these AS-BUILT DOCUMENTS. The Design Professional is not responsible for the accuracy of the information prepared by the CM/GC to prepare these AS-BUILTS. The Design Professional shall furnish the following information:

- (a) One hard copy of full-size Drawings and Specifications that include all changes made by Addendum or Change Order.
- (b) An electronic copy of the documents on compact discs in an electronic version as requested by the Owner (which format may include PDF, RWG, Revit, or any other format acceptable to the Owner, provided that Owner's selected format does not require a redraw of the plans by the Design Professional) and an electronic file of Specifications in Microsoft Word. If translation is required, the translation shall be of the same level of quality, completeness and usability as the original.

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

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

1.1.9.9 *Business Day*. A business day is each calendar day other than (1) Saturday, (2) Sunday, and (3) any holiday observed by Owner.

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

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

1.1.9.12 *Component*. An element of a Project for which the Design Professional prepares or segregates Construction Documents as a discrete package to permit procurement of the described items or the commencement of the construction of the described element of the Project.

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

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

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

1.1.9.16 *Construction Progress Schedule*. A schedule indicating agreed upon activity sequences and durations, Milestone dates for receipt and approval of pertinent information, preparation, submittal, and processing of Shop Drawings and Samples, delivery of materials or equipment requiring long-lead time procurement, and proposed date(s) of Material Completion and Final Completion. The format of the schedule will be agreed upon by the parties.

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

1.1.9.18 *[RESERVED]*

1.1.9.19 *Contract Documents*. The Contract Documents include the executed Contract, any Component Construction Documents, the Construction Documents, and all Change Orders, contractor's bid (including all documentation accompanying the bid and any post-bid documentation required by the city prior to the Notice of Award), bonds, all special conditions, general conditions, supplementary conditions, specifications, drawings and addenda, together with written amendments, change orders, field orders and the city's (or city's designated representative) written interpretations and clarifications issued in accordance with contract documents on or after the date of the contract agreement.

1.1.9.20 *Contract Time*. The period of time established for completion of the Project by the Contract Documents.

1.1.9.21 *CM/GC*. The person or entity responsible for the proper completion of the activities described in the Contract Documents, except where specifically provided otherwise.

1.1.9.22 *Cost of the Work*. The sum of all allowable costs necessarily incurred and paid by CM/GC in the proper performance of the Work, but such costs shall not include CM/GC's Fee or Construction Overhead Costs and Expenses.

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

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

1.1.9.25 *Design Development.* An interim step in the design process occurring upon receipt of written acceptance from Owner of the Schematic Design Documents and written authorization from Owner to proceed. Design Development documents consist of plans, elevations, and other Drawings and outline Specifications and Design Professional's Budget Certificate. These documents will fix and illustrate the size and character of the entire Project in its essentials as to kinds of materials, type of structure, grade elevations, sidewalks, utilities, roads, parking areas, mechanical and electrical systems, and such other work as may be required.

1.1.9.26 *Design Professional Contract.* The Contract between the Owner and the Design Professional for the design of the Project; also known as the Architectural Contract.

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

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

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

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

1.1.9.31 *Final Completion.* Final Completion has the definition set forth in Article 6.2.1.1

1.1.9.32 *Final Notice of Non-Compliant Work.* The Final Notice of Non-Compliant Work is issued as a result of the inspection for Final Completion, also known as the Final Punchlist. Upon the completion or correction of this Non-Compliant Work ("punchlist" work) the Design Professional, with the approval of the Owner, will issue the Final Certificate.

1.1.9.33 *Guaranteed Maximum Price (GMP) (also referred to herein as the "Contract Sum").* The maximum amount that Owner is obligated to pay CM/GC for construction of the Project under the GMP Change Order, and including all costs (including authorized contingency disbursements), overhead, and fees to be paid to CM/GC in connection with the Work and the Project.

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

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

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

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

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

1.1.9.39 *Notice of Non-Compliant Work.* A Notice of Non-Compliant Work shall be in writing, shall be dated, shall be signed by the Design Professional, and shall be addressed to the CM/GC with a copy to the Owner,

as set forth in Section 3, Part 6 (Correcting the Work) and Section 6, Part 6 (Correcting the Work after Final Payment).

1.1.9.40 *Owner*. City of Milton, Georgia, identified as the Owner in this Contract with whom CM/GC has entered into the Contract and for whom the Work is to be completed.

1.1.9.41 *Owner's Representative*. Owner may from time to time in writing designate one individual as Owner's Representative under this Contract. Owner's Representative so designated in writing shall serve as Owner's Representative unless and until Owner gives notice in writing of the appointment of his successor. The Owner or Owner's Representative may designate in writing assistants to serve as Owner's Representative with respect to the Project governed by this Contract or in different phases or in specific areas of responsibility with respect to the Project. All requests for consents and approvals required of Owner in connection with the Project, whether by the Design Professional, CM/GC, Owner's Construction Inspector, and or Separate Contractor, shall be submitted to Owner's Representative, if so designated, or if the matter is within the written designation of authority of his assistant, to his designated assistant. The Design Professional, CM/GC, Owner's Construction Inspector, and Separate Contractor may rely upon written consents and approvals signed by the Owner's Representative, or his designated assistant acting within the scope of his written designation, as the consent and approval of Owner; provided that any approval or consent materially altering the terms of this Contract or the Contract Documents, or increasing the amount paid under this Contract in excess of the GMP must be approved by resolution of the City of Milton City Council.

1.1.9.42 *Overall Project Schedule*. The overall construction schedule that includes both design and construction activities that is approved by the Owner.

1.1.9.43 *Pre-Commencement Phase Services*. The services required to be provided by the CM/GC for the Pre-Commencement Phase of the Project in accordance with the Contract Documents, including but not limited to Section 3.2.13 of this Contract.

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

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

1.1.9.46 *Project Manual*. A bound manual prepared by the Design Professional. It shall include but not be limited to the Specifications, the General Requirements, and Addenda.

1.1.9.47 *Owner Party(ies)*. The Owner's departments, agencies and instrumentalities and all of its respective officers, boards, commissions, members, elected and appointed officials, employees, servants, volunteers or agents.

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

1.1.9.49 *Schematic Design*. The beginning of the design process, sometimes commonly known as Preliminary Design. Schematic Design documents are the Schematic Design plans and elevations showing the scale and relationship of Project or its Components. Schematic Design documents consist of written and graphic (drawings, sketches, etc.) presentations that will enable the Owner to determine if the intent of the Project, as set forth in the Program provided by the Owner, is being addressed, and shall consist of at least the following: (a) schematic site plan; (b) floor plans; (c) elevations; and (d) additional Specification documents describing architectural, structural, mechanical and electrical systems and materials; and (e) a preliminary Design Professional's Budget Certificate.

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

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

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

1.1.9.53 *Subcontractor.* The generic term subcontractor as employed herein includes only those having a direct contract with the CM/GC or any subcontractor performing Work specified pursuant to this CM/GC contract.

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

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

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

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

1.1.9.58 *Unit Price Work; ("Unit Prices" to be agreed to by CM/GC and Owner).* Work to be paid for on the basis of unit prices as defined and described in the Contract Documents. A percentage markup for overhead or profit shall be included in all unit prices.

1.1.9.59 *Shop Drawings.* Detailed construction and fabrication drawings that show the proposed material, shape, size, and assembly of the parts and how the entire unit will be installed.

1.1.9.60 *Encumbrance Record.* A record of Owner commitments related to changes in the Work.

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

PART 2 – CM/GC'S GENERAL RESPONSIBILITIES AND DUTIES

1.2.1 General Responsibilities.

1.2.1.1 Representations of CM/GC.

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

1.2.1.1.2 Familiarity with Project. CM/GC represents that it has: (a) visited the Project Site(s), (b) taken such other steps as may be necessary to ascertain the nature and location of the Project Work and the general and local conditions that affect the Project Work or the cost thereof, (c) investigated the labor situation as regards to the Project, (d) examined the nature and location of the Project Work, the obstacles that may be encountered and all other conditions having a bearing upon the performance of the Project Work, the superintendence of the Project Work, the time of completion and all other relevant matters, (e) reported to Owner the results of all of the foregoing, and (f) familiarized itself with all local laws, and regulations. CM/GC represents that it has taken the foregoing into account in its review of the Contract Documents. (Notwithstanding anything to the contrary herein, the Designer has all responsibility for ensuring that the design, and Contract Documents representing such, are to and in compliance with applicable code.)

1.2.1.2 Responsibility to Coordinate. CM/GC acknowledges its responsibility to coordinate the Project Work with that of Separate Contractors to be selected for the installation of other work within the Project, or in the proximity of the Project. CM/GC expressly agrees to schedule and, with the assistance of Owner, coordinate the Project Work with such Separate Contractors in order to assist them and permit each phase of the Project to be completed on schedule.

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

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

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

- That all permits and approvals are obtained for the Owner to occupy the Project.

1.2.1.5 Project Delivery. The CM/GC shall commence the Basic Services immediately upon the Effective Date of the Contract and shall commence physical work at the Site as of the Proceed Order Date specified in the Proceed Order issued by the Owner. CM/GC shall construct the Project in accordance with the Contract Documents, and shall diligently perform all the Work required by the Contract Documents or reasonably inferable from industry standards and code requirements. CM/GC shall deliver the Project completed in accordance with the Contract Documents, substantially free from defects, and within the Contract Time. The CM/GC's duties shall not be diminished by any approval by the Owner or Design Professional, of Work completed or produced; nor shall the CM/GC be released from any liability by any approval by the Owner or Design Professional of Work completed or produced, it being understood that the Owner is ultimately relying on the CM/GC's skill and knowledge in performing the Work required under this Contract. In the event that during the course of performing the Work, the CM/GC discovers or reasonably should discover (given its role as a CM/GC and not as a design professional) that there exists in any Drawings, Specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the CM/GC (by the Owner or any other party) that is, in the CM/GC's opinion, unsuitable, improper, or inaccurate for the purposes for which the document or data is furnished, CM/GC shall promptly inform the Owner of such inaccuracies, impropriety, issues or concerns.

1.2.1.6 CM/GC's Consultation concerning Replacement of Work. The CM/GC shall provide consultation concerning replacement of Work damaged by fire or other cause during construction, and furnish all Basic Services required in connection with the replacement of such Work. Such consultation will be considered an additional service and will be provided pursuant to a Change Order unless the fire or other damage was caused as a result of the negligence of the CM/GC or its Subcontractors. If the cost of the replacement or repair of the damage is reimbursable under the terms of any insurance policy, the full amount of any such insurance recovery shall be applied to the Project for the benefit of the Owner.

1.2.1.7 Budgetary Limitations. CM/GC agrees and acknowledges that budgetary limitations are not a justification for breach of sound principals of CM/GC's profession and industry. CM/GC shall take no calculated risk in the performance of the Work. Specifically, CM/GC agrees that, in the event it cannot perform the Work within the budgetary limitations established without disregarding sound principals of CM/GC's profession and industry, CM/GC will give written notice immediately to the Owner.

1.2.1.8 Owner's Reliance on the Work. The CM/GC acknowledges and agrees that, except where the Owner has undertaken design responsibility, the Owner does not generally undertake to approve or pass upon matters of expertise of the CM/GC. The CM/GC acknowledges and agrees that the acceptance of Work by the Owner, or Owner's Representative is generally limited to the function of determining whether there has been compliance with what is required to be produced under this Contract. Notwithstanding the foregoing, the CM/GC shall be entitled to rely upon any design instructions expressly provided by the Owner or Owner's Representative.

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

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

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

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

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

1.2.2.5 Maintain Records. CM/GC shall keep Owner informed of the progress of the Work. CM/GC shall maintain records of the cost for the Work pursuant to and in compliance with generally acceptable accounting requirements and such other methods as Owner may require, including but not limited to complete backup documentation for all pay applications.

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

1.2.2.7 Acts and Omissions. Employees of or Subcontractors to the CM/GC shall perform the Work required by this Contract. The CM/GC is responsible to the Owner for acts and omissions of anyone directly or indirectly employed by CM/GC, any Subcontractor, and anyone for whose acts the CM/GC and any such Subcontractor may be liable.

1.2.2.8 Promptly Commence. Upon the Effective Date of the Contract, the CM/GC shall immediately commence and diligently pursue the performance of the Basic Services described in this Contract.

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

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

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

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

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

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

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

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

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

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

1.2.5 Existing Documents. CM/GC recognizes the existence of existing documents prepared on behalf of the Owner and identified in Exhibit A. The CM/GC has carefully reviewed these documents and has determined them to be, at the time of execution of this Contract, consistent with the objectives to complete the project within the Guaranteed Maximum Price Cost Limitation and Material Completion Date, subject to completion of the Construction Documents

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

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PART 3 – OWNER'S RESPONSIBILITIES AND RIGHTS

1.3.1 Owner's Representative.

1.3.1.1 Written Designation. The Owner may designate, in writing, a representative authorized to act on the Owner's behalf with respect to the Project.

1.3.1.2 Accessibility. The Owner's Representative shall be readily accessible (either on Site or by computer, phone or fax or otherwise) shall be fully acquainted with the Project, and shall have authority promptly to render decisions, approve Construction Documents, budgets, schedules and Change Orders and to furnish information required of or to be provided by the Owner hereunder; provided that such decisions and approvals altering the terms of this Contract or the Contract Documents or increasing the amount paid under this Contract in excess of the GMP must be approved by Resolution of the City of Milton City Council to be binding.

1.3.1.3 Independent Review and Inspection. The Owner may obtain independent review of the Contract Documents by a separate architect, engineer, contractor, or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work. The Owner may undertake independent inspection of the installation of the construction. Such independent inspector shall operate as the agent of the Owner in requiring the CM/GC to stop the Work in order to protect the best interests of the Project or the Owner. If any direction provided to CM/GC results in work that is not or costs that are not part of the scope or responsibility of the CM/GC, CM/GC shall be entitled to a Change Order reflecting all costs associated therewith. Any instruction by an Owner's independent inspector to stop work shall be handled as set forth in Section 5, Part 1 of this Agreement.

1.3.2 Design Professional.

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

1.3.2.2 Copies of Drawings and Specifications to CM/GC. In accordance with the Design Professional Contract the CM/GC may be furnished, free of charge, with access to current Drawings and Specification files and Rivot Model for CM/GC's use in planning, estimating, bidding, contract administration and other contract administration activities. Further, the Design Professional Contract requires that the CM/GC be furnished, free of charge, one hard copy of the final Component Construction Documents for each Project Component, complete with original stamps and signatures. The CM/GC may obtain such additional sets of Drawings and Specifications as the CM/GC deems necessary and shall pay the cost of reproduction of such additional sets to the Design Professional. Any additional sets of Drawings and Specifications obtained by the CM/GC shall be obtained as part of the Basic Services, and CM/GC shall not request additional compensation from Owner related to such additional documents.

1.3.2.3 Contract Administration. The Design Professional shall provide periodic review of the Work to assess compliance with the Contract Documents. The Design Professional shall not be responsible for the safety of the Work; provided that the Design Professional shall report any identified safety issues immediately. The Design Professional is not the agent of the Owner, but is engaged as a consultant to the Owner to assist the Owner in determining if the conditions of the Contract have been met. Design Professional is the agent of the Owner only when and to the extent, in special instances, Design Professional is authorized in writing by the Owner to so act, and in such instances Design Professional shall, upon request, produce and show such written authority. Design Professional has authority to stop the Work whenever such stoppage may be necessary to seek the proper execution of the Contract or is in the best interest of the Owner. If any direction provided to CM/GC results work that is not or costs that are not part of the scope or responsibility of the CM/GC, CM/GC shall be entitled to a Change Order reflecting all costs associated therewith. Any instruction by the Design Professional to stop work shall be handled as set forth in Section 5, Part 1 of this Agreement.

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

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

1.3.2.5.1 Promptness. The Design Professional shall make decisions within fourteen (14) calendar days after proper presentation of evidence on (1) any issue, Claim, or dispute of the Owner or CM/GC, or (2) a demand of the Owner or CM/GC for a decision on any matter relating to the execution or progress of the Work.

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

1.3.2.5.3 Protests of Design Professional's Decisions. All decisions of the Design Professional on any Claim, dispute, or demand shall be final and binding on the Contract in the absence of written notice of protest from the CM/GC received by the Owner within fourteen (14) calendar days of the date the decision of the Design Professional is received by the CM/GC. See Section 5 Part 2.

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

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

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

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

1.3.5 Owner's Independent Consultants. In the event the Owner, in its sole discretion, shall either itself perform or retain one or more independent consultants to provide peer review, expert opinion, or other analysis of design, the Construction Documents, or construction as performed in the field, the CM/GC agrees that any such review or analysis shall not constitute any admission by Owner concerning the adequacy, fitness, or completeness of the design, the Construction Documents, or the adequacy or compliance of the construction to the Specifications. Such consultant reports are expert opinion rendered solely to the Owner, and CM/GC may not use such consultant reports in connection with any Claim or legal action arising out of or related to the Project without the express written consent of the Owner, unless required by the provisions of the Civil Practice Act governing the designation and use of expert witnesses.

1.3.6 No Partial Occupancy. There shall be no partial occupancy by the Owner of the Project prior to the achievement of Final Completion. This provision may be modified by Change Order.

1.3.7 Disqualification of Potential "Pre-Qualified" Subcontractors. The Owner may disqualify for just cause any pre-qualified potential subcontractors identified in the Bidding Documents. Owner shall pay the difference in the cost of the Work necessarily resulting from such disqualification, provided that such difference in cost must be agreed to in writing by Owner prior to being incurred.

1.3.8 Owner's Right to Perform Work. The Owner reserves the right to perform construction or operations related to the Project with Separate Contractors on the Site. If the CM/GC claims that delay or additional cost is caused by

such action by the Owner, the CM/GC shall assert such Claims as provided in Section 5, Part 2 of the General Requirements.

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PART 4 – PROTECTION OF PERSONS AND PROPERTY

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

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

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

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

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

- (a) Provide fire extinguishers or fire hoses in readily accessible locations;
- (b) Periodically inspect fire extinguishers, remove discharged extinguishers immediately, and replace with new or recharged extinguishers;
- (c) Keep fire extinguishers or fire hoses within five (5) feet of any welding or open flame operations;
- (d) Remove oil-soaked and paint-soaked materials, including paper and rags, from the Site daily, and more frequently as necessary, to eliminate danger of fire.
- (e) Prohibit workers from smoking during operations involving combustible adhesives, solvents, mastics, or other fire hazard materials.

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

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

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PART 5 – BONDS, INDEMNITY AND INSURANCE

1.5.1 Bonds

1.5.1.1 Required Bonds.

1.5.1.1.1 Performance Bond and Payment Bond. The CM/GC shall furnish both a performance bond and a payment bond in the exact form set forth in Section 7 (Forms) of these General Conditions. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under this Contract, the CM/GC shall promptly furnish a copy of the bonds or shall permit a copy to be made.

1.5.1.1.2 Intentionally Omitted.

1.5.1.1.3 Five Year Bond of Roofs and Walls. The CM/GC shall furnish a Five Year Bond on Roofs and Walls in the exact form set forth in Section 7 (Forms) of these General Conditions and in the penal sum of the Actual Cost of the walls, wall cladding, wall insulation, roof, insulation and roof deck, but not less than the amount shown as in the approved initial breakdown for these roof and wall systems.

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

1.5.1.3 Penal Amount of Bonds, State Law. The CM/GC acknowledges and agrees that, pursuant to O.C.G.A. §§ 36-91-40, 36-91-70 and 36-91-90, the performance bond and the payment bond must be in a penal amount equal to at least 100% of the GMP Cost Limitation or GMP when established. Accordingly, the CM/GC warrants and agrees that, for any Change Order increasing the GMP by five (5) percent or more, or when the total Cost of the Work has increased by five (5) percent or more, it shall obtain a written amendment to the payment bond and the performance bond increasing the penal amounts of both bonds to 100% of the GMP, effective as of the date of the Change Order. The premium increase, if any, may be properly included in the cost of the Change Order. The Design Professional shall approve no payment for the Work provided by the Change Order until the CM/GC has provided the written amendment to the Owner.

1.5.1.4 Changes in Surety Status. The Owner may require the CM/GC to strengthen any or all of the bonds or to furnish a new or additional bond or bonds within ten (10) days if any of the following occurs, in the judgment of the Owner, during the term of this Contract: (1) Any surety on a bond has become insolvent; (2) Any corporate surety is no longer certified or approved by the Commissioner of Insurance to do business in the state; or (3) For any cause there are no longer proper or sufficient sureties on any or all of the bonds. Thereupon, if so ordered by the Owner, CM/GC shall cease all Work on the Contract unless such new or additional bond or bonds are furnished. If such bond or bonds are not furnished within such time, the Owner may terminate this Contract for cause pursuant to Article 5.3.2.

1.5.2 Liability and Indemnification.

1.5.2.1 General Liability. CM/GC covenants and agrees to take and assume all responsibility for the Work rendered in connection with this Contract. CM/GC shall bear all losses and damages directly or indirectly resulting to it and/or the Owner on account of the performance or character of the Work rendered pursuant to this Contract. The CM/GC shall be responsible to the Owner from the time of the signing of this Contract or the beginning of the first Work, whichever shall be earlier, for all injury or damage of any kind resulting from any negligent act or omission or breach, failure or other default regarding the Work by the CM/GC, or any of its Subcontractors, its agents, employees or others working at the direction of the CM/GC or on its behalf, regardless of who may be the owner of the property.

1.5.2.2 Indemnification Agreement. To the fullest extent permitted by law, the CM/GC shall indemnify and hold harmless the Owner and Owner Parties (collectively "Indemnitees") from and against liability, claims,

damages, losses and expenses, including attorneys' fees, arising out of or resulting from performance of the work, provided that such liability, claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, to injury to or destruction of tangible property (other than the work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by willful or negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

1.5.2.2.1 This indemnification does not extend to claims for losses or injuries or damages incurred directly by the Indemnitees due to the sole negligence of any Indemnitee.

1.5.2.2.2 This indemnification shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this provision.

1.5.2.2.3 In any and all claims against the Indemnitees by any employee of the CM/GC, any Subcontractor, anyone directly or indirectly employed by CM/GC or Subcontractor, or anyone for whose acts the CM/GC or Subcontractor may be liable, the indemnification obligation set forth in this provision shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CM/GC or any Subcontractor under workers' or workmen's compensation acts, disability benefits acts, or other employee benefit acts.

1.5.2.3 This indemnification does not extend to claims for losses or injuries or damages incurred by the Indemnitees due to any negligent act, error, or omission of a design professional in the performance of professional services that fails to meet the applicable professional standard of care, skill and ability as employed by others in their profession, provided that to the extent CM/GC worked with the Design Professional or should have reasonably known of the issue prior to such damage or injury being incurred, CM/GC shall be liable for its own actions or omissions related thereto.

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

1.5.2.5 Survival. This obligation to indemnify, defend, and hold harmless the Owner and Indemnitees shall survive expiration or termination of this Contract, provided that the claims or other Liabilities are based upon or arise out of action that occurred during the performance of this Contract.

1.5.3 Insurance Requirements.

1.5.3.1 Requirements: The CM/GC shall have and maintain in full force and effect for the duration of this Contract, insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by the CM/GC, its agents, representatives, employees and Subcontractors. The CM/GC's Completed Operations coverage should be in place for at least three (3) years after completion of the Project. All policies shall be subject to approval by the Owner as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City of Milton City Council.

1.5.3.2 Required Insurance Coverage and Minimum Limits of Insurance: The CM/GC agrees to purchase and maintain, and have the authorized agent state on the insurance certificate that the CM/GC has purchased, the following types of insurance policies with coverage and limits no less than the amount provided below:

- (a) Commercial General Liability Insurance. The CM/GC shall maintain Commercial General Liability Insurance (2002 or 2003 ISO Occurrence Form or equivalent) that shall include, but need not be limited to, coverage for bodily injury and property damage arising from premises and operations liability (including operations of independent contractors engaged in construction), products and completed operations liability, blasting and explosion, collapse of structures, underground damage, personal injury liability and contractual liability. The Commercial General Liability policy must include

separate limits per Project and shall provide at minimum the following limits:

- | | |
|---|--|
| (1) Premises and Operations | \$1,000,000 (one million dollars) per occurrence |
| (2) Products and Completed Operations | \$1,000,000 (one million dollars) per occurrence |
| (3) Bodily and Personal Injury (including but not limited to sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom) | \$1,000,000 (one million dollars) per occurrence |
| (4) Contractual | \$1,000,000 (one million dollars) per occurrence |
| (5) General Aggregate | \$2,000,000 (two million dollars) per project |

Additional Requirements for Commercial General Liability Insurance are shown below at Paragraph 1.5.3.4.

- (b) Commercial Business Automobile Liability Insurance. The CM/GC shall provide Commercial Business Automobile Liability Insurance that shall include coverage for bodily injury and personal injury, including but not limited to death, and injury to or destruction of property, including but not limited to loss of use resulting therefrom, arising from the operation of any owned, non-owned, or hired automobile. The Commercial Business Automobile Liability Insurance Policy shall provide not less than \$1,000,000 (one million dollars) Combined Single Limits for each accident. Additional Requirements for Commercial Business Automobile Liability Insurance are shown below at Paragraph 1.5.3.4.
- (c) Commercial Umbrella Liability Insurance. The CM/GC shall provide a Commercial Umbrella Liability Insurance to provide excess coverage above the Commercial General Liability, Commercial Business Automobile Liability and the Workers' Compensation and Employers' Liability to satisfy the minimum limits set forth herein. The umbrella coverage shall follow form with the Umbrella limits required as follows:

\$2,000,000 per Occurrence
\$10,000,000 Aggregate

Additional Requirements for Commercial Umbrella Liability Insurance are shown below at Paragraph 1.5.3.4.

- (d) Professional Liability Insurance. The CM/GC shall provide Professional Liability Insurance of not less than \$1,000,000 (one million dollars) Combined Single Limit for each incident for claims arising out of professional services and caused by the CM/GC's errors, omissions, or negligent acts.
- (e) Builder's Risk Insurance. CM/GC shall provide a Builder's Risk Insurance Policy to be made payable to the Owner and CM/GC, as their interests may appear. The policy amount shall be equal to 100% of the Contract Sum or \$2,000,000 (whichever is greater), written on a Builder's Risk "All Risk," or its equivalent. The policy shall be endorsed as follows: "The following may occur without diminishing, changing, altering or otherwise affecting the coverage and protection afforded the insured under this policy: i) Furniture and equipment may be delivered to the insured premises and installed in place ready for use; and ii) Partial or complete occupancy by Owner; and iii) Performance of Work in connection with construction operations insured by the Owner, by agents or lessees, or other contractors of the Owner."
- (f) Workers' Compensation Insurance. The CM/GC agrees to provide at a minimum Workers' Compensation coverage in accordance with the statutory limits as established by the General Assembly of the State of Georgia. A group insurer must submit a

certificate of authority from the Insurance Commissioner approving the group insurance plan. A self-insurer must submit a certificate from the Georgia Board of Workers' Compensation stating the CM/GC qualifies to pay its own workers' compensation claims. The CM/GC shall require all Subcontractors performing Work under this Contract to obtain an insurance certificate showing proof of Workers' Compensation Coverage and shall submit a certificate on the letterhead of the CM/GC in the following language:

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

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

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

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

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

1.5.3.3 Deductibles and Self-Insured Retentions: All deductibles shall be paid by the CM/GC. Except for qualified self-insurers or group self-insurers, self-insured retention in any policy shall not exceed \$100,000.00. Any deductibles or self-insured retentions must be declared to and approved by the Owner so that the Owner may ensure the financial solvency of the CM/GC; these should be included on the certificate of insurance.

1.5.3.4 Additional Requirements for Commercial Policies in Paragraphs 1.5.3.2 (a) through (c).

- (a) The policy shall name as additional Insureds the Owner and Owner Parties.
- (b) The policy must be on an "occurrence" basis.

1.5.3.5 Insurance Certificates and Required Endorsements.

1.5.3.5.1 Insurance Certificates. The CM/GC shall procure the insurance coverages identified above at the CM/GC's expense (i.e. within GMP) and shall furnish the Owner insurance certificates and endorsements to the policies evidencing coverage required by this Section prior to the start of Work and within ten (10) days of execution of this Contract. The certificates of insurance shall list the Owner as certificate holders and as additional insureds, as required herein. The certificates of insurance and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Evidence of insurance coverages shall be provided on the Certificate of Insurance shown in Section 7 or on a similar form approved for use by the Georgia Commissioner of Insurance that provides following:

- (a) Name and address of authorized agent
- (b) Name and address of insured
- (c) Name of insurance company(ies)
- (d) Description of policies
- (e) Policy Number(s)
- (f) Policy Period(s) – effective date and expiration date
- (g) Limits of liability
- (h) Name and address of Owner as certificate holder
- (i) Project Name and Number
- (j) Signature of authorized agent

- (k) Telephone number of authorized agent
- (l) Mandatory thirty (30) day notice of cancellation or non-renewal (except ten (10) days for non payment of premium).

The Owner reserves the right to require complete, certified copies of all required insurance policies at any time. The CM/GC shall provide proof that any expiring coverage has been renewed or replaced prior to the expiration of the coverage. The CM/GC is responsible for any delay resulting from the failure of his insurance carriers to furnish proof of proper coverage in the prescribed form.

1.5.3.5.2 Special Commercial General Liability Endorsement. The CM/GC shall cause its insurer to issue a special endorsement identifying this Project and this CM/GC Contract on the schedule of covered projects. The Owner's name should be entered in the blank and the special endorsement attached to the Certificate of Insurance.

1.5.3.5.3 Other Insurance Provisions: The policies specified below shall contain, or be modified or endorsed to contain, the following provisions:

(a) General Liability and Automobile and Umbrella Liability Coverage.

- (i) Additional Insured Endorsement. The CM/GC shall cause its insurer to issue an additional insured endorsement on ISO Form CG 20 10 11 85 ("Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization"), or its equivalent, naming the Owner and Owner Parties as additional insureds. If the insurer uses ISO Form CG 20 10 only, then the form must expressly provide for continued operations coverage and provide substantially similar coverages as ISO Form CG 20 10 11 85. The coverage shall contain no special limitations on the scope of protection afforded to the Owner and Owner.
- (ii) Contribution. The CM/GC's insurance coverage shall be primary and noncontributing insurance as respects to any other insurance or self-insurance available to the Owner or Owner Parties. Any insurance or self-insurance maintained by the Owner and Owner Parties shall be in excess of the CM/GC's insurance and shall not contribute with it.
- (iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Owner and Owner Parties.
- (iv) Coverage shall state that the CM/GC's insurance shall apply separately to each insured against whom claim is made or suit is brought.
- (v) Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.
- (vi) The insurer shall agree to waive all rights of subrogation against the Owner and Owner Parties for losses arising from Work performed by the CM/GC for the Owner.
- (vii) All endorsements to policies shall be executed by an authorized representative of the insurer.

(b) Workers' Compensation Coverage.

The insurer providing Workers' Compensation Coverage will agree to waive all rights of subrogation against the Owner and Owner Parties for losses arising from work performed by the CM/GC for the Owner.

(c) All Coverages. Policies shall have concurrent starting and ending dates.

1.5.3.6 Insurer Qualifications, Insurance Requirements. Each of the insurance coverages required above (i) shall be issued by a company licensed by the Insurance Commissioner to transact the business of

insurance in the State of Georgia for the applicable line of insurance, and (ii) shall be an insurer (or, for qualified self-insureds or group self-insureds, a specific excess insurer providing statutory limits) with a A.M. Best Rating of "A-" or better and with a financial size rating of Class VII or larger. Further, each such policy shall contain the following provisions:

1.5.3.6.1 The insurance company agrees that the policy shall not be canceled, suspended, voided, changed, allowed to lapse or allowed to expire until thirty (30) days (ten (10) days if due to nonpayment) after the Owner has received written notice thereof, as evidenced by return receipt of certified mail or statutory mail, or until such time as other insurance coverage providing protection equal to protection called for in this Contract shall have been received, accepted and acknowledged by the Owner. Such notice shall be valid only as to the Project as shall have been designated by Project Number and Name in said notice.

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

1.5.3.7 Claims-Made Policies: CM/GC shall extend any claims-made insurance policy for at least three (3) years after termination or final payment under the Contract, whichever is later.

1.5.3.8 Subcontractors: CM/GC shall include all Subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each Subcontractor. All coverage for Subcontractors shall be subject to all of the requirements stated in this Contract, including, but not limited to, naming the parties as additional insureds.

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Part 6 – Hazardous Conditions and Materials

1.6.1 Hazardous Materials.

1.6.1.1 Definition. The term "Hazardous Materials" shall mean any material or substance within the meaning and definition for "Hazardous Substance" and/or "Hazardous Waste", as those terms are employed and set forth in the Georgia Hazardous Site Response Act and the Comprehensive Environmental Response Compensation and Liability Act as amended, 42 USC § 9601 et seq., and regulations promulgated thereunder (collectively "CERCLA") and any corresponding state or local law or regulation, and shall also include: (a) any Pollutant or Contaminant as those terms are defined in CERCLA; (b) any Solid Waste or Hazardous Constituent as those terms are defined by, or are otherwise identified by, the Resource Conservation and Recovery Act as amended, 42 USC § 6901 et seq., and regulations promulgated thereunder (collectively "RCRA") and any corresponding state or local law or regulation; (c) crude oil, petroleum and fractions of distillates thereof and petroleum releases; (d) any other material, substance or chemical defined, characterized or regulated as toxic or hazardous under any applicable law, regulation, ordinance, directive or ruling, including, but not limited to, Asbestos or polychlorinated biphenyl (PCB); and (e) any infectious or medical waste or environmental contamination as defined by any applicable federal or state laws or regulations.

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

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

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

1.6.2 Responsibility and Warranty of Trade Contractors, Suppliers, and Subcontractors. Products that are specified by reference standards or in descriptive manner without a manufacturer's name, model number or trade name, to be selected by the CM/GC, shall not contain Hazardous Materials in any form, except as and to the extent permitted in 1.6.1, above, and 1.6.3, below. The CM/GC shall require that each of his Subcontractors and material Suppliers warrant to the Owner and Design Professional that all materials, products and assemblies, other than those which are specifically and expressly required by the Contract Documents, incorporated, or submitted for incorporation into this Project are free of Hazardous Materials. This warranty shall also include all materials, components, and accessories not specifically enumerated or detailed in the Contract Documents but which are required by performance Specifications or recommended by manufacturers for complete installation of materials, products and assemblies.

1.6.3 Hazardous Materials and Substances Used On the Job Site. Products containing Hazardous Materials may be employed in the performance of Work by the CM/GC and its Subcontractors as allowed above, as a means and methods application or as part of its performance of the Work, such as chemicals used on the job Site, but only if: (i) such products are used in accordance with the manufacturer's instructions and Material Safety Data Sheets; (ii) such products are rendered harmless upon completion of the affected Work; (iii) reasonable precautions can be and

are taken to prevent foreseeable bodily injury or death to persons involved in the Work or in its proximity, including but not limited to the ultimate users of the completed Work; (iv) the CM/GC shall make available to the Owner and the Design Professional copies of Material Safety Data Sheets (MSDS) for any such products used on the job Site, and (v), the CM/GC shall immediately notify Owner, Design Professional and appropriate regulatory agencies if there is a spill or release or misuse of any such product used on the job Site that exceeds State or Federal reportable limits.

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

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PART 7 – MISCELLANEOUS PROVISIONS.

1.7.1 Legal Compliance.

1.7.1.1 General. This Contract shall be governed by and construed under the laws of the State of Georgia. The CM/GC shall comply with all laws, rules, regulations, ordinances, and orders of any government agency having jurisdiction in the performance of the Basic Services and the Work and shall ensure the compliance of its Subcontractors. CM/GC shall also perform its services in accordance with the usual and customary standards of the CM/GC's profession or business.

The CM/GC and the Owners acknowledge that it is prohibited for any person to offer, give, or agree to give any City of Milton employee or official, or for any City of Milton employee or official to solicit, demand, accept, or agree to accept from another person, a gratuity of more than nominal value or rebate or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor. The CM/GC and the Owner further acknowledge that it is prohibited for any payment, gratuity, or offer of employment to be made by or on behalf of a sub-consultant under a contract to the prime consultant or higher tier sub-consultant, or any person associated therewith, as an inducement for the award of a subcontract or order.

1.7.1.2 Specific Laws. Without limiting the generality of the foregoing Paragraph, the CM/GC specifically agrees to comply with the following laws as specifically referenced (and any related rules and regulations):

- 1.7.1.2.1 Intentionally Omitted.
- 1.7.1.2.2 O.C.G.A. § 36-91-21.
- 1.7.1.2.3 Preference for Georgia forest products, O.C.G.A. § 50-5-63.
- 1.7.1.2.4 Intentionally Omitted.
- 1.7.1.2.5 Standards and Requirements for Construction, Alterations, etc., O.C.G.A. § 8-2-1, *et seq.*
- 1.7.1.2.6 Control of Soil Erosion and Sedimentation, O.C.G.A. § 12-7-1, *et seq.*
- 1.7.1.2.7 Regulation of Fire and other Hazards (See O.C.G.A. § 25-2-1 *et seq.* and applicable Rules and Regulations).
- 1.7.1.2.8 Regulation of Blasting Operations (See O.C.G.A. § 25-8-1, *et seq.* and 25-9-1, *et seq.* and applicable Rules and Regulations).
- 1.7.1.2.9 Providing safe workplace, O.C.G.A. §§ 34-2-10 and 34-7-20.
- 1.7.1.2.10 Georgia Facility Protection Act, O.C.G.A. § 25-9-1, *et seq.*
- 1.7.1.2.11 High Voltage Safety Act, O.C.G.A. § 46-3-30, *et seq.*
- 1.7.1.2.12 Access and Use by Physically Handicapped Persons, O.C.G.A. § 30-3-1, *et seq.*
- 1.7.1.2.13 Intentionally Omitted.
- 1.7.1.2.14 Intentionally Omitted.
- 1.7.1.2.15 Title VI and Title VII of the Civil Rights Act, 42 U.S.C. § 2000a through 2000h-6

- 1.7.1.2.16 Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq.*; 42 U.S.C. § 6101, *et seq.*
 - 1.7.1.2.17 Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*
 - 1.7.1.2.18 Federal Occupational Safety and Health Act, 29 U. S. C. § 651, *et seq.*
 - 1.7.1.2.19 Federal Emergency Planning and Community Right-to-Know Act, 42 U. S. C. § 11001, *et seq.*
 - 1.7.1.2.20 Georgia Open Records Act, O.C.G.A. §50-18-70, *et seq.*
 - 1.7.1.2.21 Intentionally Omitted.
 - 1.7.1.2.22 Scaffolding and Staging Statute, O.C.G.A. §25-15-110, *et seq.*
 - 1.7.1.2.23 Department of Labor Rules and Regulations (See O.C.G.A. § 34-2-6 *et seq.* and *applicable Rules and Regulations*).
 - 1.7.1.2.24 Hazardous Chemical Protection and Right to Know Act, O.C.G.A. § 45-22-2 *et seq.*
 - 1.7.1.2.25 Retainage on Public Works Contracts, O.C.G.A. §13-10-80, *et seq.*
 - 1.7.1.2.26 Compliance with “federal work authorization programs” and federal Immigration Reform and Control Act of 1986 by Georgia Public Employers, contractors and subcontractors, O.C.G.A. §13-10-90 *et seq.*
- 1.7.1.3 Building Codes. The following Building Codes, as well as any other applicable building codes, regulations or guidelines, in the latest editions approved by the Georgia Department of Community Affairs, or any other applicable state or local government entity, shall be used. (See O.C.G.A. §8-2-20, *et seq.* and related Rules and Regulations) As of the year 2000, these codes are published jointly by the Southern Building Code Congress International, the International Code Council, the Building Officials and Code Administrators, International, and the International Conference of Building Officials, and are commonly referred to as the International Building Codes.
- 1.7.1.3.1 Georgia State Minimum Standard Building Code (International Building Code with Georgia State Amendments).
 - 1.7.1.3.2 Georgia State Minimum Standard Mechanical Code (International Mechanical Code with Georgia State Amendments).
 - 1.7.1.3.3 Georgia State Minimum Standard Gas Code (International Fuel Gas Code with Georgia State Amendments).
 - 1.7.1.3.4 Georgia State Minimum Standard Plumbing Code (International Plumbing Code with Georgia State Amendments).
 - 1.7.1.3.5 Georgia State Minimum Standard Electric Code (National Electrical Code with Georgia State Amendments).
 - 1.7.1.3.6 Georgia State Minimum Standard Energy Code (International Energy Conservation Code with Georgia State Supplements and Amendments).
 - 1.7.1.3.7 Georgia State Minimum Standard Fire Prevention Code (International Fire Code with Georgia State Amendments).

1.7.1.4 Fire, Life Safety, and Accessibility Codes. The following codes, in addition to any other applicable codes, rules and regulations, in the versions approved by the Georgia State Fire Marshal/Fire Safety Commissioner and Department of Human Resources, shall be used.

- 1.7.1.4.1 Georgia State Life Safety Code (NFPA 101)
- 1.7.1.4.2 State Accessibility Codes (See O.C.G.A. §30-3-3)
- 1.7.1.4.3 Rules and Regulations of the Georgia Safety Fire Commissioner (See O.C.G.A. §§ 25-2-4,12.)

1.7.1.5 Latest Edition. The latest edition approved by the implementing agency of the regulations, rules, and codes listed in Paragraphs 1.7.1.3 and 1.7.1.4 above, with all amendments as of the date of the opening of bids, shall govern the installation of all Work and is adopted and incorporated into the Contract Documents and made a part thereof by reference; provided, however, that the Drawings and Specifications shall be adhered to in all cases where they call for quality of materials, quality of workmanship, or quality of construction which is equal to or in excess of the quality required by the above stated codes; and provided further that there may be no variances from the Drawings and Specifications except to the extent that the said variances shall be necessary in order to comply with the above stated codes. It shall be the responsibility of the CM/GC to familiarize himself with the requirements of the above stated codes. If there are any express requirements in the Drawings or Specifications that are at variance to the above stated codes, all changes in the Work necessary to eliminate or add to the said requirements and make the Work conform to the above stated codes shall be completed as provided in the Contract for changes in the Work; provided that all such changes must be approved by Owner in writing prior to becoming effective.

1.7.1.6 Compliance with Federal and State Work Authorization and Immigration Laws.

- 1.7.1.6.1 E-Verify. The CM/GC 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 Section 7 (“Affidavit and Certificate of Compliance – Federal and State Work Authorization”). Such form shall be used to certify that the CM/GC is compliant with O.C.G.A. § 13-10-90, et seq., Georgia Department of Labor Rule 300-10-1-.01, and the U.S. Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, and that Contractor has, within the previous twelve (12) month period, conducted a verification, under the federal Employment Eligibility Verification (“EEV” or “E-Verify”) program, of the social security numbers, or other identifying information now or hereafter accepted by the E-Verify program, of all employees who will perform Work pursuant to this Contract to ensure that no unauthorized aliens will be employed. The CM/GC hereby verifies that it has, prior to executing this Contract, executed a notarized affidavit, the form of which is provided in Section 7, and submitted such affidavit to the Owner. (The CM/GC acknowledges that each entity acting as the CM/GC pursuant to this Contract must separately execute and submit such affidavit to the Owner.) The required certificates must be filed with the Owner and copies maintained by the CM/GC as of the beginning date of this Contract and each subcontract, Supplier contract, and consultant contract. Further, CM/GC agrees that it shall maintain compliance with such requirements, and ensure compliance by its Subcontractors, during the term of this Contract.

In the event the CM/GC employs or contracts with any Subcontractor(s) in connection with this Contract, the CM/GC agrees to secure from such Subcontractor(s) attestation of the Subcontractor’s compliance with O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 by the Subcontractor’s execution of the subcontractor affidavit, the form of which is included in Section 7, prior to the commencement of work by the Subcontractor, and such Subcontractor affidavit shall become part of the contractor/subcontractor agreement. Further, CM/GC agrees to provide completed copies of such Subcontractor affidavit to the Owner within five (5) Business Days from receipt from any Subcontractor.

Owner retains the right to inspect, or send a designee to inspect, and audit the Project Site and employment records of the CM/GC, 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 Labor. CM/GC and CM/GC's Subcontractors shall retain all documents and records of their respective verification process for a period of five (5) years following Final Completion.

CM/GC agrees that the employee-number category designated below is applicable to the CM/GC:

<i>Initials</i>	<i>Number of Employees</i>
_____	Over 500 employees
_____	100 to 499 employees
_____	11 to 99 employees

CM/GC hereby agrees that, in the event CM/GC employs or contracts with any Subcontractor(s) in connection with this Contract, the CM/GC will secure from the Subcontractor(s) such Subcontractor(s)' indication of the above employee-number category that is applicable to the Subcontractor.

1.7.2 Surveys, Permits, and Regulations. The Owner shall furnish all surveys unless otherwise specified. Permits and licenses of a temporary nature necessary for the prosecution of the Work shall be obtained and paid for by the CM/GC. Permits, licenses, and easements for permanent structures or permanent changes in existing facilities shall be obtained and paid for by the Owner unless otherwise specified. The CM/GC and its Subcontractors must pay any municipal or city occupational licenses, taxes, or fees, if any. The CM/GC shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on the conduct of the Work. If the CM/GC observes that the Drawings or Specifications are at variance with any such laws, ordinances, rules or regulations, he shall promptly notify the Owner in writing, and any necessary changes shall be adjusted as provided in the Contract for changes in the Work. If the CM/GC performs any Work knowing it to be contrary to such laws, ordinances, rules or regulations without such notice to the Owner, he shall bear all costs arising therefrom, including but not limited to the cost to bring such Work into compliance. Nothing in this paragraph shall be construed to impose design responsibility on the CM/GC except as noted in the Contract Documents.

1.7.3 Open Records Act. Owner and Design Professional and CM/GC acknowledge and agree that all records of the Project and the Work, including but not limited to records of Subcontractors, are subject to the Georgia Open Records Act, O.C.G.A. §50-18-70, et seq., with particular attention being called to O.C.G.A. §50-18-70(a) regarding the records of private persons, firms, corporations, or other private entity engaged in performance of services or functions on behalf of a public agency or public office.

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

1.7.5 [RESERVED]

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

1.7.7 Royalties and Patents. The CM/GC shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall indemnify and hold the Owner harmless from loss on account thereof.

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

1.7.9 Records, Reports Access, and Audits.

(1) Records:

- (a) CM/GC shall oversee the receipt of all materials, the use of all equipment, and the doing of all labor entering into the performance of the Work; shall retain all invoices, checks and other records showing billing and payment for materials, equipment and labor going into the performance of the Work; shall maintain books of account with respect to the performance of the Work; and shall require its Subcontractors, Trade Contractors, and Trade Suppliers to maintain similar records throughout the Project and for a period of five (5) years from the date of Final Completion. Furthermore, records that are the subject of audit findings shall be retained for three (3) years or until such audit findings have been resolved, whichever is later.
- (b) All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Contract shall be clearly identified and readily accessible.

(2) Reports and Information: Upon request, the CM/GC shall furnish to the Owner any and all statements, records, reports, data, and information related to matters covered by this Contract in the form requested by the Owner.

(3) Audits and Inspections: CM/GC and its Subcontractors, Trade Contractors, and Trade Suppliers shall, at reasonable times and upon request at any time during the progress of the Work or during the required record retention period, afford the Owner access to the Site and to the aforesaid records with respect to matters covered by this Contract, including but not limited to books and records of account, wherever located, as they relate to the Work and determination of the cost thereof for such examination and audit by Owner or by a designated representative of the Owner as Owner may elect. Such right of access, examination and audit includes but is not limited to the right to obtain access to and to examine and audit CM/GC's and each of its Subcontractor's, Trade Contactor's, or Trade Supplier's home office records relating to the Work. Owner may make copies of any records which Owner has the rights to access, examine, and audit. If the Owner so requests at any time subsequent to the execution of this Agreement, and within anytime until the records are turned over to the Owner, CM/GC shall allow an audit to be made by an independent certified public accountant, selected and hired by the Owner, of CM/GC's determinations of Actual Cost and Contingency Costs, with Owner to pay all reasonable costs related to completing such audit, including all fees charged by the accountant. If the audit results in a finding of improper payment by the Owner, the Owner shall provide documentation regarding the result of the audit, and CM/GC shall refund such improper payment to the Owner; provided that the CM/GC shall have sixty (60) days to dispute any evidence of overpayment. To the extent a dispute arises regarding the results of such audit, the parties shall use the dispute resolution proceedings described in Section 5 Part 2. The CM/GC shall in all agreements with Subcontractors, Trade Contractors, and Trade Suppliers include a provision that

the Owner shall have the same rights with respect to the Subcontractor, Trade Contractor, or Trade Supplier; provided that any Subcontractor, Trade Contractor, or Trade Supplier bidding a lump sum payment for its portion of the Work shall be excused from this audit requirement.

Notwithstanding anything to the contrary herein, this Section 1.7.9 and any other audit provision of this Contract shall not apply to cost items included or covered by any lump sum amounts, including without limitation, Overhead Costs, Construction Fee, and Preconstruction Fee.

1.7.10 Employment of Georgia Citizens and Use of Georgia Products and Georgia Forest Products. Given that the Work provided for in this Contract is to be performed in City of Milton, Georgia, it is the wish of the Owner that materials and equipment manufactured or produced in City of Milton and the State of Georgia shall be used in the Work and that City of Milton, Georgia citizens shall be employed in the Work at wages consistent with those being paid in the general area in which the Work is to be performed. This desire on the part of the Owner is not intended to restrict or limit competitive bidding nor to increase the Cost of the Work; nor shall the fulfillment of this desire be asserted by the CM/GC as an excuse for any noncompliance or omission to fulfill any obligation under the Contract. The parties hereby agree and acknowledge that given the population of the City of Milton, Georgia, significant participation of the type described in this Section may be difficult to achieve.

1.7.11 Interpretation of Contract Documents. The Contract Documents shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner. Each party has participated in negotiating and drafting this Contract, so if an ambiguity or a question of intent or interpretation arises, this Contract is to be construed as if the parties had drafted it jointly, as opposed to being construed against a party because it was responsible for drafting one or more provisions of this Contract.

1.7.12 Counterparts. This Contract may be executed in multiple counterparts each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. At least one (1) counterpart of this Contract shall be delivered to the Owner and one (1) counterpart to the CM/GC.

1.7.13 Forms and Specimens. The forms and specimens in Section 7 are incorporated by reference herein and shall be executed in substantial conformance with the Contract Documents.

1.7.14 Entire Contract. The Contract Documents referenced herein constitute the entire Contract between the Owner and the CM/GC and supersede all prior negotiations, representations, and agreements, either oral or in writing, between the parties with respect to the subject matter of this Contract. Except as set forth herein, no other promises, understandings, agreements, representations or warranties, oral or written, expressed or implied between the parties relating to the subject matter of this Contract not contained in this Contract or the Contract Documents shall be valid and binding. This Contract may not be changed, modified, or terminated, in whole or in part, nor any provision waived except by a duly authorized Change Order executed by each of the parties hereto.

1.7.15 Confidentiality.

1.7.15.1 CM/GC acknowledges that it may receive confidential information of the Owner, which shall be conspicuously marked as such, and that it will protect the confidentiality of any such confidential information and will require any of its Subcontractors, contractors, and/or staff to likewise protect such confidential information. The CM/GC agrees that confidential information it receives or such reports, information, opinions, or conclusions that CM/GC creates under this Contract shall not be made available to, or discussed with, any individual or organization, including the news media, without prior written approval of the Owner. CM/GC shall exercise reasonable precautions to prevent the unauthorized disclosure and use of Owner information whether specifically deemed confidential or not, provided that such precautions shall not prevent dissemination or communication of information if such dissemination or communication is made in the ordinary course of CM/GC's business or in furtherance of the Project.

1.7.15.2 CM/GC acknowledges that the Owner's disclosure of documentation is governed by Georgia's Open Record's Act, and CM/GC further acknowledges that, if CM/GC submits records containing trade secret information and if CM/GC wishes to keep such records confidential, CM/GC must submit and attach to such records an affidavit affirmatively declaring that specific information in the records constitutes trade secrets pursuant to Article 27 of Chapter 1 of Title 10, and the parties shall follow the requirements of O.C.G.A. § 50-18-72(a)(34) related thereto.

1.7.16 Licenses, Certifications and Permits. The CM/GC covenants and declares that it has obtained all diplomas, certificates, licenses, permits, or the like required by any and all national, state, regional, county, local boards, agencies, commissions, committees or other regulatory bodies in order to perform the Work contracted for under this Contract; provided that some permits or licenses related to the Project may be obtained as part of the Work and shall be obtained as required. All Work performed by CM/GC under this Contract shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals. The CM/GC shall furnish copies of all such permits, licenses, or approvals to the Owner within ten (10) days after issuance.

1.7.17 Key Personnel. All of the individuals identified in Exhibit “P” are necessary for the successful completion of the Work due to their unique expertise and depth and breadth of experience. There shall be no change in CM/GC’s Project Manager or members of the project team, as listed in Exhibit “P”, without written approval of the Owner. CM/GC recognizes that the composition of this team was instrumental in the Owner’s decision to award the Work to CM/GC and that compelling reasons for substituting these individuals must be demonstrated for the Owner’s consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this Section shall constitute a material breach of CM/GC’s obligations under this Contract and shall be grounds for termination; provided that Owner must provide CM/GC written notice of its assertion of such breach and provide CM/GC with fifteen (15) days to cure such breach. CM/GC shall not subcontract with any third party for the performance of any portion of the Work without the prior written consent of the Owner. CM/GC shall be solely responsible for any such Subcontractors in terms of performance and compensation.

1.7.18 Ownership of Work. All reports, designs, drawings, plans, specifications, schedules, work product, and other materials prepared or in the process of being prepared for the Work to be performed by the CM/GC (“materials”) shall be the property of the Owner, and the Owner shall be entitled to full access and copies of all such materials. Any and all Owner copyrightable subject matter in all materials is hereby assigned to the Owner, and the CM/GC agrees to execute any additional documents that may be necessary to evidence such assignment.

1.7.19 Meetings. The CM/GC is required to meet with the Owner’s personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of this Contract at no additional cost to the Owner. Meetings will occur as problems arise and will be coordinated by the Owner. When possible, the CM/GC will be given a minimum of three full working days notice of meeting date, time, and location; provided that meetings may be scheduled faster where necessary to remain on track regarding Project completion or where safety requires. Face-to-face meetings are desired. However, at the CM/GC’s option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings, two consecutive missed or rescheduled meetings, or to make a good faith effort to resolve problems, may result in termination of the Contract.

1.7.20 Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal law, the CM/GC agrees that, during performance of this Contract, CM/GC, for itself, its assignees and successors in interest, will not discriminate against any employee or applicant for employment, any Subcontractor, or any Supplier because of race, color, creed, national origin, gender, age or disability. In addition, CM/GC agrees to comply with all applicable implementing regulations and shall include the provisions of this Article 1.7.20 in every subcontract for services contemplated under this Contract.

1.7.21 Headings. All headings herein are intended for convenience and ease of reference purposes only and in no way define, limit, or describe the scope or intent thereof, or of this Contract, nor in any way affect this Contract.

1.7.22 No Third Party Rights. This Contract shall be exclusively for the benefit of the parties hereto and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action, or other right.

1.7.23 Successors and Assigns. The CM/GC and Owner each bind itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives with respect to all covenants, agreements, and obligations contained in the Contract Documents.

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SECTION 2 – PRECONSTRUCTION PHASE

PART 1 – PRECONSTRUCTION PHASE SERVICES

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

2.1.2 Construction Preparation Period

2.1.2.1 Requirement for Project Planning. The performance of Basic Services commences immediately upon the Effective Date of the Contract. No physical work, however, will begin on the construction site until a Proceed Order is issued by the Owner. The Contract assumes that a Proceed Order will be issued in conjunction with each Component Change Order. Failure of the CM/GC to provide the necessary documentation for the issuance of a Proceed Order shall not entitle the CM/GC to any extension of time.

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

2.1.2.2.1 At contract execution and prior to commencement of Preconstruction Services:

- (a) Proof of Insurance (except Builder's Risk) as required by the Contract Documents

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

- (a) The Component Change Order executed by CM/GC and Design Professional
- (b) Payment and Performance Bonds in at least 100% of the amount covered by the Component Change Order, and in accordance with the Contract Documents
- (c) Proof of Insurance [specifically Builder's Risk Coverage]
- (d) Construction Management Plan as required in Paragraph 2.1.3 including Security Program and Safety Program
- (e) Documentation necessary for receiving all land disturbance permits
- (f) CM/GC's Quality Control Program as required in Paragraph 2.1.4
- (g) Construction Progress Schedule as required by Paragraph 2.1.5 incorporating schedule of Component Change Order(s)
- (h) CM/GC's Staffing Plan, Wage and Salary Schedule
- (i) List of intended Trade Contractors, Subcontractors and Trade Suppliers
- (j) Submittal and Shop Drawing Schedule
- (k) CM/GC's Certificate of Subcontractors' Workers' Compensation and Employer's Liability Insurance as required in Paragraphs 1.5.3.3.1 and 1.5.3.3.2
- (l) Subcontractors' Affidavit for Georgia Security and Immigration Compliance

2.1.2.2.3 Prior to acceptance of all subsequent Component Change Orders and Guaranteed Maximum Price Change Order, CM/GC shall supplement or amend all documents submitted under Paragraph 2.1.2.2.2.

2.1.2.3 Endorsement to Payment and Performance Bonds

2.1.2.3.1 Component Change Order. In the case of the initial Component Change Order, payment and performance bonds furnished by the CM/GC in conformance with and in the form set forth in the Contract Documents designating the CM/GC as the principal obligor and the Owner as the obligee, in an amount of the Change Order Sum covering the Work under that Component Change Order and, in the case of subsequent Component Change Orders, an endorsement to such bonds increasing the aggregate amount of the bonds to an amount equal to the aggregate of the Change Order Sums of all Component Change Orders to this Contract. See also Paragraph

1.8.8. If in connection with a Component Change Order, the CM/GC has furnished payment and performance bonds in the amount approved by the Owner as the reasonably expected aggregate amount of the Change Order Sums of that and any prior Component Change Order and all subsequent Component Change Orders and covering all such Work, then upon entry of a subsequent Component Change Order, no additional endorsement to payment or performance bonds shall be required provided that the aggregate amount of the Change Order Sums of all Component Change Orders does not exceed the penal sum of each bond. However, Owner may require written confirmation from the surety that the outstanding bonds cover the Work under a subsequent Component Change Order. No election or failure of the Owner to request such confirmation shall affect the rights of Owner or others under the existing bonds covering such Work.

2.1.2.3.1.1 As an alternative, the initial payment and performance bonds may be obtained with the penal amount set as the sum of the total estimated GMP at the time of the initial Component Change Order.

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

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

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

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

2.1.3.3 Certificate of Competency - Fire Protection Trade Contractor. If a fire protection sprinkler system is required, the CM/GC shall submit to the Owner and Design Professional the certificate of competency of the fire protection sprinkler system Trade Contractor as required by State of Georgia Fire Protection and Safety Code. The certificate of competency shall be provided prior to any work being performed on the fire protection sprinkler system.

2.1.4 Quality Control Program.

2.1.4.1 Responsibility for Quality of Materials and Installation. CM/GC acknowledges that he has

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

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

2.1.5 Scheduling Requirements.

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

2.1.5.2 Construction Progress Schedule; Overall Project Schedule. The CM/GC shall submit for review by the Design Professional and approval by the Owner a Construction Progress Schedule based upon the Design Professional's Preliminary Design and Construction Schedule within sixty days after the Effective Date of the Contract. The Construction Progress Schedule shall be prepared using a CPM (Critical Path Method) process, utilizing a full-featured software package in a form satisfactory to the Design Professional and Owner, showing milestone dates for receipt and approval of Component Construction Documents and Contract Documents, design coordination meetings, submittal of Component Change Orders, submittal of the GMP Change Order, preparation and processing of shop drawings and samples, and delivery of materials or equipment requiring long lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, Material Completion and Final Completion. It should also include the dates for commencement and completion of the Work required by the Contract Documents, including coordination of mechanical, plumbing, and electrical disciplines, as well as coordination of the various subdivisions of the Work within the Contract. Milestones must be clearly indicated and sequentially organized to identify the critical path of the Project. The Construction Schedule will be developed to represent the CSI specification divisions. It shall have the minimum number of activities required to adequately represent to the Owner the complete scope of Work and define the Project's (and each Component's) critical path and associated activities. The format of the Construction Progress Schedule will have dependencies indicated on a monthly grid identifying milestone dates such as construction start, phase construction, structural top out, dry-in, rough-in completion, metal stud and drywall completion, equipment installation, systems operational, inspections for Material Completion, the Material Completion Date and Final Completion Date. The CM/GC shall submit, along with the Construction Progress Schedule, the Submittal Schedule for approval by the Design Professional, correlating the associated approval dates for the documents with the Construction Progress Schedule. Upon recommendation by the Design Professional and approval by the Owner, the Construction Progress Schedule shall become the Overall Project Schedule, which shall be utilized by the Design Professional, Owner and CM/GC. The CM/GC must provide the Design Professional and the Owner with monthly updates of the Overall Project Schedule indicating completed activities and any changes in sequencing or activity durations, including approved change orders. However, no changes in milestone dates are to be made without consent of the Owner and Design Professional which includes approved change orders.

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

2.1.6 CM/GC Design Coordination Activities.

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

2.1.6.2 Design Coordination Meetings and Review. Utilizing its own review and matters discussed at Design Coordination Meetings, CM/GC shall continuously review the Program and construction documents in accordance with the schedule as they are being prepared and are made available by the Design Professional until the Construction Document Change Order (100% documents) is approved (See also Paragraph 2.2.2.). The principle objectives of the construction document review process are the recommending of alternative solutions whenever such matters affect cost, construction feasibility or schedule without the CM/GC, however, assuming any of the Design Professional's responsibilities for design. The CM/GC should consider life-cycle costs, value engineering analyses and other studies to recommend changes or modifications thereof that will reduce the cost of the Project without reducing quality, or will expedite its completion, or that, in the judgment of the CM/GC, may otherwise be in the best interest of the Owner. As the Construction Documents progress to completion, the CM/GC is the principle Project Team member positioned to identify conflicts, omissions, or constructability issues in the documents.

2.1.6.3 Recommendations on Phasing of Components. CM/GC shall make recommendations to the Owner and to the Design Professional regarding the division of the Work in the design documents and revisions to facilitate the development of Components of the Work related to the Project, the selection and awarding of Trade Contracts, taking into consideration such factors as the estimated Cost of the Work, time of performance, the availability of labor, long lead-time items, overlapping trade jurisdictions, provisions for temporary facilities, and the reduction of areas of conflict and overlapping in the Work to be performed by CM/GC or by Trade Contractors.

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

2.1.7 Building Commissioning Services. The Owner may provide either through: (i) a separate contract, (ii) as an additional service of the Design Professional, or (iii) as a separate contract issued by the Owner, the Building Commissioning services involving the project's HVAC and exhaust systems, temperature control systems, fire detection and alarm systems, emergency power and lighting system, fire suppression system, security locks and security locking control systems, food service equipment (if applicable), and laundry equipment (if applicable). It is the intent of this Section that the Commissioning Authority engaged for this Project enforce the requirements mentioned herein and certify that the systems and equipment listed all function properly prior to Material Completion.

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

2.1.7.1.1 The Building Commissioning Plan shall include a summary of understanding of the design intent for each of the relevant building systems (including clean room systems and infrastructure, if applicable) and equipment. Each design intent summary shall establish critical performance criteria that indicate whether a system is properly functioning.

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

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

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

2.1.8 CM/GC Cost Responsibilities.

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

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

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

a. Schematic Design. Within twenty-five (25) calendar days after the Schematic Design documents have been prepared by the Project Design Professional and approved by Owner, CM/GC shall prepare for the review by the Project Design Professional and approval by the Owner of a more detailed construction cost estimate with supporting data. During the preparation of the Design Development documents, CM/GC shall update and refine this estimate at appropriate intervals agreed to by Owner, Design Professional, and CM/GC. If it is determined that the CMAR cannot do the Work required herein for a cost not to exceed the GMP Cost Limitation (or Total CMAR Contract Cost Limitation), then the

parties agree that the Owner may terminate this Contract immediately pursuant to Section 5.3.1.

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

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

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

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

2.1.8.3. Unit Prices.

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

2.1.8.3.2 During Construction. Upon request of the Owner, the CM/GC shall submit written proposals for Unit Prices to be applied in the event Change Order Work is authorized by the Owner using a unit price pricing methodology.

2.1.8.3.3 Calculation of Unit Prices. Unit Prices include all sums for payment, repayment, reimbursement, remittance, remuneration, compensation, profit, cost, overhead, expense, loss, expenditure, allowance, charge, demand, hire, wages, salary, tax, cash, assessment, price, money, bill, statement, dues, recovery, restitution, benefit, recoupment, exaction, or injury. Unit prices to cover the addition or reinstallation of stormwater management BMPs shall be calculated by type and linear foot. Unit Prices shall not include any delay costs, as such costs may be added as appropriate pursuant to Section 3, Part 5. The CM/GC shall certify that the Unit Prices submitted do not exceed current costs in the industry or trade for like services or materials.

2.1.9 Limitation of Scope. The CM/GC acknowledges and agrees that the Contract Documents are addressed to skilled tradesmen in the construction profession who shall be required to use their special skills and experience, through submittals and shop drawings, to translate the Design Professional's design intent as expressed in the Contract Documents into a completed structure. The Contract Documents shall specify when shop drawings or submittals require the seal of a specialty consultant. Nothing herein shall be deemed to permit the CM/GC to require of the Design Professional any services that the Owner is not authorized to require under the terms of the Design

Professional Contract. Nothing herein shall be deemed to impose upon the CM/GC any responsibilities to provide any services constituting the practice of architecture, engineering, or any licensed design profession except as may be required to complete the design intent as expressed by performance specifications requiring the seal of a specialty consultant. CM/GC shall exercise skill and judgment in the performance of its construction management services, but does not warrant or guarantee the advice or recommendations furnished with respect to design and does not control, warrant or guarantee any design services performed or furnished by the Design Professional.

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

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

2.1.12 Payment Bond for Preconstruction. Payment and performance bonds are only required for physical work at the project site. No payment or performance bonds shall be required for Preconstruction Services.

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PART 2 – CONSTRUCTION DOCUMENTS AND SITE PLAN

2.2.1 General Provisions Regarding Construction Documents.

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

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

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

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

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

2.2.1.6 Requests for Information (RFI). In the event the Construction Documents are not complete, definite, and clear to skilled tradesmen in the construction professions, or appear to have conflicting information, the CM/GC shall request the Design Professional in writing for additional instructions and shall furnish the Owner (and the Program Manager, if engaged) a copy of the RFI. With reasonable promptness, but not more than five (5) days thereafter, the Design Professional shall furnish complete, definite, and clear instructions in writing, or by means of drawings, or both. In the event such additional instructions are given orally for expediency, they shall be confirmed in writing or by drawings or both within five days following the oral instructions. Any such additional instructions shall be consistent with the Contract Documents and reasonably inferable therefrom. The Work shall be executed in conformity with the aforesaid instructions. The Design Professional shall furnish the Owner copies of all additional instructions issued to the CM/GC. If, because of events beyond its reasonable control, the Design Professional is not able to meet the specified time period, then it may ask for additional time from the Owner, provided that Owner's approval of such extension is not guaranteed, though it shall also not be unreasonably withheld.

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

created had read originally as it reads subsequent to the (1) Instructions, (2) Bulletin, or (3) Change Order by which it was created.

2.2.1.8 Intellectual Property Rights in Construction Documents, Drawings, and Models. The Drawings, Specifications and other documents prepared by the Design Professional pursuant to this Contract (including, without limitation, the Construction Documents), are the property of the Owner, whether or not the Project for which they are made commences or completes construction. Neither the CM/GC nor any Subcontractor or material or equipment Supplier shall own or claim a copyright in such Drawings, Specifications, and other similar or related documents; Owner shall retain all common law, statutory, and other intellectual property rights with respect thereto. The CM/GC must deliver remaining copies of such documents to the Owner upon request or upon completion of the Work, except that the CM/GC may keep one (1) copy of such documents for its files. The CM/GC shall only use such Drawings, Specifications and other documents for this Project. Neither the CM/GC nor any Subcontractor or material or equipment Supplier may use such Drawings, Specifications, and other documents on other projects without the specific written consent of the Owner. All models are the property of the Owner.

2.2.2 Documents at the Project Site.

2.2.2.1 Drawings and Specifications at the Project Site. The CM/GC shall keep at the Site at least one (1) copy of the Contract Documents and Change Orders, all in good order and available to the Design Professional and to his representatives.

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

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

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

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

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

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

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

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

2.2.3 Completion of Construction Documents.

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

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

2.2.3.3 CM/GC's Final Construction Documents Coordination Review. Prior to its acceptance of the Construction Document Change Order, CM/GC shall promptly conduct a final review of the Construction Documents referenced therein for the purposes of recommending to the Owner and the Design Professional any changes or modifications thereof that will reduce the cost of the Project without reducing quality, or will expedite its completion, or that, in the judgment of the CM/GC, may otherwise be in the best interest of the Owner. However, the Owner shall not be required to accept any such recommendations. The CM/GC shall also give notice to the Owner and to the Design Professional of any errors, inconsistencies, or omissions (including non-conformance with applicable laws, statutes, building codes, rules and regulations) it may discover in the Construction Documents prior to acceptance of the proposed Construction Document Change Order. This review function being a part of the Basic Services, the CM/GC will receive no additional payments or compensation for its review and recommendations. After acceptance of the Construction Document Change Order, CM/GC shall be entitled to additional compensation pursuant to Section 3, Part 4 for changes in the work that result from coordination, errors or omissions in the documents, changes needed to the documents due to unforeseen conditions at the site, or changes to the documents required by governmental regulatory agencies. CM/GC shall not, however, be liable for any damages resulting from the failure of the Construction Documents to comply with said laws, statutes, building codes, rules, and regulations unless it recognizes same, or should have reasonably recognized same, and performs a construction activity knowing, or if with reasonable diligence CMAR should know, it is contrary to same without providing advance written notice of same to the Owner. CM/GC shall also give notice of any inconsistencies, conflicts, or omissions between said Construction Documents and either (i) the Program and revisions thereto by prior Construction Document Change Orders or (ii) the assumptions set forth in the GMP Change Order that were relied upon by CM/GC in the preparation of the GMP Change Order, including observed inconsistencies, conflicts or omissions between the Construction Documents and any proposed design development of such assumptions.

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

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

2.2.3.5 CM/GC's Option for Redesign of Construction Documents. Prior to its acceptance of any proposed Construction Document Change Order adding Construction Documents to this Contract, if the CM/GC gives notice to the Owner that either (i) the lowest responsible proposal received by the CM/GC from a Trade Contractor to perform the Work described in the Construction Documents exceeds the CM/GC's budget for that Work as set forth in the Construction Budget, or (ii) that no responsible proposal for that Work has been received, then the CM/GC may request a redesign of the Construction Documents pertaining to said Work so long as the redesign is a functional and quality equivalent of the Work forming the basis of the GMP Change Order. The approval of such request for redesign shall be within Owner's sole and absolute discretion. The architectural fees and costs for a requested redesign that is approved by Owner shall be paid by the Owner to the Design Professional and such payment shall be deducted from the Construction Contingency Component of the GMP Change Order. The deduction shall not alter the obligation of CM/GC under the GMP Change Order to perform the construction of the Project within the Guaranteed Maximum Price and any delays resulting therefrom shall not be a basis for an extension of the Date for Material Completion. If such redesign has been made once at the request of the CM/GC pursuant to this Paragraph, the CM/GC shall not request any further redesign with respect to the Construction Documents covered by that proposed Construction Document Change Order.

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

2.2.4 Special Situation – New Sole Source Designation.

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

2.2.4.2 Sole Source as Grounds for Rejection of Construction Document Change Order. If, after the acceptance of the GMP Change Order, a proposed Construction Document Change Order is submitted to CM/GC for the purposes of adding Construction Documents to this Contract necessitating a revision to the Program in accordance with the assumptions stated in the GMP Change Order, and said Construction Documents designate a "Sole Source" (as defined herein) from which CM/GC is required to procure goods or services necessary to perform the Work, which sole source has not been designated previously, CM/GC shall, in addition to the grounds enumerated above, be entitled to reject the proposed Construction Document Change Order if (1) the designated Sole Source is a Trade Contractor and it refuses to provide to CM/GC performance and payment bonds for the Trade Contract Sum in substantially the form set forth in Section 7; or (2) the designated Sole Source is a Trade Contractor or Supplier and it refuses to provide CM/GC

warranties required under this Contract, including any warranty required by Construction Documents referenced in the proposed Construction Document Change Order. In such event, CM/GC shall give written notice to the Owner rejecting the proposed Construction Document Change Order and shall accompany said written notice with a proposal from CM/GC for changes or modifications in the referenced Construction Documents so as to eliminate the Sole Source designation but to achieve goods or services equal in quality or function. The Owner shall then require the Design Professional to revise the subject Construction Documents so as to eliminate the designation of the Sole Source by incorporation of CM/GC's proposal or otherwise. Upon revision of the Construction Documents by the Design Professional and approval thereof by the Owner, the Owner shall again submit to the CM/GC a proposed Construction Document Change Order for the purpose of adding the revised Construction Documents to this Contract. CM/GC shall be entitled to a reasonable extension of the Date of Final Completion but not an increase in any Component of the Guaranteed Maximum Price by reason of its rejection of a proposed Construction Document Change Order under this Paragraph or by reason of any redesign by the Design Professional required under this Paragraph.

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

2.2.4.4 Meaning of Sole Source. As used in this Article 2.2.4, "*Sole Source*" means a Trade Contractor or Supplier specified by name in Construction Documents as the exclusive source from which conforming goods or services may be obtained. Designation of goods or services by reference to a named source accompanied by the qualification "*or equal*" or similar language is not a designation of a Sole Source as that term is defined herein.

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

2.2.5.1 Submittal Schedule. Within sixty days after the Effective Date of the Contract, the CM/GC shall prepare and submit a Submittal and Shop Drawing Schedule for review and approval of the Design Professional. In establishing the Submittal Schedule the CM/GC shall take into account large submittal documents that will require longer review times, e.g., submittals with over fifty sheets of drawings. The Design Professional's approval shall be based on conformance of

the Submittal and Shop Drawing Schedule with the Overall Project Schedule, subject to change from time to time in accordance with the progress of the Work.

2.2.5.2 Submission and Approval. The CM/GC's Submittals must comply with the Contract Documents. The CM/GC shall review and approve all Submittals prior to submission. The Contract Documents shall specify when shop drawings or submittals require the seal of a specialty consultant. The CM/GC shall submit copies of Submittals as required by the Contract Documents for the Work of the various trades. The Design Professional shall review, approve, or take other appropriate action with respect to shop drawings, samples, or other submissions of the CM/GC, including, but not limited to, confirming conformance with the design concept of the Project and with the Contract Documents. The Design Professional shall respond to and return said items to the CM/GC within fourteen calendar days from receipt provided that the Submittals are submitted by the CM/GC in accordance with the required Submittal schedule. The Design Professional shall review and give comment or approval to Submittal schedule within fourteen calendar days from receipt. Large submittal documents may require longer review times, e.g., submittals with over fifty sheets of drawings. If, because of events beyond its reasonable control, the Design Professional is not able to meet the specified time period, then it is entitled to ask for additional time from the Owner. The CM/GC shall make all corrections required by the Design Professional and furnish such corrected copies as may be needed. If the CM/GC believes that any corrections required by the Design Professional constitute a change to the contract, the CM/GC shall immediately notify the Design Professional and Owner and request instructions. By forwarding the approved Submittals to the Design Professional, the CM/GC represents that the CM/GC has determined and verified materials, field measurements, and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents. The Design Professional's approval of Submittals shall not relieve the CM/GC from the responsibility for errors of any sort in Submittals or schedules. The CM/GC shall perform no portion of the Work for which the Contract Documents require Submittals until the Design Professional has approved the respective Submittal. The CM/GC shall maintain at the Site one copy

of all approved Submittals.

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

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

2.2.7 Site Plan.

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

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

2.2.7.3 Installation, Inspection, and Maintenance. The CM/GC is responsible for installation and maintenance of the BMPs as a part of the Work. The CM/GC 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.

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

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**SECTION 3 – CONSTRUCTION PHASE
PART 1 – CONSTRUCTION SERVICES**

3.1.1 Basic Construction Services.

3.1.1.1 Requirement to Commence Work. The CM/GC shall under all circumstances commence Work under a Component Change Order or GMP Change Order, as the case may be, no later than ten (10) days after the Proceed Order Date of a Proceed Order issued subsequent to a Component Change Order or GMP Change Order.

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

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

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

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

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

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

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

3.1.1.6 Superintendence and Supervision by CM/GC.

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

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

3.1.1.6.3 Replacement Project Superintendent. If the CM/GC terminates the Project Superintendent or, if the CM/GC, for any reason, engages a Project Superintendent different from the one originally assigned to the Project, CM/GC must ensure that the replacement Project Superintendent has

similar qualifications and experience as the originally identified Project Superintendent. Furthermore, the CM/GC must obtain the Owner's prior written approval before engaging a permanent replacement Project Superintendent.

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

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

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

3.1.2 Meetings and Schedule Updates.

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

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

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

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

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

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

3.1.2.2.5 Status. The status of construction and completion.

3.1.2.3 Joint Development of Procedures. CM/GC shall develop jointly with the Design Professional and Owner procedures for the following items:

3.1.2.3.1 Routing. Routing of correspondence;

3.1.2.3.2 Progress Reports. Progress reports;

3.1.2.3.3 Cost Control. Cost control and reporting;

3.1.2.3.4 Lines of Authority. Lines of authority and personnel assignments of CM/GC's organization;

3.1.2.3.5 Field Construction Procedures. Field construction procedures, including, without limitation, safety, construction means and methods, logistics, and handling of material and equipment at the Site;

3.1.2.3.6 Inventory Control. Inventory control and security;

3.1.2.3.7 Accounting. Accounting and auditing;

3.1.2.3.8 Quality Control. Quality control of materials and the Work;

3.1.2.3.9 Other. Such other procedures as may be reasonably required by the Owner.

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

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

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

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

3.1.3 Construction Budget.

3.1.3.1 Provide Budget. Prior to the commencement of the Work under a Component Change Order and the GMP Change Order, the CM/GC shall provide or update the Construction Budget to the Owner and Design Professional, using the format provided in Exhibit C attached hereto and incorporated herein by reference and including therein, as a line item, the estimated cost for each discrete cost of the Work within the Change Order Sum or the Guaranteed Maximum Price, as the case may be. The CM/GC shall revise and refine the Construction Budget at appropriate intervals as required by the conditions of the Work and present the revisions to the Owner. As the projected cost of the Work becomes more determinable, the CM/GC shall incorporate approved changes as they occur, shall develop cash flow reports and forecasts, shall identify variances between actual and budgeted costs and shall advise the Owner and Design Professional promptly whenever projected costs exceed or may exceed the budgeted cost. The Construction Budget, as revised thereafter, shall be regularly updated and provided by the CM/GC to the Owner and Design Professional for the purpose of permitting the Owner to monitor the progress of the Work and to establish the basis on which Claims or requests by the CM/GC, or other matters, may be evaluated.

3.1.3.2 Cost Control System.

3.1.3.2.1 Develop System. The CM/GC shall develop a system of cost control for the Work, including but not limited to regular monitoring of Actual Costs for activities in progress and estimates for uncompleted tasks and proposed changes.

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

3.1.3.3 Cost Accounting Records. The CM/GC shall maintain cost accounting records on items of Actual Cost and Construction Contingency Costs, including but not limited to authorized Work performed under Unit Prices, Actual

Costs and Construction Contingency Costs for labor and materials, and other basis for requiring accounting records. The CM/GC shall maintain at the Project Site accounting records for Trade Contracts, this Contract, and other Contracts related to the Project.

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

3.1.4 Coordination of the Work.

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

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

3.1.4.3 Quality Control. CM/GC shall review the Work of Trade Contractors and Suppliers for defects and deficiencies. Further, CM/GC shall develop and implement a system, including appropriate quality control documentation, for ensuring that all such defects and deficiencies are corrected.

3.1.4.4 Procedures for Change Orders. CM/GC shall coordinate and develop for Trade Contractors and Subcontractors procedures for (i) preparation, review, and processing of Change Orders; (ii) recommending necessary or desirable changes to the Owner and the Design Professional; (iv) reviewing requests for changes by the Owner, Trade Contractors, or Suppliers; (iv) submitting recommendations to the Owner and the Design Professional with respect to proposed Change Orders; and (v) implementing Change Orders as approved by the Owner.

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

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

3.1.6 Duty to Commence.

3.1.6.1 Time for Commencement. Within ten (10) days after the Proceed Order Date, the CM/GC shall commence to procure such services, labor, and materials necessary to perform the Work described in any approved Component Change Order or the GMC Change Order, but only to the extent Construction Documents for said Work or affecting said Work have been approved by Owner.

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

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

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

3.1.6.5 Responsibility for Completion. CM/GC shall complete the Work under Component Change Orders and the GMP Change Order and shall achieve Final Completion of the Project not later than thirty (30) days after the Material Completion Date.

3.1.7 Notice of Commencement. The CM/GC shall, in accordance with Georgia law, record and post a Notice of Commencement for the construction portion of the Work, and shall promptly deliver a stamped-recorded copy of such Notice of Commencement to the Design Professional. (See O.C.G.A. § 36-91-92.)

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

3.1.9 Rain Water, Surface Water, and Back-up. The CM/GC shall protect all excavations and trenches, from rainwater, surface water, and back up of drains and sewers. The CM/GC shall furnish all labor, pumps, shoring, enclosures, and equipment necessary to protect and to keep the Work free of water.

3.1.10 Dust Control. CM/GC shall provide and include in the Cost of the Work dust-proof enclosures or partitions for protection wherever dusty or dirty Work is performed, and CM/GC shall provide dampening of debris to avoid dusting when removed.

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

3.1.12 Space Conditions. All pipes passing through floors, walls, and ceilings shall be installed with sufficient space between them to permit installation of pipe insulation and floor, wall, and ceiling plates without cutting of insulation or plates. Roughed-in dimensions shall be prepared by the CM/GC to accomplish this requirement. The CM/GC shall locate all equipment that must be serviced, operated, or maintained in fully accessible positions. This provision includes but is not limited to valves, traps, cleanouts, motors, controllers, switchgear, drain points, filter, access doors, and fire dampers. If spaces, dimensions, or other design conditions do not permit compliance with the present article, the CM/GC shall file a request in writing with the Design Professional for additional instructions, furnishing a copy to the Owner.

3.1.13 Cleaning.

3.1.13.1 During Construction. At all times, the CM/GC shall keep the premises free from accumulations of waste material or rubbish caused by his employees, Trade Contractors, or Work. Periodically during the course of the Work he shall remove all his rubbish, tools, scaffolding, and surplus materials from and about the Work and Site and shall leave his Work and the Site "broom-clean" or its equivalent, unless more exactly specified. Prior to Final Completion

by a Trade Contractor of any Trade Contract, CM/GC shall require the Trade Contractor to remove from the Work and Site all temporary systems, tools, equipment, machinery, and surplus materials not required for the continued performance of any Work under the Trade Contract or this Contract. In case of dispute, after 48 hours written notice to CM/GC, the Owner may remove the rubbish and charge the cost to the CM/GC.

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

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

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

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PART 2 – COMPONENT CHANGE ORDERS

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

3.2.2 Component Change Order Proposal.

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

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

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

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

3.2.3 Component Change Order Sum.

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

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

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

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

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

3.2.3.2 Lump Sum Amount. If CM/GC proposes to perform Work with its own forces, and the Owner approves, the lump sum amount shall be the Change Order Sum, and the Change Order Sum proposed shall not include, as additions, any estimated cost, contingency, overhead, scope of Work or CM/GC Fee components in the same manner as set forth in Article 3.7.8.

3.2.3.3 Mobilization Costs.

3.2.3.3.1 Intentionally Omitted.

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

3.2.4 Unacceptable Proposals. If, prior to its acceptance of a proposed Component Change Order, the CM/GC shall give notice to the Owner that the lowest responsible proposal received by the CM/GC from a Trade Contractor to perform the Work described in the proposed Change Order exceeds the CM/GC's Construction Cost Estimate for that Work, or that no responsible proposal for that Work has been received, then the CM/GC may propose to either (1) request a redesign of Construction Document governing the Component (so long as the redesign is a functional and quality equivalent); or (2) request that the CM/GC perform the Work with its own forces for the lump sum amount stated in the CM/GC's Construction Cost Estimate, which shall be the lump sum Change Order Sum. Any design fees and costs for a requested redesign approved by Owner shall be paid by CM/GC to the Design Professional through the Owner. The Owner, in its sole and absolute discretion, may reject either or both proposals made by CM/GC.

3.2.5 Time for Review. The Owner shall have seven (7) days following its receipt of the CM/GC's proposed Component Change Order under this Article to accept or reject same. Otherwise, CM/GC shall be entitled to an extension of time equal to the delay of Owner in accepting or rejecting same.

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

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

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

3.2.9 Owner's Liability.

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

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

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

3.2.11 Effect of GMP Change Order. At the time CM/GC submits its GMP Change Order proposal under Article 3.3.1, CM/GC shall incorporate into the Estimated Cost, Construction Contingency, and Fee components of the proposed Guaranteed Maximum Price the corresponding components or lump sum amounts of all Change Order Sums stated in all Component Change Orders accepted as of that date by the Owner. The Owner shall receive a credit for payments it has made under all Component Change Orders after approval of the GMP Change Order.

3.2.12 Cumulative Effect of Component Change Orders. Estimated Cost and Contingency Cost components of the Change Order Sums of Component Changes Orders shall be cumulative so that the aggregate of all outstanding Estimated Cost and Contingency Cost components of all Component Change Orders shall be available for payment to CM/GC at any time.

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

3.2.13.1 Payment and Performance Bonds.

3.2.13.1.1 Component Change Order.

(a) In the case of the initial Component Change Order, CM/GC shall provide payment and performance bonds in conformance with and in the form set forth in the Contract Documents designating the CM/GC as the principal obligor and the Owner as the obligee, in an amount of the Change Order Sum covering the Work under that Component Change Order and, in the case of subsequent Component Change Orders, an endorsement to such bonds increasing the aggregate amount of the bonds to an amount equal to the aggregate of the Change Order Sums of all Component Change Orders to this Contract. See also Article 1.5.1. If, in connection with a Component Change Order, the CM/GC has furnished payment and performance bonds in the amount approved by the Owner as the reasonably expected aggregate amount of the Change Order Sums of that and any prior Component Change Order and all subsequent Component Change Orders and covering all such Work, then upon entry of a subsequent Component Change Order, no additional endorsement to payment or performance bonds shall be required, provided that the aggregate amount of the Change Order Sums of all Component Change Orders does not exceed the penal sum of each bond. However, Owner may require written confirmation from the surety that the outstanding bonds cover the Work under a subsequent Component Change Order. No election or failure of the Owner to request such confirmation shall affect the rights of Owner or others under the existing bonds covering such Work.

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

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

3.2.13.2 Certificates of Insurance. CM/GC shall provide to Owner all certificates of insurance required under of this Contract, including those required under Contract Documents.

3.2.13.3 Construction Progress Schedule. CM/GC shall complete and provide to Owner for approval a Construction Progress Schedule.

3.2.13.4 Construction Budget. CM/GC shall complete and provide to Owner for approval a Construction Budget.

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

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PART 3 – GMP CHANGE ORDER

3.3.1 Guaranteed Maximum Price.

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

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

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

(a) *Estimated costs to complete the Work.* The proposed GMP Change Order shall include separately identified dollar amounts, stated as fixed sums, for the costs as estimated by the CM/GC for the complete construction of the Project, which amount shall include all Trade Contract and Subcontract Sums, costs of materials, and any Component Change Order Sums;

(b) *Construction Contingency.* The proposed GMP Change Order shall include, as a separately identified item, a Construction Contingency sum in an initial amount (subject to increase or decrease) against which CM/GC can draw at its election for the purposes set forth in Section 4 Part 4. The initial Construction Contingency sum shall include the contingency amounts stated in all accepted Component Change Orders.

(c) *CM/GC's Fee.* The proposed GMP Change Order shall include, as a separately identified item, the total Fee for CM/GC's performance of the Work. The Fee shall be stated as a lump sum amount and shall be not more than the amount shown in Paragraph 5 of the Contract (inclusive of Preconstruction Fee and Construction Fee).

(d) *CM/GC's Overhead Costs and Expenses.* The proposed GMP Change Order shall include, as a separately identified item, a lump sum fixed amount for CM/GC's Overhead Costs and Expenses (Preconstruction and Construction) for performance of the Work.

(e) *Credit for Payments.* The Owner shall receive a credit for all payments already made under the Contract Documents, as against the CM/GC Fee and the cost of Basic Services and the Work.

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

(a) A list of the Drawings and Specifications, including all Addenda and Bulletins thereto, including without limitation the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.

(b) All estimates, noting whether they cover furnishing and delivery, or furnishing, delivery, and installation. The CM/GC's Fee shall not be reduced because the Actual Cost of the estimated item is less than the estimate and shall not be increased because the Actual Cost of the estimated item is greater than the estimate.

(c) A listing of any trade, Work categories, or other items that are not included in the Guaranteed

Maximum Price.

(d) A Construction Documents Schedule setting forth the dates assumed by CM/GC for the Design Professional's completion of Construction Documents necessary to effect the Program to satisfy Subparagraph 3.3.1.2.2(l) below that have not been completed and approved by Owner, to which schedule the Design Professional shall have agreed.

(e) A Shop Drawing Approval Schedule setting forth the schedule assumed by CM/GC for the Design Professional's response to Shop Drawings, submitted by CM/GC, to which schedule the Design Professional shall have agreed.

(f) A Construction Progress Schedule prepared in accordance with this Contract.

(g) A Construction Budget prepared in accordance with this Contract.

(h) A Component Schedule showing any Components of the Project that the CM/GC expects the Design Professional to segregate.

(i) The Design Professional's concurrence with the Construction Documents Schedule, Shop Drawing Approval Schedule, and the Component Schedule referenced above.

(j) A staffing plan along with a wage and salary schedule for CM/GC's staffing of the Project during the course of the Work, for which CM/GC proposes that the Owner reimburse CM/GC Actual Costs under this Contract.

(k) A proposed budget for CM/GC's estimated Actual Cost for CM/GC's on-Site offices and for other temporary structures and equipment and a proposed plan for acquisition of such items.

(l) A list of the clarifications and assumptions made by CM/GC in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.

(m) The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items, along with the CM/GC's Fee, that compose the Guaranteed Maximum Price.

(n) The Material Completion Date and Final Completion Date upon which the proposed Guaranteed Maximum Price is based.

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

3.3.2 Submittal of GMP Change Order.

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

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

basis for a change therein or a modification to this Contract.

3.3.3 Acceptance or Rejection of GMP Change Order.

3.3.3.1 Time for Acceptance or Rejection. The Owner shall have thirty (30) Business Days from the receipt of CM/GC's proposed GMP Change Order to accept or reject same.

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

3.3.3.3 Rejection of GMP Proposal. If the Owner rejects the CM/GC's proposed GMP Change Order, CM/GC may, but shall not be obligated to, revise and resubmit same. In the event no GMP Change Order can be agreed upon, CM/GC shall continue its performance under any Component Change Orders then outstanding and with the performance of any other services required under this Contract until such time that a GMP Change Order is approved or either party elects to terminate this Contract.

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

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

3.3.6 Replacement of GMP with Lump Sum Price.

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

3.3.6.2 Effect of Lump Sum Price Change Order. The Lump Sum Price shall become the Contract Sum for full and Final Completion of the Project in accordance with the Contract Documents. The CM/GC's Fee and the Construction Contingency shall be eliminated from the Construction Budget and, to the extent they have been paid, shall be included in the Lump Sum Fee. Unpaid amounts from these GMP budget categories shall be retained by the Owner, provided however, that CM/GC may retain within the Lump Sum Price the reasonable CM/GC's Fee to be earned through completion of the Project. Within 10 days of the execution of the Lump Sum Price Change Order, CM/GC shall present for the approval of the Design Professional and Owner a schedule of values for the periodic payment of the remaining contract balance, which approval shall not be unreasonably withheld.

3.3.6.3 Periodic Payments of the Lump Sum Price. In the event the GMP is replaced with a Lump Sum Price to be paid in periodic payments, the cost accounting and payment provisions contained in this agreement shall be superseded and modified to the extent of the following:

- (a) *Periodical Estimates and Receipts.*—The CM/GC shall submit to the Design Professional and in accordance with a form to be supplied by the Owner (specimen of which will be supplied upon request) an application (sometimes herein designated "periodical estimate") for each payment, and, if requested by the Owner or Design Professional, receipts or other vouchers showing CM/GC's

payments for materials and labor, including payments to Trade Contractors, Suppliers, and Subcontractors.

(b) *Initial Breakdown and Periodical Payments.*—If payments are made on valuation of Work done, such application shall be submitted at least thirty (30) days before each payment falls due. Before the first application, the CM/GC shall submit to the Design Professional a schedule of values of the various parts of the Work, including quantities, aggregating the total sum of the contract, divided in such manner as to facilitate payments to Trade Contractors, Suppliers, and Subcontractors, on a form to be furnished by the Owner with a complete breakdown of the Lump Sum Price so arranged and so itemized as to meet the approval of the Design Professional and, if requested, supported by such evidence as to its correctness as the Design Professional may direct. The schedule, designated herein the "initial breakdown" (specimen of which will be supplied on request), when approved by the Design Professional, shall be used as a basis for certificates of payment unless it be found to be in error. In applying for payments, the CM/GC shall submit a statement based upon this schedule on the periodical estimate form and, if requested by the Design Professional or Owner, said statement shall be itemized in such form and supported by such evidence as the Design Professional or Owner may direct, showing the CM/GC's right to the payment claimed on the periodical estimate.

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

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

(e) *Compliance with O.C.G.A. § 13-10-80.*— Notwithstanding any provisions to the contrary, the parties shall comply with the applicable requirements of O.C.G.A. § 13-10-80 in processing payments.

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

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PART 4 – CHANGES TO THE WORK

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

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

3.4.3 Changes Forbidden without Consent of Owner. Neither the Design Professional nor the CM/GC shall make any change whatsoever in the Work without an approved Change Order. In the absence of an approved Change Order, the CM/GC shall have no Claim for payment, repayment, reimbursement, remittance, remuneration, compensation, profit, cost, overhead, expense, loss, expenditure, allowance, charge, demand, hire, wages, salary, tax, cash, assessment, price, money, bill, statement, dues, recovery, restitution, benefit, recoupment, exaction, injury, damages, or time based upon or resulting from any change. The provisions of this Article do not apply to emergencies as described in Article 1.4.4; provided that any additional payment for such emergency changes shall be negotiated in good faith and agreed upon in writing by the parties if such emergency resulted from circumstances beyond CM/GC's control.

3.4.4 Form and Execution of Change Orders.

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

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

3.4.4.3 Disagreement between Design Professional and CM/GC.

3.4.4.3.1 As to GMP and Fees. Should the Design Professional disagree with the CM/GC as to the amount of the adjustment to the Change Order Sum and such disagreement is not resolved between them within seven (7) days, the Owner, if it desires the Change Order Work to proceed, may direct a Change Order for Force Account.

3.4.4.3.2 As to Contract Time. Should the Design Professional disagree with the CM/GC as to the amount of the adjustment to the Contract Time and such disagreement not be resolved between them within seven (7) days, the dispute shall be resolved by the Owner as set forth in Section 5 Part 2.

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

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

3.4.4.4.1 For Lump Sum Change Order: The payment and extension of time (if any) provided by this Change Order constitutes compensation in full to the CM/GC and its Subcontractors and Suppliers for all costs and markups directly and indirectly attributable to the Change Order herein, for all delays related thereto and for performance of changes within the time stated.

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

3.4.4.4.3 For All Change Orders: Any changes or reservations by the CM/GC to the standard representations and releases contained in a Change Order (examples of which are included in Exhibits G through I attached hereto), or refusal of the CM/GC to perform an executed Change Order, shall be a material breach of this Contract that may be sufficient cause to issue a declaration of default.

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

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

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

3.4.7.1 Lump Sum. The Change Order cost is determined by mutual agreement as a lump sum amount changing the Contract Sum allowed for completion of the Work. The Change Order shall be substantiated by documentation itemizing the estimated quantities and costs of all labor, materials and equipment required as well as any mark-up used. The price change shall include the cost percent allowed for the CM/GC's, Subcontractor's and second tier subcontractor's overhead and profit as allowable (See Paragraph 3.4.8).

3.4.7.2 Unit Price Work. The Change Order cost is calculated by using Unit Prices and calculating the number of net units of Work in each part of the Work that is changed, either as the Work progresses or before Work on the change commences, and by then multiplying the calculated number of units by the applicable Unit Price set forth in the Contract, or by a mutually agreed Unit Price if none was provided in the Contract.

No additional percentage markup for overhead or profit shall be added to the Unit Prices as this markup is included within the Unit Prices.

3.4.7.3 Force Account. The Change Order cost is accomplished by Force Account in the event the CM/GC and Design Professional cannot agree on the cost of the Change Order or the cost cannot be reasonably determined prior to beginning the Work. A form of the Change order for Force Account or Indeterminate Units is attached hereto as Exhibit I and incorporated herein by reference.

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

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

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

3.4.7.3.4 Within fourteen (14) days of the conclusion of such Work ordered by Force Account, the CM/GC and the Owner shall arrive at the total lump sum cost for the Change Order. Such lump sum cost shall be incorporated into and finalize the Change Order, and shall reference and close the Encumbrance Record establishing the Force Account.

3.4.7.4 Breakdown of Expenditures. The CM/GC shall review any Owner requested or directed change and shall respond in writing within fourteen (14) calendar days after receipt of the proposed change (or such other reasonable time as the Owner may direct), stating the effect of the proposed change upon his Work, including any increase or decrease in the Contract Time and Sum. The CM/GC shall furnish to the Owner and the Design Professional an itemized breakdown of the quantities and prices and expenditures for labor and materials used in computing the proposed change in Contract Sum, in the form prescribed by the Owner, and the breakdown shall be accompanied by the following declaration:

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

The CM/GC shall obtain and furnish as back up to the CM/GC's breakdown a separate breakdown for each Subcontractor's charges prepared by each Subcontractor on the letterhead of the Subcontractor and properly signed by the Subcontractor. The Owner shall review the CM/GC's proposal and respond to the CM/GC within fourteen (14) days of receipt.

3.4.8 Overhead and Profit for Change Orders.

3.4.8.1 Overhead and Profit. The percentage for overhead and profit to be used in calculating changes in the Work (not including changes covered by Unit Prices) shall not exceed the percentages for each category listed below. Said percentages for overhead and profit shall be applied only on the net cost of the changed Work, (i.e., the difference in cost between original and revised Work). There shall be no extension of time unless allowed pursuant to Article 3.5.7 or 3.5.8.

3.4.8.1.1 CM/GC. If the CM/GC self-performs the Work with its own forces or with a Subcontractor, the maximum overhead and CM/GC Fee will be _____% of the cost of the work.

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

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

3.4.9.1 Actual labor costs for employees directly employed in the change in the Work, including salaries and wages plus the cost of payroll charges and fringe benefits and overtime premiums, if such premiums are explicitly authorized by the Owner, set at rates established in the manner set forth in Article 4.2.1.

3.4.9.2 Actual Costs for materials incorporated into the change to the Work, including costs of transportation, handling, fuel, and on-Site storage, if applicable.

3.4.9.3 Actual Costs for equipment incorporated in the changed Work or equipment used directly in accomplishing the Work. If the equipment is rented expressly for accomplishing the change in the Work, that cost shall be the rental rate according to the terms of the rental agreement, which the Owner shall have the right to approve, or shall be set at rates established in the manner set forth in Article 3.2.13.5. The decision of the Owner shall be final, binding, and conclusive on all parties.

3.4.9.4 Costs of increases in premiums for the CM/GC's Payment Bond and Performance Bond, Insurance Premiums and for Subcontractor Default Insurance, to the extent that such increased costs are a result of coverage adjustments for changes in Work approved in writing by the Owner. Prior to requesting payment for the Change Order Work, the CM/GC shall provide proof of its notification to the Surety of the change in the Work and of the Surety's agreement to include such change in its coverage. The cost of the increase in premium shall be an allowable cost but shall not be marked up. In no event shall a cost in excess of two (2) percent of the cost of the change be allowable. CM/GC shall promptly furnish Owner with certificates demonstrating that bond/insurance coverage has been increased as indicated by the allocation for increased premiums. CM/GC's failure to cure breach of the obligation in the preceding sentence, following reasonable notice from the Owner, shall be deemed a material breach of this Agreement.

3.4.9.5 Sales, consumer, use, and other applicable taxes that are legally in effect at the time the Change Order are approved.

3.4.9.6 Any other costs directly attributable to the change in the Work, such as professional engineering costs, except those set forth in Articles 3.4.8 and 3.4.10; provided that such costs must be reviewed for legitimacy and approved prior to becoming due.

3.4.9.7 For Change Order Work directed by the Owner, where the headquarters of the Subcontractor actually performing the Work is more than 100 miles from the Project Site, the Subcontractor may include in the cost of the Change Order a stipend of fifty (50) dollars per day for each worker performing Work at the Site if that worker is receiving a per diem under present company policy. Such stipend cost shall not exceed the number of workers and number of days determined by Design Professional's decision to be attributable to the new Work so ordered, so long as the number of workers and number of days attributable to any deleted Work is deducted therefrom. No allowance for overhead or profit as set forth in Article 3.4.8 may be added to the Change Order cost on account of the stipend amount, and the full amount of the stipend must be actually paid to the eligible worker or it shall be forfeited by the CM/GC and Subcontractor(s).

3.4.9.8 The Owner may require and CM/GC shall provide documentation evidencing the amount of the Allowable Costs, such documentation may include any or all of the following to be provided by the CM/GC to support the Allowable Costs:

- (a) certified payroll records showing the name, classification, date, daily hours, total hours, rate, and extension for each laborer, foreman, supervisor or other worker;
- (b) equipment type & model, dates, daily hours, total hours, rental rate or other specified rate, and extension for each unit of equipment;
- (c) invoices for materials showing quantities, prices, and extensions;
- (d) daily records of waste materials removed from the Site and/or fill materials imported to the Site;
- (e) certified measurements of over excavations, piling installed and similar work;
- (f) transportation records for materials, including prices, loads, and extensions; and/or
- (g) any other document that may be required to demonstrate a cost item to the extent that it is not demonstrated by the documents in the preceding list.

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

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

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

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

3.4.10.4 Where Work is deleted from the Contract (by Bulletin, Change Order, or otherwise) prior to commencement of that Work without substitution of other similar Work, one hundred (100) percent of the Contract Sum attributable to that Work shall be deducted from the Contract Sum. However, in the event that material Submittals have been approved and orders placed for said materials, a lesser amount as justified by proper documentation and approved by the Owner shall be deducted from the Contract Sum. The credit, if any, to the Owner for reduced premiums on payment bonds and performance bonds shall be in all cases one hundred (100) percent of the credit. If the deductive Change Order affects the critical path or the schedule and it causes an overall reduction in the Contract Time, jobsite time dependent expenses shall be included in the deduction at the rate.

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

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

3.4.11 Change Order Formats. Formats for Lump Sum Change Orders and for Change Orders based upon either a force account are attached hereto as Exhibit I and incorporated herein by reference.

3.4.12 Changes due to Subsurface or Other Unforeseen Conditions.

3.4.12.1 Subsurface Conditions. Unless the Owner provides geotechnical testing that shows specific quantities and units of rock or unsuitable soils, the CM/GC shall assume material below the surface of the Earth to be earth and other material that can be removed by power shovel or similar equipment.

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

3.4.13 Compensable Rock. CAUTION: No rock for which extra compensation is expected to be received shall be removed except pursuant to and in conformity with a written authorization or order of the Owner. Unless otherwise provided in the Bid Documents, no removal of rock as defined herein shall be included in the Bid. Shale, rottenstone, or stratified rock that can be loosened with a pick or removed by a hydraulic excavator equivalent to a Caterpillar Model 215, a single engine pan (Caterpillar 621 or equivalent) that is pushed by a crawler tractor (Caterpillar D-8K or equivalent), or similar equipment shall not be classified as rock.

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

3.4.13.1.1 Rippable Rock. Rippable rock is defined as any material that can be ripped with a single-tooth hydraulic ripper drawn by a crawler tractor having a minimum draw bar pull rated at not less than 56,000 pounds (Caterpillar D-8K or equivalent) and occupies an original volume of at least one (1) cubic yard.

3.4.13.1.2 Mass Rock. Mass rock is defined as any material that cannot be ripped with a single-tooth hydraulic ripper drawn by a crawler tractor having a minimum draw bar pull rated at not less than 56,000 pounds (Caterpillar D-8K or equivalent) and occupies an original volume of at least one (1) cubic yard.

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

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

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

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

3.4.14 RESERVED.

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

3.4.16 Sole Source Designation for Change Order Work.

3.4.16.1 Definition of Sole Source. As used in this Article 3.4.16, “Sole Source” means a Trade Contractor or Supplier or Subcontractor specified by name in a Bulletin as the exclusive source from which conforming goods or services may be obtained. Designation of goods or services by reference to a named source accompanied by the qualification “or equal” or similar language is not a designation of a Sole Source as that term is defined herein.

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

3.4.16.3 Sole Source as Grounds for Rejection of a Change Order. If a Change Order is submitted to CM/GC for the purposes of adding a Bulletin to this Contract and said Bulletin designates a Sole Source from which CM/GC is required to procure goods or services necessary to perform the Work, which Sole Source has not been designated previously, CM/GC shall be entitled to reject the proposed Change Order if the designated Sole Source refuses to provide to CM/GC the warranties, bonds, terms or schedule required under the Contract Documents, including any warranty or terms or schedule required by Bulletins referenced in the proposed Change Order. In such event, CM/GC shall give written notice to the Owner rejecting the proposed Change Order and, if possible, shall accompany said written notice with a proposal from CM/GC for changes or modifications to the Bulletin so as to eliminate the Sole Source designation but to achieve goods or services equal in quality or function. The Owner may then require the Design Professional to revise the subject Bulletin so as to eliminate the designation of the Sole Source by incorporation of CM/GC’s proposal or otherwise. Upon revision of the Bulletin by the Design Professional and approval thereof by the Owner, the Owner shall again submit to the CM/GC a proposed Change Order for the purpose of adding the revised Bulletin to this Contract. If the Owner decides to retain the Sole Source in the Change Order and CM/GC cannot acquire the full contractually required warranties from the Sole Source, CM/GC shall be held only to the warranty terms and schedule obtainable from the Sole Source; provided that such warranty terms and schedule must be approved in writing by Owner prior to being accepted.

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

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

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PART 5 – TIME.

3.5.1 Time is of the Essence. Time is of the essence of this Contract and all obligations hereunder. Unless otherwise approved, the CM/GC shall perform its obligations under this Contract as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work.

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

3.5.3 Contract Time.

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

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

3.5.3.3 Termination and Automatic Renewal. The term of this Contract is expected to be longer than one calendar year. Therefore, the parties agree that this Contract, as required by O.C.G.A. § 36-60-13, shall terminate absolutely and without further obligation on the part of the Owner on December 31 each calendar year of the term, and further, that this Contract shall automatically renew on January 1 of each subsequent calendar year, without lapse, absent the City of Milton City Council taking positive action to terminate this Contract in a public meeting and such action being entered upon the Official Minutes of the City of Milton City Council. This Agreement shall terminate immediately and absolutely at any such time as there are no appropriated and otherwise un-obligated funds available to satisfy the Owner's obligations under this Agreement. Title to any supplies, materials, equipment, or other personal property shall remain in CM/GC until fully paid for by the Owner. If such event described above occurs, it will be treated as a Termination for Convenience as described herein.

3.5.4 Commencement, Prosecution, and Completion.

3.5.4.1 Commencement, Prosecution, and Completion of Work. The CM/GC will be required (a) to commence the physical Work on the Site under this Contract on the applicable Proceed Order Date, (b) to prosecute the Work with faithfulness and energy (c) to install the various parts of the Work with equal steps shown on the Overall Project Schedule and at the same rate (or better) shown on the Overall Project Schedule and (d) to complete the Work within the Contract Time, as amended. Unless otherwise agreed, and subject to Change Orders, Material Completion of the Project must be achieved on or before the date established as the Material Completion Date under the Overall Project Schedule, and Final Completion must be achieved on or before the thirtieth (30th) day following the Material Completion Date provided in the Overall Project Schedule.

3.5.4.2 CM/GC's Acceleration for failure to meet Schedule Requirements. In the event the CM/GC shall be delinquent in respect to achieving the Milestone dates established in the Overall Project Schedule, CM/GC shall, within seven (7) days after receipt of written demand of the Owner, cause its employees and Subcontractors to perform Work at an accelerated pace with hours and days in addition to the normal working hours and working days, as necessary to promptly bring the Work into compliance with the Overall Project Schedule. Fulfillment of this requirement as to overtime work shall not relieve the CM/GC from liability for breach of the covenant as to time. For account of recovery of lost time required of the CM/GC for its breach of covenant as to time, the CM/GC shall be entitled to no Claim against the Owner for any payment,

repayment, reimbursement, remittance, remuneration, compensation, profit, cost, overhead, expense, loss expenditure, allowance, charge, demand, hire, wages, salary, tax, cash, assessment, price, money, bill, statement, dues, recovery, restitution, benefit, recoupment, exaction, injury or damages.

3.5.5 Construction Progress Schedule and Overall Project Schedule.

3.5.5.1 Submittal, Approval, and Updates. Not later than sixty (60) days after the Effective Date of the Contract, but prior to the Proceed Order, the CM/GC must submit a Construction Progress Schedule in accordance with Section 2.1.5.

3.5.5.2 Approval of Overall Project Schedule. Upon recommendation by the Design Professional and approval by the Owner, the Construction Progress Schedule shall be combined with the design schedule agreed upon by Owner and Design Professional and shall collectively become the Overall Project Schedule part of this Contract. The Overall Project Schedule shall govern the schedule of activities of the CM/GC under this Contract.

3.5.5.3 Monthly Updates. The CM/GC must provide the Design Professional and the Owner with monthly updates of the Overall Project Schedule indicating completed activities and any changes in sequencing or activity durations. Such reports shall be provided in the form indicated in Exhibit D attached hereto and incorporated herein by reference. (See also Articles 2.1.2 and 2.1.5).

3.5.6 Completion Date. The Work under this Contract shall be completed by midnight on the thirtieth (30th) calendar day following the date required in the Contract as the Material Completion Date unless extended by approved requests for extension of time.

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

3.5.7.1 Extensions of Time for Abnormal Weather. Extensions of time will be granted for Abnormal Weather Days that delay the critical path of the progress of the work, subject to the provisions below.

3.5.7.1.1 Weather Delay Days. Weather Delay Days are those days where the project site receives more than 1/2" of precipitation or extreme weather conditions and the event causes a delay in the critical path of the work.

3.5.7.1.2 Anticipated Weather Delay Days. Anticipated Weather Delay Days are the Weather Delay Days specified in the Supplementary General Requirements that the CM/GC shall expect to incur and shall provide for in the schedule. If no Anticipated Weather Delay Days are listed in the Supplementary General Requirements, the Anticipated Weather Delay Days are those days where the region has historically received more than 1/2' of precipitation in a month according to the 30 year NOAA Average.

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

3.5.7.1.4 Documenting Weather Delay Days. Upon receipt of the Proceed Order and continuing throughout the contract, the CM/GC shall record actual Weather Delay Days incurred at the site and describe the weather's impact to the critical path. Weather Delay Days shall be documented by the CM/GC and verified by the Design Professional. Not later than ten days after the end of each calendar month, the CM/GC shall submit a report to the Design Professional documenting the number of Weather Delay Days incurred in the month. The Design Professional shall determine if each documented Weather Delay Day impacts the critical path.

3.5.7.1.5 Extensions of Time for Abnormal Weather Delay Days. The CM/GC shall be entitled to a contract extension due to Weather Delay Days whenever the number of Weather Delay Days incurred in a month is greater than the total number of Anticipated Weather Delay Days for that month.

3.5.7.1.6 Claims for Extension of Time for Abnormal Weather Delay Days. Claims for time extensions for Abnormal Weather Delay Days shall be made when the CM/GC submits its monthly report of Weather Delay Days. Claims shall be processed as a Change Order pursuant to Section 3, Part 4. The CM/GC must make reasonable efforts to mitigate the effects of Abnormal Weather Delay Days in order to be entitled to a contract extension.

3.5.7.1.7 Protest. The Design Professional's decision as to whether each Weather Delay Day impacts the critical path shall be subject to protest by the CM/GC as set forth in Section 5, Part

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

3.5.8.1 Compensable Delay – Unavoidable Delay.

3.5.8.1.1 Delay by Owner or Design Professional. If the CM/GC is delayed in the progress of the Work between the Proceed Order Date and the Final Completion Date, as amended, by an act or neglect of the Owner, Owner's employees, Design Professional or Separate Contractors employed by the Owner, or by other causes beyond the CM/GC's control which the Design Professional determines are the fault of the Owner or the Design Professional and may justify delay, then the Contract Time will be extended by Change Order for such reasonable time as the Design Professional and the Owner may determine; provided, however, that (i) such delays extend the Overall Project Schedule's critical path; (ii) the CM/GC has taken all reasonable actions to mitigate the effects of the delay on the Work; (iii) the fault or negligence of the CM/GC, the CM/GC's agents or employees did not materially contribute to such causes; and (iv) the CM/GC shall have notified Owner of the cause or causes of such delay within fourteen (14) days from the date on which the CM/GC first becomes aware of such delay.

3.5.8.1.2 Delay in Responses to Submittals. Any Claim by CM/GC for a change in the Material and/or Final Completion Date due to delay of responses to Submittals that materially affect the completion of the Work by lengthening the critical path of the Construction Progress Schedule may be made during the time while the failure of the Design Professional to act or perform continues, or within seven (7) days after such failure to act or perform has been cured. If no Submittal Schedule or agreement, as required in Paragraph 2.2.5.1, is agreed upon, then a Claim for delay will be allowed only after the Design Professional has been allowed fourteen (14) days to take action. Any Claim for extension of time must be reasonable and take into consideration the nature of the Submittal.

3.5.8.1.3 To be Processed as a Part of the Change Order Process. Extensions of time and adjustments to the Contract Sum for compensable Unavoidable Delay are to be processed as a Change Order pursuant to Article 3.4.6.

3.5.8.2 Compensable Delay – Certain Change Orders.

3.5.8.2.1 Owner-Requested Changes. If the Owner requests changes in the Contract Documents that would materially affect the completion of the Work by lengthening the critical path of the Overall Project Schedule, the Design Professional shall determine the appropriate number of days and, upon approval of such extension by Owner and CM/GC, thereby extend the Material Completion Date by Change Order. The CM/GC expressly agrees that the CM/GC's sole monetary remedy for such extensions of Contract Time shall be no greater than the actual direct costs incurred by the CM/GC.

3.5.8.2.2 Other Change Orders. For Change Orders involving the following situations that would materially affect the completion of the Work by lengthening the critical path of the Construction Progress Schedule, the Design Professional shall determine the appropriate number of days and, upon approval of such extension by Owner and CM/GC, thereby extend the Material Completion Date. The CM/GC expressly agrees that the CM/GC's sole monetary remedy for such extensions of Contract Time shall be no greater than the actual direct costs incurred by the CM/GC.

(a) Changes due to Subsurface or Other Unforeseen Conditions, Article 3.4.12.

- (b) Changes for Compensable Rock, Article 3.4.13.
- (c) Changes deleting Work, Paragraph 3.4.10.4

3.5.8.2.3 To be Processed as a Part of the Change Order Process. Extensions of Time and adjustments to the Contract Sum for any of the compensable change order delays set forth in this Paragraph 3.5.8.2 are to be processed as a part of each Change Order pursuant to Article 3.4.6.

3.5.8.3 Compensable Delay – Force Majeure. If, between the Proceed Order Date and the Final Completion Date, as amended, the CM/GC is unable to perform or is delayed in the performance of any of the terms and provisions of this Contract, that materially affects the completion of the Work by lengthening the critical path of the Overall Project Schedule, as a result of (i) any cause beyond CM/GC's reasonable control; (ii) any change in applicable governmental rules or regulations rendering performance of any provision of this Contract legally impermissible; (iii) any governmental preemption of materials in connection with a national emergency declared by the President of the United States; (iv) any war, hostility, embargo, sabotage, civil disturbance, riot, insurrection, invasion, acts of terror or terrorism or other civil disorder affecting performance of the Work; (v) strike or labor dispute, excluding strikes or labor disputes by employees and/or agents of CM/GC, that could not be reasonably anticipated, or (vi) any earthquake, fire, explosion, flood, or unusual and extreme weather conditions constituting Acts of God, then, and in any such event, such inability or delay shall be excused, and the time for completing the affected portions of the Project (and the entire Project, if applicable) shall be extended for such reasonable period of time as the delay has affected the critical path of the performance of the Work hereunder.

3.5.8.3.1 Mitigation of Delay. CM/GC shall take all reasonable actions to minimize the delay caused by any of the above factors, and shall notify Owner in writing with a copy to the Design Professional of any event allowing for excuse or delay not later than seven (7) days after the CM/GC first becomes aware of the event, or should have become aware, of the event; otherwise CM/GC will be deemed to have waived the excuse or delay.

3.5.8.3.2 To be Processed as a Part of the Change Order Process. Extensions of Time and adjustments to the Contract Sum for Force Majeure are to be processed as a Change Order pursuant to Paragraph 3.4.6.

3.5.8.4 [RESERVED]

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

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

3.5.9.1 Normal Weather Conditions. Weather conditions other than those that substantially vary from the normal climatology conditions that prevailed at the Site for the preceding 120 months, as evidenced by data published by the National Oceanic and Atmospheric Administration. Based on the historical NOAA weather records for this site, the number of weather days (i.e. days on which site conditions would not permit work) expected for the entire construction schedule is 39 work days (inclusive of 15 work days listed below). For the period identified in Section 3.5.8.4 the number of weather days is 15 work days. Any weather days experienced in excess of this expected number reflect abnormal weather conditions.

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

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

3.5.10 Submission of Claims for Compensable Delay, Extending the Material Completion or Final Completion Date.

3.5.10.1 Time for Submission. Except as specified below, any claim by CM/GC for a change in the Contract Time or the Material Completion or Final Completion Date shall be made within fourteen (14) days of the day on which the CM/GC becomes aware of the event on which the claim is based or, if the Contract Documents specify a shorter or longer period with respect to such event, within the period specified by the Contract Documents.

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

3.5.10.3 When Delay Claim Deemed Waived. Any claim to extend the Contract Time and Material Completion or Final Completion Date not made in writing to Owner within the above time periods shall be deemed waived and shall not thereafter be valid. In the case of a continuing delay as a result of a single event, only one (1) claim submission is necessary.

3.5.11 Recovery of Schedule Delays.

3.5.11.1 Recovery of Schedule Delays. If the Design Professional determines that the Project is two (2) weeks or more behind schedule, per the approved Overall Project Schedule, the Design Professional shall so notify the CM/GC in writing. Within seven (7) days of the date of the Design Professional's notice, the CM/GC shall deliver to the Design Professional and Owner a written plan explaining how the CM/GC intends to bring the Project back on schedule. The CM/GC's plan must provide sufficient detail to allow the Design Professional and Owner to determine the proposal's feasibility.

3.5.11.2 Recovery of Schedule Delays During Last Sixty (60) Days of Contract Time. At any time during the last sixty (60) days of the Contract Time that the Design Professional finds that the CM/GC is behind schedule per the Contract Time, as amended, the Design Professional shall notify the CM/GC in writing. Within seven (7) days of the date of the Design Professional's notice, the CM/GC shall prepare and deliver to the Design Professional and Owner a written plan explaining how the CM/GC intends to bring the Project back on schedule. The CM/GC's plan must provide sufficient detail to allow the Design Professional and Owner to determine the proposal's feasibility. Should the Design Professional deem the plan of action inadequate, the CM/GC shall take additional steps to make adjustments as necessary to its plan of action until it meets with the Design Professional approval.

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

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PART 6 – CORRECTING THE WORK; INSPECTIONS, COVERING AND UNCOVERING WORK

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

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

3.6.1.2 Make Good Losses. The CM/GC shall rebuild, repair, restore, and make good losses of, and injuries or damages to, the Work or any portion thereof before final acceptance of the Work. Such rebuilding, repair, or restoration may be paid from the Construction Contingency; provided, however, that the Owner and CM/GC may also look to proceeds from the Builders' Risk policy required by the Contract Documents, where applicable and available.

Notwithstanding anything to the contrary herein, Owner shall insure all Owner-furnished supplies, material, equipment, or other items to be utilized with, or incorporated in, the Work and that are at the Site ("OFE") under its property insurance policy and shall bear the full risk of loss on such OFE. For the sake of clarity, above Section 3.6.1.2 and any indemnity provision herein or hereunder shall not apply to OFE. Upon written request to GM/GC and subject to the provisions of GM/GC builder's risk policy, Owner may request that OFE be added to the Builder's Risk policy. If OFE is added to the Builder's Risk policy the above Section 3.6.1.2 shall apply to such OFE, Owner shall provide a value and description to CM/GC of such OFE to be covered thereunder, and CM/GC shall be entitled to reimbursement for any premiums associated therewith whether through Change Order or as part of the GMP.

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

3.6.2 Correcting the Work.

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

3.6.2.1.1 Description of Work

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

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

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

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

prosecute the Work. A Notice of Non-Compliant Work in such event may be based upon deficiencies in management of time.

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

3.6.2.4 Remedy of the Owner for Breach of Notice of Non-Compliant Work.

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

- (a) Remove the Non-Compliant Work and store it at the expense of the CM/GC. If the CM/GC does not pay the expenses of such removal and storing within ten (10) days after receipt of written demand of the Owner, the Owner may upon three (3) days' notice in writing to the CM/GC sell such materials at private sale or at auction and shall account for the net proceeds thereof after deducting all proper costs incurred by the Owner.
- (b) Supply omitted Work, perform unexecuted Work, or replace and re-execute Work not done in accordance with the methods and materials designated in the Contract Documents, and deduct the cost thereof from any payment then or thereafter due the CM/GC. The Design Professional shall approve the amount charged to the CM/GC.

3.6.2.4.2 Other Remedies. The remedies stated in this article are in addition to the remedies otherwise available to the Owner, do not exclude such other remedies, and are without prejudice to any other remedies. Time limits stated in Notices of Non-Compliant Work are of the essence of the Contract. Unless otherwise agreed to by the Owner in writing, the making good of Non-Compliant Work shall physically commence at the Site in not more than seven (7) days after receipt of the Notice of Non-Compliant Work, except that, in case of emergency, correction shall physically commence at the Site at once, and except that the CM/GC shall in any event physically commence the correction at the Site early enough to complete the correction within the space of time allowed in the Notice of Non-Compliant Work; provided such time is reasonable. The Owner shall give prompt consideration to reasonable requests for delay in commencement of the making good of Notices of Non-Compliant Work. The making good of Non-Compliant Work shall be completed within the space of time allowed in the Notice of Non-Compliant Work unless the CM/GC shall have requested from the Design Professional an increase in the amount of time allowed and the Design Professional shall have given notice to the CM/GC in writing, with copy to the Owner, stating the additional amount of time, if any, allowed.

3.6.2.5 Notice of Correction from CM/GC. The CM/GC shall give prompt notice in writing to the Design Professional, with copy to the Owner, upon completion of the correction of the Non-Compliant Work. In the absence of such notice, it shall be and is presumed under this Contract that there has been no correction, supplying remedy, or performance of unexecuted Work.

3.6.2.6 The Owner's Right to Correct Work. If the CM/GC should neglect to prosecute the Work properly or fail to correct Non-Compliant Work or fail to perform any provision of this Contract, the Owner, after three (3) days' written notice to the CM/GC, may without prejudice to any other remedy it may have (including without limitation remedies against the CM/GC's surety), make good the deficiencies and may deduct the cost thereof from the payment then or thereafter due the CM/GC.

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

3.6.4 Inspection of Work.

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

3.6.4.2 Notice to Design Professional from CM/GC Prior to Covering Work. If the Specifications, the Design Professional's instructions (either in the Specifications or issued later in writing), laws, ordinances, or any public authority require any Work to be specially tested or approved, the CM/GC shall give the Design Professional timely notice in writing of its readiness for inspection and, if the inspection is by any authority other than the Design Professional, will tell the Design Professional the date fixed for such inspection. Inspections by the Design Professional shall be made promptly and, where practicable, at the source of supply. If any Work should be covered without approval or consent of the Design Professional, said Work must, if required by the Design Professional, be uncovered for examination at the CM/GC's expense.

3.6.4.3 Fire Marshal Inspections.

3.6.4.3.1 General. The Fire Marshal may make inspections at any time. It shall be the responsibility of the CM/GC to request an inspection at eighty (80) percent completion and at one hundred (100) percent completion and to give notice when all items on the one hundred (100) percent inspection report have been completed. Requests shall be in writing with a copy to the Owner and Design Professional.

3.6.4.3.2 Inspections Defined. The basic definitions for eighty (80) percent and one hundred (100) percent inspections are as follows:

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

(b) 100% Inspection: The CM/GC has completed all of the items on the eighty (80) percent inspection report and has the Certificate of Occupancy in hand.

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

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

3.6.5 Covering and Uncovering Work.

3.6.5.1 Re-examination or Re-testing of Work Covered Pursuant to Consent of Design Professional. Re-examination or re-testing of questioned Work previously covered pursuant to consent of the Design Professional may be ordered by the Design Professional; provided that Design Professional must have authority from Owner to uncover such Work. If so ordered, the Work must be uncovered by the CM/GC. The Owner shall pay the cost of re-examination and replacement or of re-testing if such Work is found in accordance with the Contract Documents; provided that such cost must be agreed to in writing by Owner prior to being incurred. The CM/GC shall pay such cost if such Work is found not in accordance with the Contract Documents unless the CM/GC can show that a Separate Contractor caused the defect in the Work. In that event, the Owner shall pay such cost, provided that such cost must be agreed to in writing by Owner prior to being incurred, or cause such cost to be paid by the Separate Contractor. Re-examination or re-

testing under the terms of this Paragraph applies only to Work that has been covered with consent of the Design Professional. Work covered without consent of the Design Professional must be uncovered for examination as provided below.

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

3.6.6 Inspection Does Not Relieve CM/GC. Under the Contract Documents, the CM/GC acknowledges that it has the responsibility for furnishing all services, labor, supplies, and materials for the entire Work in accordance with the Contract Documents. No provisions of this article nor any inspection of the Work by the Owner, representatives of the Owner, engineers employed by the Design Professional, representatives of the Design Professional, or the Design Professional shall in any way diminish, relieve, or alter said responsibility and undertaking of the CM/GC. Neither shall the omission of any of the foregoing to discover or to bring to the attention of the CM/GC the existence of any Work or materials injured or done not in accordance with said Contract Documents in any way diminish, relieve, or alter such obligation of the CM/GC; nor shall the aforesaid omission diminish or alter the rights or remedies of the Owner as set forth in the Contract Documents. The Contract Compliance Specialist has no power to make decisions, to accept or reject Work, or to consent to the covering of Work. The Contract Compliance Specialist owes no duty to the CM/GC.

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

3.6.8 Intentionally Omitted.

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

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

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PART 7 – TRADE CONTRACTORS; SELF-PERFORMANCE

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

3.7.2 Selection.

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

3.7.2.2 Information for Proposed Firms. CM/GC shall develop information for proposed firms for all of the Work. Such information shall describe the Work to be procured by the CM/GC through Trade Contractors or Suppliers, using CM/GC's own forms and procedures. Firms shall be required to submit a proposal encompassing the full contract price for the Work to be procured, except as provided in Article 3.7.10 below.

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

3.7.2.4 Timing of Proposals. CM/GC may, at its discretion, procure proposals for Work described in **Construction Documents, or proposed for addition to this Contract by Change Order prior to acceptance of such Change Order by CM/GC or by Owner, but CM/GC shall not be authorized to reject a Construction Document Change Order proposed after the issuance of a GMP Change Order.**

3.7.3 Proposers Lists. Prior to each solicitation of proposals, the CM/GC shall prepare and submit to the Owner for review a list of recommended proposers. CM/GC may require prospective proposer to undergo a pre-qualification process to permit CM/GC affirmatively to determine that a proposer who desires to submit a proposal is a Responsible Proposer as defined in Article 3.7.5.

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

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

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

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

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

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

its Estimated Cost Component shall be adjusted to reflect the difference between the amount of the rejected proposal or price and the higher accepted proposal or price.

3.7.7 CM/GC Award. Unless the Owner exercises its rights under Article 3.7.6, CM/GC shall award the Work to a responsible Trade Contractor or Supplier of CM/GC's choosing and proceed with the preparation of a purchase order or Trade Contract incorporating all necessary terms and conditions of the Contract Documents. Upon execution by CM/GC, and if requested by the Owner, CM/GC shall send a copy of the executed purchase order or Trade Contract to the Owner.

3.7.8 CM/GC Self-Performance. In all cases where the CM/GC requests to perform any work with its own forces, such work shall require prior written approval by the Owner.

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

3.7.8.2 Default of Trade Contractor. In addition, CM/GC may with its own forces perform Work encompassed within any Trade Contract between CM/GC and any Trade Contractor upon the termination of such Trade Contract by CM/GC by reason of the default or abandonment of the Work by the Trade Contractor, but , except as provided in Article 1.5.1 the CM/GC shall perform such Work, or the balance thereof remaining at the time of termination, for an amount not exceeding the contract sum specified in the Trade Contract or the unexpended balance thereof remaining at the time of termination , except as provided in Article 1.5.1 provided that CM/GC's Fee shall not be reduced or increased on account of the Work performed under this Paragraph 3.7.8.2.

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

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

3.7.10 Alternative Price Terms. Notwithstanding the requirements of Paragraphs 3.7.2 and 3.7.13, CM/GC shall be permitted, with Owner's advance approval and in Owner's sole discretion, to seek Trade Contractors or Suppliers who meet the requirements of this Section, through a proposal process under which the proposed Trade Contractor or Supplier offers to provide Construction Management services for designated subcomponents of the Project, and,

with the Owner's approval, CM/GC may enter such contracts for the furnishing of such systems on a guaranteed maximum price basis.

3.7.11 CM/GC Supplied Equipment or Supplies. With the prior approval of the Owner and in Owner's sole discretion, CM/GC may supply for use by its Trade Contractors or Suppliers, or for use by CM/GC for the performance of Work performed by CM/GC with its own forces, equipment and supplies necessary to the performance of the Work in addition to those items that the CM/GC is authorized to supply. However, the Actual Cost of such equipment or supplies reimbursable by the Owner to CM/GC shall not in any event exceed the least of (i) the amount that would be paid by CM/GC for the procurement of such equipment or supplies under a competitive proposal procurement, or (ii) the amount that would be reimbursable to CM/GC as an Actual Cost for such equipment or supplies had such equipment or supplies been procured from others under the terms of the Contract Documents, or (iii) the applicable amounts stated in Subparagraph 4.4.4.1. If the Owner approves the provision by CM/GC of such items from CM/GC's inventory, then no CM/GC's Fee shall be payable by Owner on account of such self-provided items in excess of any fee included in the approved sales price or rental rate. CM/GC's Fee shall be reduced proportionately for such self-provided items.

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

3.7.13 Fair Opportunity for Trade Contractors – Trade Packages. All construction Work to be performed by Trade Contractors shall be performed pursuant to Trade Packages from qualified Trade Contractors. The CM/GC shall make reasonable efforts to ensure that Trade Contractors and Suppliers local to the Project Site are given the fair opportunity to propose for, be considered for, and participate in the award of Trade Packages required for completion of the Project. The CM/GC shall, on behalf of Owner, advertise and solicit proposals from Trade Contractors and from Suppliers of material or equipment fabricated to a special design for the Work. All proposals will be delivered to the CM/GC. CM/GC will, on behalf of the Owner, analyze all such proposals to determine whether the proposals are responsive and the proposers are responsible. The CM/GC will recommend to the Owner, based on price and other factors, the Trade Contractor or Supplier. If the recommended Trade Contractor or Supplier is not the low price proposer, CM/GC will provide additional information justifying its recommendation. The Trade Package will be awarded upon receipt of approval from the Owner. If the Owner does not agree with the CM/GC's recommendation, the Owner will instruct the CM/GC to award the Trade Package to the lowest responsive and responsible price proposer, or to reissue the package for additional proposers.

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

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

performance or as to compliance with methods and materials designated in the Contract Documents. Any provision in any contract between the CM/GC and any Trade Contractor pursuant to which the CM/GC is obliged to present to the Owner any claim of any Trade Contractor shall be invalid.

3.7.16 Relationship of CM/GC and Trade Contractors.

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

3.7.16.1.1 The CM/GC agrees:

- (a) To be bound to the Subordinate CM/GC by all the obligations that the Owner owes to the CM/GC under the Contract Documents.
- (b) To pay the Subordinate CM/GC, upon the payment of certificates issued under the schedule of values described in the General Conditions, the amount allowed to the CM/GC on account of the Subordinate CM/GC's Work, to the extent of the Subordinate CM/GC's interest therein, within seven (7) days of receipt of payment from the Owner; provided, however, that retainage shall be released to the Subordinate CM/GC as provided by law and in accordance with the Final Affidavit set forth in Section 7, Forms.
- (c) To pay the Subordinate CM/GC, upon the payment of certificates issued otherwise than the schedule of values, in such a manner that at all times the Subordinate CM/GC's total payments shall be as large in proportion to the value of the Work done by the Subordinate CM/GC as the total amount certified and paid to the CM/GC is to the value of the Work done by the Subordinate CM/GC.
- (d) To pay the Subordinate CM/GC a just share of any property insurance money received by the CM/GC and due to Subordinate CM/GC for Work performed by Subordinate CM/GC and paid for by insurance.
- (e) That no claim for services rendered or materials supplied or other matters by the CM/GC against the Subordinate CM/GC shall be valid unless written notice thereof is given by the CM/GC to the Subordinate CM/GC prior to or during the first ten (10) days of the calendar month following that in which the CM/GC determines that the claim is chargeable against that Subordinate CM/GC.
- (f) To give the Subordinate CM/GC, upon its request, an opportunity to be present with CM/GC and to submit evidence in any dispute involving rights of the Subordinate CM/GC.

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

- (a) To be bound to the CM/GC by the terms of the Contract Documents and to assume toward the CM/GC all the obligations and responsibilities that the CM/GC by the aforesaid documents assumes toward the Owner.
- (b) To submit to the CM/GC applications for payment in such reasonable time as to enable the CM/GC to apply for payment under these General Conditions.
- (c) To make all claims for extras, for extensions of time or for damages to the CM/GC in the manner provided in the General Conditions for like claims by the CM/GC upon the Owner, except that the time for making such claims to the CM/GC is within ten (10) days after the initial event leading to the claim.
- (d) To pay their sub-subcontractors (hereinafter “Subordinate Contractors”), upon the payment of certificates issued under the schedule of values described in the General Conditions, the amount allowed on account of such Subordinate Contractor's Work, to the extent of such Subordinate Contractor's interest therein, within seven (7) days of its

receipt of payment; provided, however, that retainage shall be released as provided by law and in accordance with the Final Affidavit set forth in Section 7, Forms.

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

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

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

3.7.16.4 Failure to Incorporate Terms in Subcontracts. The CM/GC agrees that failure on its part to incorporate this Article 3.7.16 in all Subcontracts, Trade Contracts, or Supplier contracts, is a material breach of an essential covenant of this Contract, and further agrees that, in the event of such breach, the CM/GC shall, within five (5) days after demand of the Owner, furnish proof in writing that the deficiency has been remedied to the end that (i) the CM/GC may not maintain that it is beyond his competence to require performance of terms of the Contract by a Subcontractor and (ii) no Subcontractor may maintain that he has not assumed toward the CM/GC all the obligations and responsibilities that the CM/GC has assumed toward the Owner. Failure on the part of the CM/GC to effect remedy as described above within five (5) days after receipt of written demand of the Owner shall be grounds for issuance of a declaration of default by the Owner.

3.7.17 Assignment of Trade Contracts, Subcontracts.

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

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

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

3.7.17.4 Assignment of Warranties. Without limiting CM/GC's post-construction obligations pursuant to this Contract, CM/GC shall assign to Owner all post-construction warranties resulting from CM/GC's agreements with third parties, subject to CM/GC's reservation of rights under such warranties to the extent necessary to enable

CM/GC to fulfill its obligations to Owner hereunder. Moreover, CM/GC shall protect Owner's interest in all such warranties and shall take no action nor commit an omission that renders such warranties void or voidable.

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SECTION 4 – COMPENSATION

PART 1 – GENERAL.

4.1.1 Authorized Compensation and Limitations.

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

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

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

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

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

4.1.1.2 CM/GC's Construction Overhead Costs and Expenses. The lump sum amount for Preconstruction and Construction Overhead Costs and Expenses shall be the amount specified in Paragraph 6 of the Contract, established by agreement with the Owner based upon the CM/GC Fee Proposal, set forth in Exhibit E, and by using the Project Cost Matrix included therein. These costs and limitations consist of the following:

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

4.1.1.2.2 Construction Overhead Costs and Expenses. The Construction Overhead Costs and Expenses are inclusive of toll telephone calls, facsimile charges, postage and use of courier services, photocopying and reproduction expenses, travel costs, sustenance, reproduction, salaries, wages, and field office expenses, as agreed upon by the parties. The maximum allowable amount for which the Owner shall be liable to the CM/GC for Construction Overhead Costs and Expenses is shown in Exhibit E.

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

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

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

4.1.1.4.2 Details and Effect of the GMP Cost Limitation.

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

4.1.1.5 Guaranteed Maximum Price (“GMP”). The Owner will pay the CM/GC an amount established as the CM/GC’s Fee, plus Overhead Costs and the Cost of the Work as described herein, but those amounts in the aggregate shall not exceed, in any event or for any reason, the Guaranteed Maximum Price.

4.1.1.6 Effect of GMP Change Order. Upon acceptance of the GMP Change Order by Owner, the GMP Change Order shall exclusively govern the compensation to CM/GC for all fees and services included therein.

4.1.1.7 Payment Schedule. The CM/GC’s Fee shall be paid monthly in proportion to the services actually performed. CM/GC shall submit not later than the tenth (10th) day of any month an invoice for the proportionate part of the CM/GC’s Fee that represents the services actually performed for the period following the period covered by any prior invoice to the end of the preceding month. If and to the extent approved by Owner, the amount of such invoice shall be paid by Owner promptly and the CM/GC Overhead Costs will be paid proportionally to time expended on the project versus the overall project schedule. Such proportionate amount shall establish a rate to be applied in the same manner to time extensions for compensable Change Orders

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

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

When the above grounds are removed, payment shall be made for amounts withheld because of them. At the option of the Owner, adherence to the Construction Progress Schedule shall be a condition precedent to the right of the CM/GC to demand payment. No omission on the part of the Owner to exercise the aforesaid option shall be construed to be a waiver of breach of the Construction Progress Schedule or acquiescence therein, and the Owner may exercise its option from time to time and as often as may be expedient.

4.1.1.9 Change in Tax Rates. If the rate of sales, use, payroll, or other similar direct taxes on materials, equipment, or labor required for the performance of the Work shall increase above the rate in force on the date of the GMP Change Order, then the Cost of Work Component (but not the Fee or Construction Overhead Component) of the GMP Change Order shall be increased by the amount of additional taxes incurred by CM/GC as a result of such change in rate, provided that such increase shall not exceed seven (7) percent of the GMP. A written Claim shall be made promptly after CM/GC receives notice of such tax increase. If the tax rates decrease, the estimated amount of saved taxes due to the decrease as yet unexpended shall be split equally and moved into the Construction Contingency and Design Contingency, respectively.

4.1.2 Audit. At the request of the Owner, the CM/GC shall allow the Owner the opportunity to select an auditor to examine and inspect the Project and the CM/GC’s books, records, and any and all accounts and similar data related to the Project. The Owner shall bear the cost of such audit. The auditor may sign a confidentiality agreement before conducting any such audit. Notwithstanding such agreement, CM/GC understands and agrees that all Project records are subject to the Georgia Open Records Act. Approval of an Application for Payment by the Owner, including Final

Payment, shall not foreclose the right of the Owner to examine the books and records and their backup documents in accordance with the Contract Documents to determine the correctness and accuracy of any item.

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

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

4.1.5 Inclusion of Contingency Amounts in GMP.

4.1.5.1 Construction Contingency - A Part of the Cost of the Work. The GMP shall include in the Construction Contingency sums established by the CM/GC for the CM/GC's use to cover costs arising under Articles 4.4.5 *et seq.* and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

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

4.1.5.3 Design Contingency. Owner may establish a Design Contingency for its use. Such uses may include costs associated with errors and omissions in the design documents, design changes, scope changes, or other items that would result in a Change Order for CM/GC. The Design Contingency would not be Cost of Work or included in the GMP unless and until such funds are allocated to the Project through a Change Order.

4.1.6 CM/GC's Compensation Prior to Acceptance of GMP. Prior to the Owner's acceptance of CM/GC's Guaranteed Maximum Price proposal and issuance of a Proceed Order, CM/GC's compensation shall be limited to an amount equal to (i) the Preconstruction Fee and Preconstruction Overhead; and (ii) the Cost of the Work in connection with any approved Component Change Order. Prior to the Owner's acceptance of the CM/GC's Guaranteed Maximum Price proposal and issuance of a Proceed Order, the CM/GC shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing or in an approved Component Change Order.

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PART 2 – PAYMENT FOR PRECONSTRUCTION PHASE SERVICES.

4.2.1 Basis of Compensation for Change Orders and Extensions. In negotiating payment for any additional services provided pursuant to Change Orders and Extensions, the parties shall consider actual wages, salaries and costs permitted under Section 4, Part 4 and will use the reasonable salaries and rates set forth in Exhibit J as a starting point and guideline for negotiations.

4.2.2 Payment Schedule. The Preconstruction Fee payable under Paragraph 4.1.1 shall be paid monthly. CM/GC shall submit, by the fifth day (5th) of each month, but no earlier than the first (1s) day of each month, a Payment Application for the actual costs of the Preconstruction Costs and Expenses it has incurred in the previous month, plus the applicable Preconstruction Fee and Preconstruction Overhead (if applicable). If the Preconstruction Fee is a lump sum fee, the CM/GC shall calculate the Fee as a proportion of the services actually performed. If the Preconstruction Fee is a percentage, the percentage shall be calculated as a percentage of the actual costs of the Preconstruction Costs and Expenses incurred.

4.2.3 Payment Due. Payment shall be made in accordance with Paragraph 4.3.3.

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

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

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

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PART 3 – PAYMENT FOR CONSTRUCTION PHASE SERVICES

4.3.1 Basis of Compensation for Change Orders and Extensions.

4.3.1.1 Additional Services. In negotiating payment for any additional services provided pursuant to Change Orders and Extensions, the parties shall consider actual wages, salaries and costs permitted under Section 4, Part 4 and will use the reasonable salaries and rates set forth in Exhibit J as a starting point and guideline for negotiations.

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

4.3.2 Submission of Applications for Payment. By the twenty-fifth day (25th) of each month, the CM/GC shall submit to the Design Professional itemized Applications for Payment in the form attached hereto as Exhibit K. The CM/GC shall submit no more than one (1) Application for Payment during each month. Any material deviations in tests or inspections performed, or times or locations required to complete such tests or inspections, and other deviations from the Work described in this Contract shall be clearly communicated to the Design Professional and Owner before charges are incurred and shall be handled through Change Orders as described herein.

4.3.3 Timing of Payments. No later than thirty (30) Business Days following Owner's timely approval of an Application for Payment (in the form required by this Contract), and to the extent it has approved such Application, it shall pay to the CM/GC 100% of all Actual Costs and Contingency Costs properly incurred by the CM/GC during the preceding period and properly reimbursable under this Contract (less retainage, if applicable, as provided herein). No payments will be made for unauthorized work. Such payments shall be subject to adjustment on account of any prior overpayment attributable to error of CM/GC, Owner, whether discovered by audit or otherwise. If amounts properly invoiced remain unpaid for more than thirty (30) days, the CM/GC shall provide notice and interest shall accrue pursuant to Article 4.3.17. Within thirty (30) days after receiving an approved Application for Payment, the Owner will notify the CM/GC of any disputed amounts. The Owner and the CM/GC agree to use their best efforts to resolve all disputes concerning the disputed amounts within thirty (30) days of the Owner's notice to the CM/GC of the dispute.

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

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

When the above grounds are removed, payment shall be made for amounts withheld because of them. At the option of the Owner, adherence to the Construction Progress Schedule shall be a condition precedent to the right of the CM/GC to demand payment of an Application for Payment or certificate. No omission on the part of the Owner to exercise the aforesaid option shall be construed to be a waiver of breach of the Construction Progress Schedule or acquiescence therein, and the Owner may exercise its option from time to time and as often as may be expedient.

4.3.5 Retainage.

4.3.5.1 Withholding of Retainage; Conversion to Lump Sum. Retainage shall be withheld from each Application for Payment to the CM/GC in the amount of ten (10) percent of the sum of the total cost for Work, Change Order Work, materials stored on the Site, and CM/GC Fee earned, as such items are included for

payment within the Application for Payment and as agreed upon by the Design Professional. After one-half of the Contract Sum, including Change Orders, becomes due and the Work meets all of the following conditions:

- (a) On or ahead of the Overall Project Schedule; and
- (b) There are no breaches of Notices of Non-Compliant Work
- (c) The Work has been completely procured by the CM/GC and remains within the construction budget limitations; and
- (d) There is no delinquency in the completion of Work and filing of the final breakdown and accounting pursuant to any Change Orders utilizing a Force Account;

then, if the CM/GC requests and the Design Professional approves in writing, the sum being withheld as retainage will be converted to a lump sum and held by the Owner until Final Completion.

4.3.5.2 Reinstatement of Retainage. Following the conversion of the retainage to a lump sum, as described in Article 4.3.5.1 above, the Owner will withhold no further retainage from payments to the CM/GC unless one or more of the following events occur:

- (a) The percentage of Work complete falls behind the percentage required by the Overall Project Schedule by five (5) percent or more; or
- (b) The CM/GC breaches a Notice of Non-Compliant Work; or
- (c) The CM/GC becomes delinquent in regard to the filing of the final breakdown and accounting pursuant to any Change Orders utilizing a Force Account;

in which event or events the Owner shall reinstate the ten (10) percent retainage on all Applications for Payment due to be paid while one or more of the events continues to exist. The CM/GC will be given written notice of the reinstatement of the retainage.

4.3.5.3 Reconversion to Lump Sum. If the CM/GC subsequently:

- (a) Recovers all lost time and puts the Work back on schedule; and
- (b) Remedies all breaches of Notices of Non-Compliant Work; and
- (c) Supplies a proper breakdown and accounting pursuant to any Change Orders utilizing a Force Account;

then the sums withheld while either or all of the events existed will be again converted to a lump sum.

4.3.6 Subcontractor's Retainage Release. Upon request by the CM/GC, Owner may, but is not required, to permit an amount equal to the subcontract retainage of a Subcontractor to be separately released from the retainage held by the Owner as he completes his Work. An application in accordance with the Owner's Subcontractor Retainage Release Certificate (See Section 7, Forms) for release of a Subcontractor's retainage shall contain a release of all claims by the Subcontractor and shall bear the original certificates of the Subcontractor, the CM/GC, and the Design Professional, that the Subcontractor's Work has been fully performed, and that the sum for which payment is requested is due by the CM/GC to the Subcontractor. Before receiving any portion of the retainage, the CM/GC will be required to furnish a Final Affidavit executed by the Subcontractor in the exact form as shown in Section 7. Checks releasing a Subcontractor's retainage shall be made payable to the CM/GC, the CM/GC's surety, and the Subcontractor and shall be mailed to the CM/GC's surety. This article does not create any contractual relationship between the Owner and the Subcontractor or any duty of the Owner to any Subcontractor.

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

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

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

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

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

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

4.3.9.1 Payment of CM/GC Construction Fee.

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

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

4.3.9.2 Payment of CM/GC Fee Withheld. The Owner may withhold payment only on account of (1) a breach of this Contract by CM/GC, (2) CM/GC's failure to perform the management and similar services hereunder, (3) CM/GC's failure to provide information it is required to provide to the Owner hereunder, or (4) under other circumstances as may be permitted by the Contract or the CM/GC's Proposal.

4.3.10 Applications for Payment.

4.3.10.1 Form of Application. By the twenty-fifth (25th) day of each month, the CM/GC shall submit to the Architect itemized Applications for Payment in the form attached hereto as Exhibit K. If requested by the Owner or Design Professional, the CM/GC shall attach to such Applications for Payment backup materials including, but not limited to, receipts or other vouchers, showing his payments for materials and labor, including payments previously made to Subcontractors. The CM/GC shall submit no more than one (1) Application for Payment during each month. An Updated Progress Construction Progress Schedule must accompany each of the CM/GC's Applications for Payment. Further, each invoice shall be accompanied by an Interim Waiver and Release upon Payment (or a Waiver and Release upon Final Payment in the case of the invoice for Final Payment) procured by the CM/GC from all Subcontractors in accordance with O.C.G.A. § 44-14-366. The Architect will review each Application for Payment and make recommendations to the Owner by the fifth (5th) of the month following the month in which the CM/GC submits its Application for Payment.

4.3.10.2 Initial Breakdown and Periodic Payments. Each Application for Payment shall be submitted at least thirty (30) days before each payment falls due, and the CM/GC shall, before the first application, submit to the Design Professional a Schedule of Values as required by Paragraph 4.3.1.2 above of the various parts of the Work, including quantities, aggregating the total sum of the Contract, divided in the same manner set forth in the Application for Payment Form set forth in Exhibit K and so arranged and so itemized as to meet the approval of the Design Professional and, further, if requested, supported by such evidence as to its correctness as the Design Professional may direct.

4.3.10.3 Materials Stored. If the Application for Payment includes materials delivered and suitably stored at the Site but not incorporated in the Work, they shall, if required by the Owner or the Design Professional, be conditional upon submission by the CM/GC of bills of sale or such other procedure as will establish the Owner's title to such material or otherwise adequately protect the Owner's interest. The CM/GC is responsible for the existence, protection, and, if necessary, replacement of materials until execution of the Final Certificate of the Design Professional. The Owner shall not pay for any materials stored off-site unless approved in the GMP Change Order.

4.3.10.4 Action by Owner. The Owner may refuse to pay any item or items contained in any such Application for Payment until and unless documentation and details evidencing the related costs are submitted to the

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

4.3.10.5 Accounting Format. Applications for Payment shall be broken down by Construction Specification Institute (“CSI”) Category and, in certain situations, by CSI Description and capital asset category, as set forth in the form for Application for Payment. The purpose is to provide appropriate backup documents for the CM/GC’s Final Certification of Costs in conformance with GASB 34 accounting standards. See Exhibits K and L – Forms, “Application for Payment” and Final Certification of Costs.

4.3.11 Schedule of Values. Before the first Application for Payment is submitted, the CM/GC shall submit to the Architect a Schedule of Values allocated to various portions of the construction Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This Schedule of Values, as approved by the Owner, will be used as a basis for reviewing the CM/GC’s Applications for Payment. Each Application for Payment will be submitted and reviewed based on percentage completion of the Schedule of Values.

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

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

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

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

4.3.16 Payment Due. Payment of an Application for Payment shall be due thirty (30) days after receipt by the Owner of the certification of the Application for Payment by the Design Professional, unless items are audited and deleted pursuant to Article 4.3.10, in which case payment shall be due thirty (30) days after the deletions are approved by the Owner.

4.3.17 Late Payments and Interest. Should the Owner fail to pay a proper invoice within thirty (30) calendar days of receipt, the Contractor shall notify the Owner in writing by certified or statutory mail. If the Owner fails to pay within ten (10) Business Days of receipt of the notice, and if the amount claimed owing is not in dispute, the Contractor shall receive, in addition the sum named in the proper invoice, interest thereon at the rate of one half (.5) percent per month on the unpaid balance as may be due.

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PART 4 – COST OF THE WORK.

4.4.1 Definition. The term "Cost of the Work" is defined in Paragraph 1.1.9.22, and includes costs necessarily incurred by CM/GC in the proper performance of the Work, but such costs shall not include CM/GC's Fee or Overhead Costs and Expenses. Such costs shall include or be limited by the items set forth in this Part and otherwise in this Contract. Notwithstanding anything to the contrary herein, CM/GC's Construction Contingency shall be considered Cost of the Work.

4.4.2 Preconstruction Phase Services.

4.4.2.1 Labor Costs. Reasonable salaries and wages of workers directly employed by CMAR to perform Work directly associated with the Project performed off-site, including but not limited to Preconstruction personnel and administrative assistance, shall be paid in the same manner as described in Article 4.4.3.1 and 4.4.3.2 below. All pre-construction salaried workers employed by CMAR shall be reimbursed based upon Actual Cost not exceeding in the aggregate the amounts shown in the CMAR's proposal, attached hereto as Exhibit E, which, upon agreement with the Owner, is incorporated into and made a part of this Contract by reference.

4.4.2.2 Pre-Construction Costs and Expenses. CM/GC shall be reimbursed for all reasonable Pre-Construction costs and expenses incurred in the performance of CM/GC's Pre-Construction services under this Contract, including, without limitation, (i) toll telephone calls, facsimile charges, postage and use of courier services; (ii) photocopying and reproduction expenses; and (iii) travel costs, based upon Actual Cost not exceeding the maximum amounts in the shown on Exhibit E, or the total of the amounts in the aggregate of Paragraph 6(a) of the Contract.

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

4.4.3.1 Wages.

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

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

4.4.3.2 Salaries.

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

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

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

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

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

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

4.4.3.7 Royalties. Royalties and license fees payable under any patents.

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

4.4.3.9 Insurance Premiums. The costs of premiums for all bonds, the cost of insurance (including Workers' compensation insurance) covering risks related solely to the Project, and the *pro rata* cost of insurance (including Workers' compensation insurance) covering such Project risks and other risks, which bonds and insurance the CM/GC is required by the Contract Documents to purchase and maintain.

4.4.3.10 Permits, Fees, etc. Permits, fees, licenses, tests, royalties, sales, use, or any other such taxes, tariffs or duties related to the Work for which the CM/GC is responsible, but not including any fines or interest due to CM/GC's failure to meet legal requirements associated with such items. Fees and assessments for the building permit and impact fees (as included in approved Guaranteed Maximum Price Proposal) and for other permits, licenses and inspections for which CM/GC is required by the Contract Documents to pay.

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

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

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

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

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

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

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

4.4.3.18 Deposits. Deposits lost for causes other than the CM/GC's negligence or the negligence of a Subcontractor or other entity for which the CM/GC is responsible hereunder.

4.4.3.19 Intentionally Omitted.

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

4.4.3.21 Emergency Costs. Any and all costs incurred due to an emergency affecting the safety of persons or property and related to the performance of the Work; provided such emergency is not caused by negligence on the part of the CM/GC or any entity for whose acts the CM/GC is responsible hereunder.

4.4.3.22 Intentionally Omitted.

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

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

4.4.4.1 Intentionally Omitted.

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

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

4.4.4.4 Office Expenses. All costs associated with establishing, equipping, operating, maintaining, and demobilizing CM/GC's main office costs and offices other than the Site office, except as provided in Paragraph 4.4.3.11.

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

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

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

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

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

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

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

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

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

4.4.4.14 Legal Fees. Legal fees, except as provided in Article 4.4.5.

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

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

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

4.4.5 Construction Contingency Costs. As provided in this Article 4.4.5, but only prior to the Design Professional's Certificate of Final Completion, the CM/GC shall be entitled to payment for all actually incurred and reasonable Construction Contingency Costs, as listed in this Article 4.4.5 and incident to the performance of Work under this Contract, provided that such Construction Contingency Costs are not otherwise reimbursed or recovered by CM/GC, that records required hereunder are established contemporaneously with the incurring of the cost and are maintained, and that such Construction Contingency Costs shall not in the aggregate exceed the Construction Contingency Component of CM/GC's Component Change Order or of the GMP Change Order, as the case may be, as adjusted pursuant to Articles 4.4.6 and 4.4.7. CM/GC shall not be entitled to payment for Construction Contingency Costs which are attributable to CM/GC's gross negligence or willful misconduct. : Construction Contingency Costs may include the following:

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

4.4.5.2 Trade Proposer Defaults. Costs incurred as a result of defaults by proposers who submit proposals to CM/GC for Trade Contracts or as a result of defaults by Trade Contractors or Suppliers.

4.4.5.3 Omissions and Oversight. Interfacing omissions between and from the various Work contingents of the CM/GC and oversight of Non-Compliant Work to the extent not recoverable from the Trade Contractor, its surety or insurance.

4.4.5.4 Legal Fees. Legal fees incurred by CM/GC in connection with the performance of its services under this Contract but in no event legal fees incurred in the negotiation of, or any dispute arising out of, the relationship between Owner and CM/GC.

4.4.5.5 Acceleration Costs. Subject to the limitations stated in this Paragraph, costs incurred or charged by CM/GC to accelerate the performance of Work by a Trade Contractor so as to achieve Final Completion of such Work in advance of the time stated for same in the applicable Trade Contract. Costs incurred under this paragraph shall be within the discretion of the CM/GC. However, if significant acceleration is required, CM/GC will advise Owner prior to incurring significant acceleration costs.

4.4.5.6 Reexamination Costs. If Design Professional demands that Work be uncovered for inspection, Design Professional shall inspect any uncovered Work within 72 hours of receiving CM/GC's notice of readiness for

inspection under the Contract Documents. Costs for uncovering, reexamining, retesting and replacing any Work which the Design Professional demands be uncovered for its observation and which the Design Professional did not inspect within 72 hours of receiving CM/GC's notice of readiness for inspection under Contract Documents, so long as such Work, when uncovered, is found to be in accordance with the Contract Documents.

4.4.5.7 Liens. Subject to prior approval of the Owner and the surety, costs of liens against Subcontractors, pending recovery of costs from the Subcontractor at fault.

4.4.6 Adjustments to Construction Contingency.

4.4.6.1 Basis of Adjustments. The contingency costs incurred by CM/GC under Article 4.4.5 shall be reimbursable to CM/GC from the Construction Contingency. The amount of the Construction Contingency shall be increased by the net amount of (i) the aggregate by which Trade Contracts entered by CM/GC are less than line item amounts stated in CM/GC's construction budget for each particular Trade Contract less (ii) the aggregate amount by which Trade Contracts entered by CM/GC exceed the line item amount stated in CM/GC's construction budget for each particular Trade Contract. All net amounts saved, if any, shall be added to the existing Construction Contingency amount and shall be available for all purposes permitted under Article 4.4.5. Funds from the Construction Contingency may not be encumbered by the CM/GC without written approval from the Owner, which approval shall not be unreasonably withheld.

4.4.6.2 Limitations on Adjustments. No Claim shall be made by CM/GC for any reason, including a default by Owner, or payment of additional compensation to CM/GC, or any other circumstance which would otherwise permit an increase in the Guaranteed Maximum Price under a GMP Change Order, for any Construction Contingency costs in excess of the established in the construction contingency cost item budgeted in the GMP Change Order or Component Change Order, as the case may be, plus any adjustments, as specified in Paragraph 4.4.6.1 above. . The Design Professional shall not have any authority to decide any such Claim other than to reject and thereby deny such a Claim.

4.4.7 Release of Construction Contingency.

4.4.7.1 Periodic Review. After approval of the GMP Change Order, the Owner and the CM/GC shall review for approval each transfer to and from the Construction Contingency on a periodic basis as requested by the CM/GC, but not less than quarterly. The Owner shall determine if the transfer is in compliance with the Contract, and if so, the Owner shall not unreasonably withhold approval of the transfer. Additionally, the CM/GC shall periodically review its accrued and anticipated Construction Contingency Costs and shall promptly inform Owner of CM/GC's determination of the extent to which the remaining Construction Contingency exceeds CM/GC's reasonably anticipated Construction and Contingency Costs expected to be incurred prior to the issuance of a Final Certificate. CM/GC shall in good faith negotiate with Owner for the release of any surplus of Construction Contingency over such anticipated Construction Contingency Costs so as to permit Owner to enhance the Project; provided that any increase in Construction Contingency in accordance with Section 4.4.6.1 shall not be released until Material Completion. Any such release shall be confirmed by Change Order. Release of Construction Contingency shall occur in a timely basis as to allow adequate decision making time for the Owner.

4.4.7.2 Confirmation of Balance. The amount of any balance of Construction Contingency shall be confirmed by the written certification of the CM/GC to the Owner at each review.

4.4.7.3 Gross Negligence. In no event shall CM/GC be entitled to reimbursement of any cost attributable to CM/GC's gross negligence or willful misconduct.

4.4.8 Final Disposition of Construction Contingency. The amount of any funds remaining in Construction Contingency upon the issuance of a Certificate of Final Completion of the entire Project, or upon the earlier termination of this Contract, shall be confirmed by the written certification of the CM/GC to the Owner at the time of the issuance of the Final Certificate, and any funds remaining in the Construction Contingency at the time of the issuance of the Final Certificate shall be returned to/retained by the Owner.

4.4.9 Owner Option. With respect to any furniture, equipment, or other capital items of a similar nature for which the Owner is to reimburse CM/GC its Actual Costs of acquisition, CM/GC shall, upon the termination or expiration of this Contract, and at the election of the Owner, either deliver such furniture, equipment and other capital items to the Owner, or shall credit to the Owner the depreciated (normal wear and tear only) value of such items that the Owner

elects not to obtain. The CM/GC shall protect all such items during the term of this Contract against loss or damage other than normal wear and tear.

4.4.10 Discounts, Rebates, Etc. The CM/GC shall provide the Owner an opportunity to provide funds to take advantage of discounts for prompt payment of materials, supplies, equipment, *etc.* Any trade or quantity discounts, rebates, refunds, and/or proceeds from the sale of surplus materials or equipments shall be credited to reduce the Cost of the Work.

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PART 5 - LIENS

4.5.1 Public Property Not Subject to Lien. The CM/GC acknowledges that, pursuant to law, the Site is public property of City of Milton, Georgia and is not subject to lien or levy. The CM/GC will notify the Owner of any liens or levies against the Site of which it becomes aware. The CM/GC shall cooperate with the Owner and shall use its best efforts to assist in securing the release of any liens or levies of which it becomes aware.

4.5.2 Notice of Commencement. A Notice of Commencement shall be filed by the CM/GC with the Clerk of the Superior Court in the county in which the Project is located, pursuant to O.C.G.A. § 36-91-92.

4.5.3 Release of Liens. Neither any part of the retainage nor the Final Payment shall become due until the CM/GC, if required, shall deliver to the Owner (1) a complete release of all liens or conditional release of lien upon payment of claims arising out of this Contract in accordance with the Owner's Final Affidavit and/or Subcontractor Retainage Release Certificate (a copy of which will be provided to any bidder on request), or (2) receipts in full in place thereof and, if required in either case, an affidavit that, so far as CM/GC has knowledge or information, the releases and receipts include all labor and materials for which a lien or claim could be filed; but the CM/GC may, if any Subcontractor or claimant refuses to provide a release, furnish a bond satisfactory to the Owner to indemnify the Owner against any lien or claim. If any lien or claim remains unsatisfied after all payments are made, the CM/GC shall refund to the Owner all monies that the latter may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees.

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SECTION 5 – CONTRACT ADJUSTMENTS, DISPUTES AND TERMINATION

PART 1 -Owner’s Right to Suspend the Work

5.1.1 Owner’s Right to Suspend Work. The Owner reserves the right, with or without the concurrence of the Design Professional, to suspend the Work at any time or from time to time at the Owner's sole discretion, upon giving CM/GC five (5) days advanced written notice thereof. If the Owner exercises this right and then resumes the Work covered hereby, CM/GC shall be entitled, upon timely Claim to a Change Order, to payment by Owner of any reasonable Actual Costs incurred by CM/GC in connection with the suspension and resumption of the Work, provided that such costs must be approved in writing by Owner prior to being incurred, as well as to an extension in the time for performance of the Work to the extent CM/GC is delayed by Owner's suspension.

5.1.2 Owner’s Right to Stop Work. The Owner reserves the right, for itself and for any retained Owner’s Representative, upon observation of apparent Non-Compliant Work, to immediately stop the affected Work at any time by oral direction, at the Owner's sole discretion, with notice to be provided to CM/GC within 72 hours. If the Work is later determined by the Design Professional to be in fact Compliant Work, then CM/GC, for the period commencing 72 hours after the issuance of the initial stop Work order, shall be entitled, upon timely Claim to a Change Order, to payment by Owner of any reasonable Actual Costs incurred by CM/GC in connection with the stop Work order and resumption of the Work, provided that such amount shall be paid from the Design Contingency or result in a Change Order. Further, CM/GC shall be entitled to a noncompensable extension in the time for performance of the Work to the extent CM/GC is delayed by Owner's stop Work order beyond the initial 72 hours. If the City of Milton, acting in its police and regulatory role and not as Owner, properly or justifiably stops the Work for any public purpose, such act shall not be attributed to the Owner for purposes of this Agreement.

5.1.3 Owner’s Rights Independent from Rights and Duty of the Design Professional. The rights granted to Owner under this Article are independent of the duty and obligation of the Design Professional to stop the Work for Non-Compliant Work or to issue orders of condemnation for Non-Compliant Work.

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PART 2 – CONTRACT ADJUSTMENTS AND DISPUTES

5.2.1 General Provisions.

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

5.2.1.2 Continuation of the Work. Unless otherwise agreed in writing, and notwithstanding any other rights or obligations of either of the parties under any Contract Documents or Agreements, the CM/GC must carry on with the performance of its contract services and the Work, including all duties and obligations hereunder, during the pendency of any Claim, dispute, and other matter in question or during any alternative dispute resolution proceeding, court proceeding, or other proceeding to resolve any Claim, dispute, and other matter in question, and the Owner will continue to make payments in accordance with the Contract Documents. The Owner, however, is under no obligation to make payments on or against such Claims, disputes, and other matters in question during the time required to resolve such claims, disputes, and other matters in question.

5.2.2 General Claims for Contract Adjustments and Disputes.

5.2.2.1 General Claims of the CM/GC. Budgeting and cash flow being of material importance to the Owner, should the CM/GC suffer any injury or damage to person or property for which CM/GC reasonably believes a legal basis exists for liability on the part of the Owner or Design Professional, and should CM/GC believe that such injury or damage should result in an adjustment in the Cost of the Work or the Contract Time, CM/GC shall make such Claim in writing in the form of a Request for Change Order to the Design Professional within fourteen (14) days after such injury or damage is or should have been first observed. Any and all Claims not made within said fourteen (14) days are barred, waived, released, and discharged. The decision of the Design Professional is final and binding on both Owner and CM/GC unless the CM/GC protests the decision of the Design Professional. If the CM/GC protests the decision of the Design Professional, the CM/GC shall file a Statement of General Claim as set forth below.

5.2.2.2 Protest; Statement of General Claim; Time of Submission. No protest of a Claim decision of the Design Professional by the CM/GC, whether said Claim shall be accrued or prospective, shall be valid unless a "Statement of Claim" in writing and accompanied by vouchers and other supporting data shall have been filed with the Owner, by the CM/GC not later than thirty (30) days after the Design Professional's decision to reject the Claim, time being of the essence. The "Statement of Claim" shall contain a concise and clear recital of the grounds and the legal basis upon which the claim is asserted, including a designation of the provision or provisions of the Contract Documents and the legal basis of liability on which the Claim is based. The Statement of Claim shall indicate the dollar amount of the Claim and the number of days of adjustment of the Contract Time.

5.2.2.3 Certain Claims Excluded from General Claims.

5.2.2.3.1 All Claims for Compensable Delay as defined in Article 3.5.8 must be filed and processed pursuant to Article 3.5.10 and are subject to the limitations of Articles 3.5.7 and 3.5.9

5.2.2.3.2 All Claims concerning designation of a Sole Source must be filed and processed pursuant to Articles 2.2.4 or 3.4.6 and are subject to the provisions and limitations therein.

5.2.2.3.3 All Claims concerning the Owner's rejection of Construction Documents in conjunction with a Construction Document Change Order must be filed and processed pursuant to Article 2.2.3 and are subject to the provisions and limitations therein.

5.2.2.3.4 After execution of the GMP Change Order, all Claims to modify the Contract Time or extend the Material or Final Completion Date must be filed and processed pursuant to Article 3.5.10.

5.2.2.3.5 After execution of the GMP Change Order, all Claims to modify the Cost of Work or adjust the GMP must be filed and processed as a request for Change Order and subject to the processes and limitations set forth in Sections 3 and 4. If the requested Change Order is rejected, a protest may be made as set forth in Paragraph 5.2.2.2 above.

5.2.3 Dispute Resolution.

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

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

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

5.2.3.4 No Litigation. No litigation may be commenced without first following the process in this Article. Any litigation pursued in connection with or arising out of this Contract shall be filed in the Superior Court of Fulton County, Georgia after the filing party provides thirty (30) days written notice to the opposing party. The parties hereby agree that the Superior Court of Fulton County, Georgia shall have exclusive jurisdiction and venue in all matters concerning this Contract.

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PART 3 – TERMINATION

5.3.1 Owner's Right to Terminate Contract Without Cause.

5.3.1.1 Owner's Right to Terminate. The Owner may terminate this Contract for convenience at its sole discretion and at any time, without cause and irrespective of whether or not CM/GC is in default of its obligations hereunder, upon providing written notice thereof to CM/GC at least thirty (30) calendar days in advance of the termination date. In the event of a termination for convenience, CM/GC shall take immediate steps to terminate Work as quickly and effectively as possible and shall terminate all commitments to third-parties, unless otherwise instructed by the Owner. Provided that no damages are due to the Owner for CM/GC's failure to perform in accordance with this Contract, the Owner shall pay CM/GC for work performed in accordance with Article 5.3.1.2 through 5.3.1.4 below. The Owner shall have no further liability to CM/GC for such termination. Further, at its sole discretion, the Owner may pay the CM/GC for additional value received as a result of CM/GC's efforts, but in no case shall said payment exceed any remaining unpaid portion of the Contract Sum.

5.3.1.2 Termination Prior to Entry of GMP Change Order.

5.3.1.2.1 CM/GC Fee. In the event such termination occurs prior to any Component Change Order, or after all Work under any issued Component Change Orders has been finally completed, the Owner shall pay CM/GC the sums due for the CM/GC Fee earned to the date of termination, not exceeding the unpaid balance of the Preconstruction Fee amount set forth in Article 4.1.1 (Paragraph 5 of the Contract). For purposes of calculation, the CM/GC Fee shall be deemed earned only to the extent of an amount that bears to the total CM/GC Fee the same ratio that the Work in place at the time of termination bears to the total Work, as reasonably determined by the Design Professional.

5.3.1.2.2 Prior to GMP Change Order, Items for Which Payment Shall Be Made. In the event such termination occurs prior to the entry of the GMP Change Order, the Owner shall pay CM/GC the reasonable termination expenses for:

- (a) Sums due for authorized Preconstruction Fees earned prior to termination, but not exceeding the remaining unpaid balance of the Preconstruction Fee;
- (b) Any unpaid Actual Costs, Contingency Costs and lump sum amounts due under Component Change Orders and actually incurred or earned to the date of termination;
- (c) Any other costs, not exceeding the unpaid balance of the aggregate of all approved Change Order and Component Change Order sums, attributable to the termination (including, by way of illustration only, cancellation charges owed to and other incurred obligations, commitments and claims of Trade Contractors or Suppliers) and for which CM/GC is not otherwise compensated;
- (d) The cost to CM/GC to terminate any lease of equipment (other than motor vehicles) required specifically for the purpose of providing services under this Contract, provided that prior notice of such acquisition was given to Owner, or fair compensation by purchase or rental (at Owner's election) for any equipment retained by Owner, to the extent it has not already paid for same as an item of Actual Cost or Contingency Cost.

5.3.1.3 Termination After GMP Change Order. Should such termination occur after the entry of the GMP Change Order, the Owner shall pay CM/GC, up to the unpaid balance of the GMP, for:

- (1) all Actual Costs, Contingency Costs and lump sum amounts earned to the date of such termination;
- (2) all other costs attributable to the termination (including by way of illustration only cancellation charges owed to and other incurred obligations, commitments and claims of Trade Contractors or Suppliers) and for which CM/GC is not otherwise compensated;
- (3) a proportionate amount of CM/GC's Fee that bears to the total Fee under the GMP Change Order the same ratio that the Actual Cost and lump sum amounts due with respect to the Work in place at the date of termination bears to the Estimated Cost Component of the GMP Change Order; and

(4) the cost to CM/GC to terminate any lease of equipment (other than motor vehicles) required specifically for the purpose of providing services under this Contract, provided that prior notice of such acquisition was given to Owner, or fair compensation by purchase or rental (at Owner's election) for any equipment retained by Owner, to the extent it has not already paid for same as an item of Actual Cost or Contingency Cost.

5.3.1.4 Condition Precedent to Payment. As a condition precedent to receiving the payment set forth in this Article 5.3.1, CM/GC shall deliver to the Owner all papers, documents, assignments and agreements relating to the Project, in particular the Construction Documents (including ownership and copyright thereof) as set forth in Article 1.7.9.

5.3.1.4.1 Assignment. If requested, CM/GC shall assign to the Owner or to an entity of Owner's choice all of CM/GC's contractual rights in respect to the Project, including but not limited to any agreements with Subcontractors or Suppliers, so that the assignee shall be fully vested with all rights and benefits of CM/GC under such papers, documents and agreements, together with releases and waivers of lien in the same manner as would be required upon Final Completion. Further, upon request, CM/GC shall assign to Owner or to the entity of Owner's choice all Trade Contracts entered into by CM/GC under Component Change Orders, and in that event the assignee shall be solely obligated to the Trade Contractors or Suppliers under such Trade Contracts for all sums payable thereunder and not previously paid by the Owner to CM/GC.

5.3.1.4.2 Cessation of Entitlement. Upon the CM/GC's assignment of agreements, contracts, Trade Contracts and/or Owner's payment of monies due CM/GC as provided in Subparagraph 5.3.1.4.1 above, CM/GC shall be entitled to no further compensation of any kind from Owner and shall have no further obligation with regard to the assigned agreements, contracts, or Trade Contracts.

5.3.2 Owner's Right to Declare Default and/or Terminate Contract for Cause.

5.3.2.1 Owner's Right to Terminate. Owner may declare the CM/GC to be in Default and terminate this Contract for cause, and without prejudice to any right or remedy, if CM/GC makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if it persistently or repeatedly refuses or fails, except in cases for which extensions of time are provided, to supply enough properly skilled workmen or proper materials, or if it fails to make proper payment to Trade Contractors or Suppliers for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the Project, or if it fails to diligently prosecute the Work in accordance with the Owner's Program, the Construction Documents, or the Contract Documents, or if it otherwise is guilty of a material violation of any provision of this Contract. The Owner shall give the CM/GC and Surety ten (10) days' advance written notice of the Owner's intent to declare default and the reasons therefore, and if CM/GC, or its Surety, fail to cure the default within that time period, or fail to commence and thereafter diligently prosecute the Work necessary to cure the default, Owner may declare the CM/GC to be in default and terminate this Contract immediately. The Owner may then make alternative arrangements for completion of the Project.

The Owner reserves the right in termination for cause to take assignment of all contracts between the CM/GC and its Subcontractors, vendors, and Suppliers. The Owner will promptly notify the CM/GC of the contracts that the Owner elects to assume. Upon receipt of such notice, the CM/GC shall promptly take all steps necessary to effect each assignment.

5.3.2.2 Default or Termination Prior to GMP. If such default or termination occurs prior to entry of any Component Change Order or GMP Change Order, Owner shall pay all CMAR Fees for preconstruction activities earned prior to termination less such damages as may be incurred by Owner by reason of such termination.

5.3.2.3 Default or Termination after GMP. Upon default or termination of this Contract after entry of a Component Change Order or GMP Change Order, the Owner shall have the right to take possession of the Work, together with all materials, equipment, tools and improvements thereon and to finish the Work by whatever reasonable method the Owner may deem expedient. In such case, CM/GC shall not be entitled to receive any further payment until the Work is completed and shall take all necessary steps, including the legal assignment of its contract rights, as the Owner may require for the purpose of fully vesting in the Owner or the entity of Owner's choice with the rights and benefits of CM/GC under such obligations or commitments as the Owner may elect. Upon Final Completion of the Work governed by Change Orders then in force (including the GMP Change Order), CM/GC shall pay the Owner the amount, if any, that the (1) total cost of completing the Work governed by such Change Orders, plus (2) any damages recoverable by Owner for delays in completion, together with (3) amounts previously paid to CM/GC, exceeds the agreed upon maximum price stated in the Change Orders (including the GMP Change Order) in force at the time of

said default or termination. If there is no such excess, the Owner shall pay CM/GC any portion of the Actual Cost and lump sum amounts due with respect to the Work completed by CM/GC prior to the termination for default and the CM/GC's Fee that has not previously been paid and that was owed to CM/GC at the time of termination under Change Orders then in force, provided that such payment shall not exceed the unpaid balance of the amount otherwise payable under this Contract minus the cost of completing the Project and the total amount paid by the Owner for completing the Work under such Change Orders, including all costs and damages incurred by the Owner as a result of any delay in completion, and all amounts previously paid to CM/GC, do not exceed the amount stated in the Change Orders (including the GMP Change Order) in force at the time of termination.

5.3.2.4 Owner's Right to Prosecute the Work. Time being of the essence, if the CM/GC shall be declared in default or shall fail or neglect to carry out the Work in accordance with the Contract Documents, or fail to otherwise fully comply with its obligations under this Contract, both the CM/GC and the Surety agree that the Owner may, after giving the CM/GC and Surety twenty five (25) calendar days written notice, without prejudice to any other remedy and without invalidating the performance bond, make good such deficiencies and may deduct the cost thereof from payment due the CM/GC or at the Owner's option, the Owner may terminate this Contract and take possession of the Site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the CM/GC and finish the Work by whatever method the Owner shall deem expedient.

5.3.2.5 Effect of Later Judicial Determination. In the event a court of competent jurisdiction determines (or the parties agree to settle with a consent determination) that a termination for default is wrongful or not the fault of the CM/GC, the termination shall be considered to be a Termination Without Cause and the sole remedy available to the CM/GC shall be the contractual treatment of the termination pursuant to Article 5.3.1 above and without any other damages or relief.

5.3.3 CM/GC's Right to Terminate.

5.3.3.1 CM/GC's General Right to Terminate. If the Project, in whole or substantial part, is stopped for a period of thirty (30) days or more under an order of any court or other public authority having jurisdiction over the Project, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the CM/GC, or should the Work be suspended by Owner under Paragraph 5.1.1 for a period of more than forty-five (45) days, then the CM/GC may, upon seven (7) days' written notice to the Owner, terminate this Contract and, upon providing Owner with all releases and waivers of lien in the same manner as would be required upon Final Completion, recover from the Owner payment of (1) Actual Costs and lump sum amounts due for all Work properly executed or Project materials actually delivered to the Site for which title has been provided to Owner, (2) the CM/GC's Fee earned to date, and, (3) upon timely claim therefor, for any proven loss sustained or cost incurred related to termination of any lease of equipment (other than motor vehicles) required specifically for the purposes of providing services under this Contract, provided that prior notice of such acquisition was given to the Owner.

5.3.3.2 CM/GC's Right to Terminate for Nonpayment. If the Owner fails to pay the CM/GC when payment is due, the CM/GC must give written notice of the CM/GC's intention to terminate this Contract. If the Owner fails to provide the CM/GC payment or written notice of a dispute as to the amount sought by the CM/GC within forty-five (45) days after receipt of the CM/GC's written notice, the CM/GC may terminate this Contract. Upon such termination the Owner will pay the CM/GC (1) the Actual Cost for the Work properly executed or Project materials actually delivered to the Site for which title has been provided to Owner, (2) the CM/GC's Fee earned to date, and, (3) upon timely claim therefore, for any proven loss sustained or cost incurred related to termination of any lease of equipment (other than motor vehicles) required specifically for the purposes of providing services under this Contract, provided that prior notice of such acquisition was given to the Owner.

5.3.3.3 Limitation on Fee. The CM/GC Fee shall be deemed earned only to the extent of an amount that bears to the total CM/GC Fee the same ratio that the Work in place at the time of termination bears to the total Work, as reasonably determined by the Design Professional and approved by the Owner.

5.3.4 Termination for Abandonment by CM/GC. Both the CM/GC and the Surety under any bond furnished for the Project agree that the Owner, after fourteen (14) calendar days' written notice to the CM/GC, may terminate this Contract if the CM/GC abandons the Project. If such termination occurs, the Owner shall pay the CM/GC for Work completed and for the CM/GC's actual expenses for materials, equipment, tools and machinery, less any costs the Owner incurs in re-contracting and the start-up of a replacement for the CM/GC, which amount shall be reasonably determined by the Design Professional and approved by the Owner.

5.3.5 Notices of Termination. Notwithstanding any other provision of this Contract, if the either party elects to terminate this Contract regardless of reason, the terminating party will issue a written Notice of Termination or Notice of Default to the terminated or defaulted party by Certified Mail, Return Receipt Requested.

5.3.6 Duties Upon Termination. Upon termination the CM/GC shall: (1) promptly discontinue all services affected, unless the notice directs otherwise; and (2) promptly deliver to the Owner all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the CM/GC in performing this Contract, whether completed or in process, in the form specified by the Owner.

5.3.7 Cumulative Remedies. Except as otherwise provided herein, each right and remedy provided for in this Contract shall be cumulative and shall be in addition to every other right or remedy provided for in this Contract as now or hereafter existing, at law, or in equity, or by statute, or otherwise, and the exercise or beginning of the exercise of any one or more of the rights or remedies provided for in this Contract as now or hereafter existing, at law, or in equity, or by statute, or otherwise shall not preclude the simultaneous or later exercise of any or all other rights or remedies provided for in this Contract as now or hereafter existing, at law, or in equity, or by statute, or otherwise.

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SECTION 6 - PROJECT COMPLETION

PART 1 – MATERIAL COMPLETION

6.1.1 Prerequisites.

6.1.1.1 No Incomplete Work. The CM/GC must attain Final Completion prior to any occupancy of the Project; provided that Owner may occupy the Project prior to completion of Permitted Incomplete Work where appropriate and upon agreement of the parties pursuant to Section 6.1.1.3 below.

6.1.1.2 Completion of Components. The Owner does not intend to accept partial occupancy of Components. All Components of the Project must achieve Final Completion.

6.1.1.3 No Partial Occupancy. In the event partial occupancy becomes appropriate, which decision shall be at the sole discretion of the Owner, a Change Order will be executed, and partial occupancy will be governed by the following:

6.1.1.3.1 Written Agreement Required. The Owner may obtain beneficial use and occupancy of any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the CM/GC by Change Order, provided such use and occupancy is consented to by the insurer providing property insurance coverage, is authorized by public authorities having jurisdiction over the Work, and a written agreement establishing such occupancy is made in accordance with this Paragraph. Such partial use and occupancy may commence whether or not the portion is finally complete, provided the Owner and CM/GC have agreed in writing by Change Order (a) to the commencement date for such partial use and occupancy, describing the portion of the Work covered by such use and occupancy, (b) to the respective responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and (c) to the period for correction of the Work and commencement of warranties required by the Contract Documents. Consent of the CM/GC to partial use and occupancy shall not be unreasonably withheld. No use or occupancy by the Owner of any portion of the Work shall be deemed use or occupancy unless the written agreement required hereunder is executed.

6.1.1.3.2 Inspection. Immediately prior to such partial use and occupancy, the Owner, the CM/GC and the Design Professional shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

6.1.1.3.3 Effect. Partial use and occupancy of a portion or portions of the Work shall not constitute acceptance of Work not complying with requirements of the Contract Documents.

6.1.2 Material Completion.

6.1.2.1 Material Completion Defined. Material Completion is when the Work or designated portion thereof is complete in accordance with the Contract Documents so that any remaining Work includes only Minor Items that can be completed or corrected within the following thirty (30) calendar days, Permitted Incomplete Work that will be completed by the date agreed upon by the parties, and any Warranty Work. Material Completion shall require building commissioning and complete operation of all applicable building systems including, but not limited to, mechanical, electrical, plumbing, fire protection, fire alarm, telecom, data, security, elevators, life safety, and accessibility. The Work shall be complete except commissioning and for Minor Items or Permitted Incomplete Work (defined below) or Warranty Complaint Items (see Article 6.6.3).

6.1.2.1.1 Minor Item Defined. A Minor Item is a portion or element of the Work that can be totally complete within thirty (30) calendar days.

6.1.2.1.2 Permitted Incomplete Work Defined. Permitted Incomplete Work is work that is incomplete through no fault of the CM/GC, as determined by the Owner, including, but not limited to, seasonal test and balance, seasonal landscaping, scheduled elevator inspection or maintenance, incomplete Work due to failure of Separate Contractors to complete Work, and the like.

6.1.2.2 When Material Completion Required. Material Completion shall be achieved by the Material Completion Date, as provided in Paragraph 7 of the Contract and as may be amended.

6.1.2.3 Effect of Material Completion. The Liquidated Damages daily rate is reduced to zero.

6.1.2.4 Liquidated Damages. Should Material Completion not be achieved by the Material Completion Date, as amended, Liquidated Damages at the specified daily rate in Paragraph 8 of the Contract begin to accrue and are payable on the day immediately following the Material Completion Date required by this Contract and shall continue to accrue and be payable each day thereafter until Material Completion is accomplished.

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PART 2 – FINAL COMPLETION

6.2.1 Final Completion.

6.2.1.1 Final Completion Defined. Final Completion is the completion of all Work, including completion of all Minor Items as defined in Section 6, Part 1, except any Warranty Work, as provided herein. Final Completion shall be evidenced by the Design Professional's Certificate of Final Completion, a form of which is attached hereto as Exhibit N and incorporated herein by reference. Final Completion should include completion of Permitted Incomplete Work, as defined in Section 6, Part 1, for which the reason that the Work was incomplete has been removed.

6.2.1.2 When Final Completion Required. Final Completion shall be obtained not later than thirty (30) days after the Material Completion Date, as amended, provided that Permitted Incomplete Work shall be completed as expeditiously as possible, but not later than a date established by the Design Professional. The Design Professional's Certificate of Final Completion shall not be issued until all Permitted Incomplete Work is completed.

6.2.2 Effect of Achieving Final Completion. Upon the date when Final Completion is achieved and the Design Professional's Certificate of Final Completion is issued, the following matters are conclusively determined:

6.2.2.1 Project Completion. The Project and the Work (other than any Warranty Work) are complete.

6.2.2.2 Occupancy of the Work. The Owner may immediately occupy the Work without restriction.

6.2.2.3 Warranty Periods. All warranties begin to run from the date Final Completion is achieved, subject to any agreement made pursuant to Section 6.1.1.3.1.

6.2.2.4 Utilities. All utilities become the responsibility of the Owner.

6.2.2.5 Insurance. The Owner is responsible for all insurance for the Project.

6.2.2.6 Payment for Final Completion. The CM/GC may request payment of the remaining Contract Sum including but not limited to retainage, less amounts credited the Owner or incurred as Liquidated Damages.

6.2.3 Effect of Failure to Achieve Final Completion.

6.2.3.1 Notice and Effect of continued Failure to Achieve Final Completion. Should Final Completion not be achieved within the time specified, the Owner will issue to the CM/GC a fourteen (14) day notice as a final warning to complete the Work. If Final Completion is not achieved by the end of the 14th day from the date of the Notice, the following matters are conclusively determined, subject to any request for extension of time as set forth in paragraph 6.2.3.2 below:

6.2.3.1.1 Breach of Covenant of Time. As time is of the essence in the completion of the Work, the CM/GC is in breach of the covenant of time and is subject to default.

6.2.3.1.2 Ineligibility to Bid Upon City Contracts. The CM/GC is ineligible to bid upon any contract invitation to bid of City of Milton, Georgia. In the event a bid has been submitted but the bid award has not been made, the CM/GC's ineligibility requires that its bid be rejected.

6.2.3.1.2.1 Automatic Restoration of Eligibility to Bid. The CM/GC's eligibility to bid upon City of Milton contracts shall be restored automatically as of the date of achievement of Final Completion as evidenced by the Certificate of Final Completion.

6.2.3.1.2.2 Application to Reinstate Eligibility to Bid. The CM/GC's eligibility to bid upon City of Milton contracts may be reinstated upon the following:

(a) A written application to the Owner, not earlier than 18 months after the date of failure to achieve Final Completion, requesting reinstatement of eligibility, and

(b) The showing of good and just cause why the CM/GC's eligibility should be reinstated, or that there is good and just cause to believe that the achievement of Final Completion was impossible to the extent that determination of ineligibility was improvident.

(c) The Owner may, upon written request, permit the CM/GC to make a personal presentation upon the application to and approval by the City of Milton City Council.

6.2.3.2 Extension of Time for Final Completion. The CM/GC may file a request for an additional extension of time in the manner prescribed in Section 3, Part 4, and the effects of failure to achieve Final Completion shall be suspended until the Design Professional's decision is provided. Should the Design Professional suggest approval of the application for extension of time generally, and should the Owner approve same (or grant the Design Professional written authority to approve same), the time for achieving Final Completion shall be adjusted accordingly. Should the Design Professional suggest approval of the application for extension of time for a specific item of Work, and should Owner approve same (or grant the Design Professional written authority to approve same), that item of Work shall be deemed Permitted Incomplete Work with a specific individual final completion date.

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PART 3 – INSPECTIONS FOR COMPLETION OF THE WORK

6.3.1 General Responsibility of the CM/GC for Inspection. The CM/GC acknowledges and agrees that he has an indivisible, non-delegable, and nontransferable contractual obligation to the Owner to make his own inspections of the Work at all stages of construction, and he shall supervise and superintend performance of the Contract in such manner as to enable him to confirm and corroborate at all times that all Work has been executed strictly, literally, rigidly, and inflexibly in accordance with the methods and materials designated in the Contract Documents. The CM/GC's inspections are also for the purpose of permitting the CM/GC to accurately represent that (a) his certifications on periodical estimates are true and correct and (b) his notices of readiness for inspections are true and correct. Accordingly, the CM/GC acknowledges and agrees that he may not defend or excuse any deviation from the Contract Documents on the ground (a) that the deviation was not brought to his attention by another person or party or other persons or parties or (b) that a Subcontractor is or Subcontractors are at fault.

6.3.2 Notice of Readiness for Inspection for Material Completion.

6.3.2.1 Preparation of Preliminary Punchlist. Prior to the Material Completion Date, as amended, the CM/GC shall correct all Non-compliant or Incomplete Work.

6.3.2.2 CM/GC's Inspection and Notice. At such time as the CM/GC believes that the Work has progressed to the point that all remaining incomplete or Non-Compliant Work (other than Permitted Incomplete Work), can be completed or corrected within not more than thirty (30) days, the CM/GC shall perform an inspection of the Work. At the conclusion of this inspection, the CM/GC shall prepare a "Preliminary Punchlist" indicating Work that is either incomplete or not in compliance with the Contract Documents. A copy of the Preliminary Punchlist will be provided to the affected Subcontractors or Trade Contractors, the Design Professional and the Owner. When this Work has been corrected or completed to the extent that all remaining Work is Minor Items (that can be corrected or completed within thirty (30) days) or Permitted Incomplete Work (as defined in Section 6, Part 1), the CM/GC will send an updated punchlist to the Design Professional and Owner. After or simultaneously with the provision of this punchlist, the CM/GC shall provide a written notice to the Design Professional and the Owner, the "Notice of Readiness for Inspection for Material Completion", requesting an inspection to determine Material Completion in the following words:

The Work on the Contract for the [show name of Project as it appears in the Contract] having been materially completed, it is requested that an Inspection for Material Completion be made promptly by the Design Professional in accordance with Section 6 of the General Conditions. The Preliminary Punchlist, to the best of the CM/GC's knowledge, is attached hereto.

6.3.2.3 In the event the CM/GC shall have issued the "Notice of Readiness for Inspection for Material Completion" prematurely, hereinafter referred to as a "false start," the CM/GC shall be liable for the damage resulting from the false start including, but not limited to, the salaries, professional fees, and travel and living expenses of the persons or parties inconvenienced by the false start.

6.3.3 Conducting the Inspection for Material Completion.

6.3.3.1 Initial Punchlist. The Design Professional shall conduct the Inspection for Material Completion. Upon receipt of the CM/GC's notice, the Design Professional shall confirm the punchlist provided by the CM/GC and prepare a comprehensive list of items to be completed or corrected, adding or deleting such Minor Items or Permitted Incomplete Work as shall be appropriate. Where appropriate, the Design Professional shall assign completion dates for the items of Permitted Incomplete Work. Such a list is referred to as the "Initial Punchlist." The "Initial Punchlist" is defined as the list of items of required Work that, as a minimum, are to be accomplished for the CM/GC to achieve Final Completion of the Project; provided that such list shall not alter the responsibility of the CM/GC to complete all work in accordance with the Contract Documents.

6.3.3.2 Prompt Completion and Correction by CM/GC. The CM/GC shall proceed promptly to complete and correct items on the Initial Punchlist and all Supplemental Punchlists. Failure to include an item on any such list does not alter the responsibility of the CM/GC to complete all Work in accordance with the Contract Documents.

6.3.4 Certificate of Material Completion. Upon successful completion of the inspection, the Design Professional shall issue a Certificate of Material Completion, a form of which is attached hereto as Exhibit M and included herein by reference. If the Design Professional's inspection, or observations by the Design Professional, discloses any item, whether or not included on the Initial Punchlist or any applicable Supplemental Punchlist, which is not in accordance

with the requirements of the Contract Documents, the CM/GC shall, before issuance of any Certificate of Material Completion, complete or correct all items on the Initial Punchlist and any applicable Supplemental Punchlist so that the Project is substantially complete and only Minor Items and Permitted Incomplete Work remain to be completed or corrected, which can be completed or corrected within not more than thirty (30) days, or as otherwise agreed.

6.3.5 Determination of Final Completion.

6.3.5.1 Final Completion of the Project. Final Completion of the Project shall occur when the Design Professional determines that (1) the entire Project and all of its systems, including access to the Project and any off-site Work required by the Contract Documents, are sufficiently complete and cleaned in accordance with the Contract Documents, (2) the required Certificates of Occupancy and other governmental approvals have been obtained, and (3) the Design Professional issues the Certificate of Final Completion. In order for the CM/GC to have achieved Final Completion of the Project, the Design Professional must have determined that the Owner is able to occupy the Project and all of the Site and utilize all building systems per the Contract Documents. The Project must also be properly cleaned as set out above (See Section 3.1.13). The Owner reserves the right to waive any of the above conditions for a part or all of the Project without relieving the CM/GC of any other responsibilities. CM/GC shall not stop or delay the Work because of a dispute regarding a proposed Certificate of Final Completion or the Owner's or Design Professional's actions related to a proposed Certificate of Final Completion.

6.3.5.2 Notice from CM/GC. Upon completion of the items noted on the Initial and any Supplemental Punchlist, including all Minor Items and such Permitted Incomplete Items as are due to be completed, the CM/GC shall give to Design Professional and Owner notice requesting an Inspection for Final Completion using the following language:

The Work on the Contract for the [show name of Project as it appears in the Contract] having been 100% completed, except for Permitted Incomplete Work not yet due to be completed, it is requested that an Inspection for Final Completion be made promptly by the Design Professional in accordance with Section 6 of the General Conditions.

No Final Inspection shall be made until such time as the Design Professional has received a notice in the exact form indicated above and a copy thereof has been received by the Owner. At that time, CM/GC shall submit to the Design Professional a proposed Certificate of Final Completion for each portion of the Work CM/GC believes is, in fact complete. Each proposed Certificate of Final Completion must state the responsibility of each party for security, maintenance, heat, utilities, damage to the Work, and insurance, must include a list of any Permitted Incomplete Items to be completed or corrected, and must fix the time within which the CM/GC shall complete the items listed therein. Failure to include an item on any such list does not alter the responsibility of the CM/GC to complete all Work in accordance with the Contract Documents. The notice requesting the Inspection for Final Completion should be given upon completion of the Work (other than any Permitted Incomplete Work), which should occur within thirty (30) days of achieving Material Completion.

6.3.5.3 Final Accounting. At the time CM/GC gives a notice requesting an Inspection for Final Completion to the Design Professional, CM/GC shall submit to the Owner a final accounting showing the total Actual Cost of the Work in such form as the Owner may reasonably require, accompanied by the following:

6.3.5.3.1 Documentation. All documentation (in proper form) required to be submitted to the Owner pursuant to any provision of this Agreement;

6.3.5.3.2 Certificates. Certificates and other documents as may be required to demonstrate that all payrolls, bills for materials and equipment, and other indebtedness and liabilities connected with the Work for which the Owner or the property thereof might in any way be responsible have been paid or otherwise satisfied;

6.3.5.3.3 Waivers.

6.5.9.4.3.1 Liens. Subject to Paragraph 4.5.3, full waivers of lien and general releases (to the extent not theretofore submitted) issued by the CM/GC and by all Trade Contractors and Trade Suppliers who may claim through CM/GC or its Trade Contractors, in favor of the Owner and its designees;

6.5.9.4.3.2 Claims. Subject to Paragraph 4.5.3, full waivers of lien and general releases for any claim theretofore asserted for damages resulting from injury or death to any employee, Trade Contactor, or the public at large or for any other claims theretofore asserted which might constitute a lien upon the property of Owner; and

6.3.5.3.4 Full Accounting. A full accounting of the Actual Cost and Contingency Cost of the Work. The CM/GC shall be deemed to waive all rights to submit any claim for any cost incurred as of the date the request for final payment is submitted and for which proper documentation was not retained or does not exist;

6.3.5.3.5 Drawings and Specifications. One complete set of marked up drawings and specifications showing actual locations of utilities and all changes and alterations made to the Work during construction;

6.3.5.3.6 Affidavits. The affidavit and bond set forth in subparagraphs 6.4.1.2.1 and 2;

6.3.5.4 In the event the CM/GC shall have issued the "Notice of Request for Inspection for Final Completion" prematurely, hereinafter referred to as a "false start," the CM/GC shall be liable for the damage resulting from the false start including, but not limited to, the salaries, professional fees, and travel and living expenses of the persons or parties inconvenienced by the false start.

6.3.5.5 The Design Professional may notify the CM/GC that it does or does not approve of a proposed Certificate of Final Completion. If the Owner rejects a proposed Certificate of Final Completion, the Design Professional, on behalf of the Owner, will provide CM/GC with written notice, as to the Owner's basis for rejecting a proposed Certificate of Final Completion.

6.3.6 Conducting the Interim Inspection for Punchlist Completion. Upon receipt of an application for an Inspection for Final Completion and the required documentation from CM/GC, the Design Professional shall conduct the Inspection for Final Completion accompanied by the CM/GC, Owner. The Design Professional shall confirm the items noted on the Initial and Supplemental Punchlists have been completed including *all* Minor Items. Upon successful completion of the inspection, the Design Professional shall issue a Report of Interim Inspection, noting any Permitted Incomplete Work which remains to be accomplished and the date by which it is to be completed. In the event *all* Permitted Incomplete Work has been completed at the time of this Interim Inspection, and the Design Professional so certifies, then this inspection shall be deemed an Inspection for Final Completion. In the event any Minor Item is determined to be incomplete, the Owner may give the fourteen (14) day notice of failure to complete the Work set forth in Article 6.2.3.1.

6.3.7 Conducting the Inspection for Final Completion. In the event that Permitted Incomplete Work remains after the Interim Inspection for Punchlist Completion, at such time when all such Permitted Incomplete Work has been completed or scheduled for completion, the Owner shall call for, and the Design Professional shall schedule, the Final Inspection with the Owner and CM/GC. The Design Professional shall conduct the Inspection for Final Completion and shall confirm that all Permitted Incomplete Work has been completed. Upon successful completion of the inspection, the Design Professional shall issue the Certificate of Final Completion and Final Payment, and any remaining funds withheld in accordance with Paragraph 4.3.5 (except the Warranty Retainage and as otherwise specifically provided herein) may, upon an Application for Payment, be paid to the CM/GC as provided in Article 6.5.14. A form of the Certificate of Final Completion is attached hereto as Exhibit N and incorporated herein by reference. Any Final Documents, including satisfactory test and balance reports on the heating, ventilating and air conditioning system and the facility operation and maintenance instructions and any other documents specified by the Design Professional in Division 1 of the Specifications, not yet submitted must be submitted with the application for Final Payment. In the event any item of Permitted Incomplete Work is determined to be incomplete and the date for its completion has passed, the Owner may give the fourteen (14) day notice of failure to complete the Work set forth in Article 6.2.3.1.

6.3.8 Final Notice of Non-Compliant Work. The Final Notice of Non-Compliant Work is issued as a result of the inspection for Final Completion and is also known as the Final Punchlist. Upon the completion or correction of this Non-Compliant Work ("Punchlist" work) the Design Professional, with the approval of the Owner, will issue the Final Completion Certificate. Costs associated with the repair or replacement of Non-Compliant Work will be at the CM/GC's sole expense and shall not be deducted from the contingency funds of either the CM/GC or the Owner.

6.3.9 Certificates of Occupancy. The CM/GC shall obtain the Certificates of Occupancy.

6.3.10 Notification of Owner of Site Visits by the CM/GC or Trade Contractors. Following the successful completion of the Inspection for Final Completion, the CM/GC and his Trade Contractors or Subcontractors shall make no visits to the Site without first giving notice to the Owner.

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PART 4 – FINAL DOCUMENTS

6.4.1 Final Documents.

6.4.1.1 Final Documents Defined. Final Documents consist of all Contract Documents, including but not limited to Specifications, warranties, and guarantees required by the Contract Documents as well as the documents described below.

6.4.1.2 Minimum Specific Final Documents Required. Prior to beginning processing of the Application for Payment upon the Certificate of Final Completion, the following, must be submitted to the Owner:

6.4.1.2.1 Affidavit. A Final Affidavit in the exact form as shown in Section 7, Forms.

6.4.1.2.2 Bond. A Five Year Bond of Roofs and Walls meeting the requirements described in Section 1.5.1 and in the penal sum of the Actual Cost of the walls, wall cladding, wall insulation, roof, insulation and roof deck, but not less than the amount shown as in the approved initial breakdown for these roof and wall systems.

6.4.1.2.3 Marked-up Construction Documents. The CM/GC shall provide a complete set of Marked-up Construction Documents to the Design Professional, which set shall reflect all changes caused by Addenda, field changes, Change Orders, or observed changes by the CM/GC or Subcontractor(s) for the purpose of the Design Professional's issuance of As Built Documents to the Owner.

6.4.1.2.4 Operation and Maintenance Data and Instructions and Training. The CM/GC shall furnish proper written instructions to the Owner on operation and maintenance of all mechanical and electrical equipment. The CM/GC shall provide training in the operation and maintenance of all mechanical and electrical systems to Owner in the presence of the Design Professional and shall give notice in writing to the Design Professional and Owner at least fifteen (15) days prior to the date it is proposes for the training. For all items of mechanical or electrical equipment or apparatus installed that require operation or maintenance after occupancy, the CM/GC shall furnish and deliver to the Owner complete brochures and data, as prepared and published by the manufacturers covering details of operation and maintenance.

6.4.1.2.5 Certificates of Manufacturers for Major Components.

The CM/GC expressly agrees that the manufacturers are solely the agents of the CM/GC. In accomplishing this certification, the CM/GC shall obtain the Specimen Certificate of Manufacturer (the form of which is provided in Section 7) from the respective manufacturers and coordinate the initial start-up and testing of building systems. In all cases where the equipment of two or more manufacturers ties in and functions together, the CM/GC shall require the field representatives to perform simultaneously the initial start-up, the testing, and the placing of their equipment into operation. "Start-up" is defined as putting the equipment into action. "Testing" is defined as performing such testing as is stipulated in the Contract Documents to be performed. "Placing into operation" is defined as operating the equipment for a sufficient period of time for the determination to be made that it is performing properly. All building commissioning activities should be completed, with the exception of those designated as "Permitted Incomplete Work."

For elevators, , major components of air conditioning systems; major components of heating systems; start-up, testing, and placing into operation shall be performed by the field representative(s) of the manufacturer(s), and certificate(s) of the manufacturer(s), a.k.a. Specimen Certificate of Manufacturer, shall be filed with the Owner on the letterhead(s) of the manufacturer(s) in which the manufacturer(s) certifies or certify that "the equipment has been installed in strict compliance with the recommendations of the manufacturer(s) and is operating properly," in the format shown in Section 7, Forms. The manufacturer shall list in the certificate the item or items furnished to the job and the date, name, or other positive means of identifying any supplementary documents containing the recommendations of the manufacturer, with a copy of each of the supplementary documents attached to the certificate.

6.4.1.2.6 Final Certification of Costs. For proper capital asset reporting of the Project, the CM/GC shall submit his Final Certification of Costs in the format set forth in Exhibit L.

6.4.1.2.7 Name Plate Data for Computerized Maintenance Management System (CMMS). The CM/GC shall input all equipment into a BIM Model using a Level of Development (LOD) 5 that is compatible in software and nomenclature with the Design Professional's BIM Model. Upon completing input of all equipment name plate data in a manner approved by the Owner, the CM/GC shall download the information into an xcel format acceptable to the Owner and compatible with the CMMS.

6.4.2 Presentation of Final Documents. At the time of the Inspection for Final Completion, but in any event prior to the application for Final Payment, the CM/GC will provide the Owner with a three ring binder containing all of the Final Documents, warranties, and guarantees required by the Contract Documents. Included in the binder shall be the documents indicating the brand names actually used in the installation of the Work.

6.4.3 Keys. At the time of the Inspection for Final Completion, but in any event prior to the application for Final Payment, CM/GC shall deliver to Owner keys with tags indicating number and/or description of door or room each key is intended to fit attached to each key. CM/GC shall prepare and furnish with the keys an itemized key schedule in quintuplicate listing the door or room number and description, serial number of key, and number of keys being delivered for each door or lock.

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PART 5 – PAYMENT FOR MATERIAL COMPLETION AND FINAL PAYMENT

6.5.1 Payment for Material Completion. Payment for Material Completion shall be due thirty (30) days after receipt by the Owner of the Application for Payment upon achievement and certification of Material Completion. Payment shall be made by a check payable jointly to the CM/GC and surety and shall be mailed to the surety.

6.5.2 Application for Payment for Material Completion.

6.5.2.1 Certification of CM/GC. Upon submitting its Application for Payment for Material Completion, the CM/GC shall certify, over his own signature, that the Work provided for by the Contract Documents has been completed under the terms and conditions thereof, , except for any Minor Items or Permitted Incomplete Work.

6.5.2.2 Supporting Documentation.

6.5.2.2.1 Financial Data. The CM/GC shall submit evidence satisfactory to the Design Professional that all payrolls, material bills, and other indebtedness connected with the Work have been paid.

6.5.2.2.2 Affidavit and Bond. The CM/GC shall attach copies of the affidavit and bond set forth in subparagraphs 6.4.1.2.1 and 2 above, execute the payment certification and forward it directly to the Design Professional.

6.5.3 Intentionally Omitted.

6.5.4 Intentionally Omitted.

6.5.5 Final Payment. Final Payment shall be due thirty (30) days after receipt by the Owner of the Application for Payment upon achievement and certification of Final Completion, provided that Final Documents must have also been submitted. Payment shall be made by a check payable jointly to the CM/GC and surety and shall be mailed to the surety. Owner shall process the Final Payment as expeditiously as possible in accordance with the certification of the Design Professional, but interest shall not accrue until sixty (60) days have elapsed from receipt, unless error is found in the application or supporting documents; provided that no interest shall accrue for items in dispute.

6.5.5.1 Certification of CM/GC. Upon submitting its Application for Final Payment, the CM/GC shall certify, over his own signature, that the Work provided for by the Contract Documents has been completed under the terms and conditions thereof, and that the entire balance of the Contract is due and payable.

6.5.6 Intentionally Omitted.

6.5.7 Incomplete Work. In the event any Work required hereunder is incomplete, and the Design Professional so certifies at the time it issues the Certificate of Final Completion, the Owner may, at its sole discretion and without terminating this Agreement, make payment of the balance due to the CM/GC hereunder, including the unpaid remainder of CM/GC's Fee for the portion of the Work fully completed; and such payment shall be made under the terms and conditions governing final payment hereunder except that the Owner may retain an amount equal to 200% of the cost of the performance of such incomplete Work as estimated by the Design Professional.

6.5.8 No Substantial Completion. The Project must be finally complete before acceptance by the Owner. Substantial completion is not acceptable.

6.5.9 Final Completion of the Entire Project and Final Payment. Notice Required. When the entire Project, as defined in the GMP Change Order, is completed, CM/GC shall notify the Owner in writing of its intention to make an application to the Design Professional to certify Final Completion seven (7) days before the application is made.

6.5.10 Certification of CM/GC Before Final Payment. Before submitting its Final Application for Payment, CM/GC shall certify to the Owner the following:

6.5.10.1 Work Completed. Construction of the Project has been completed substantially in accordance with the Contract Documents, and all labor, services, materials, and supplies used in such construction have been paid or provided for;

6.5.10.2 Necessary Facilities Complete. All other facilities necessary in connection with the construction of the Project have been constructed, acquired, and installed substantially in accordance with the Contract Documents;

6.5.10.3 Work Paid For. All costs and expenses incurred as required by the Contract Documents, have been paid or provided for. The Design Professional shall certify (to the best of its knowledge and belief) the matters covered by the clauses above.

6.5.11 Payment. Upon the Design Professional's issuance of a Certificate of Final Completion under Section 6, Part 5, Owner shall pay to CM/GC all amounts owed to CM/GC for Actual Costs, Contingency Costs or Fees earned but not yet paid CM/GC under the GMP Change Order, assuming all other conditions of the Agreement have been met.

6.5.12 Conditional Certificate. If a Certificate of Final Completion should be issued by Design Professional but for claims described in Paragraph 6.3.5.3.3, Design Professional may, with the prior approval of Owner, in Owner's sole discretion, issue such Certificate, but Owner may condition such approval on the retention of such amounts from any sums due the CM/GC, the certificate of insurance coverage or the provision of such other security, as the Owner shall determine necessary or appropriate to protect the interests of the Owner.

6.5.13 Prerequisites to Payment. Neither final payment nor any amounts withheld pursuant to Section 4, Part 3 shall become due until the CM/GC submits to the Owner:

6.5.13.1 Final Affidavit. An affidavit (Final Affidavit) that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or Owner's property might be responsible or encumbered (less amounts withheld by the Owner) have been paid or otherwise satisfied, including unconditional waivers and releases upon final payment from all Trade Contractors, Suppliers, material men, or other third parties that provided labor, services, equipment, or material to the Project.

6.5.13.2 Non-Collusion Affidavit. An affidavit (Non-Collusion Affidavit) a form of which is provided in Section 7.

6.5.13.3 Consent of Surety. Consent to final payment by any surety having issued a performance or payment bond for any Work; and

6.5.13.4 Other. Other data establishing payment or satisfaction of obligations, such as receipts, releases and waiver of liens, claims, security interests or encumbrances arising out of the Contract Documents, to the extent and in such form as may be designated by the Owner.

6.5.14 Disbursement of Retainage. The Retainage under this Agreement shall be disbursed only after:

6.5.14.1 Satisfactory Performance. This Agreement shall have been performed to the satisfaction of the Owner in accordance with the Contract Documents, as evidenced by the signature of Design Professional on the Final Application and Certificate of Payment and approval by the Owner.

6.5.14.2 Lien Waivers. Owner shall have received from the CM/GC a Georgia statutory Waiver and Released Upon Final Payment or an affidavit to the effect that it and all its Trade Contractors, Subcontractors, and suppliers of labor and materials have been paid in full (which Waiver and Release Upon Final Payment or affidavit must be in form and substance sufficient as a matter of law to dissolve all liens or claims of lien for labor or service performed or rendered and materials supplied or furnished, in connection with the construction and installation of the Project), and with respect to this Agreement, the CM/GC shall have provided to the Owner the Final Certificate of Occupancy for the building.

6.5.15 Failure to Provide Release or Waiver. If a Trade Contractor or other person or entity entitled to assert a lien against the Owner's property refuses to furnish a release or waiver required by the Owner, the CM/GC may furnish a notice from the surety on the payment bond that the lien is covered under the payment bond or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such liens remain after the Owner makes payments to the CM/GC in accordance with this Agreement, the CM/GC shall indemnify the Owner for all loss and cost, including reasonable attorneys' fees incurred as a result of any and all such liens.

6.5.16 Acceptance of Final Payment by CM/GC. Acceptance of final payment with respect to the Project shall operate as settlement, waiver, release, discharge and payment in full of all claims by the CM/GC against the Owner of any nature arising out of the Project.

6.5.17 Continued Right to Audit. Approval of an Application for Payment by the Owner shall not foreclose the right of the Owner to examine the books and records in accordance with the Contract Documents to determine the correctness and accuracy of any item.

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PART 6 – CORRECTION OF WORK AFTER FINAL PAYMENT

6.6.1 Non-Complying or Defective Work. Neither (1) the Design Professional's Certificate of Final Completion, nor (2) any decision of the Design Professional, nor (3) payment, nor (4) any provision in the Contract shall relieve the CM/GC of responsibility for faulty materials, faulty workmanship, or omission of Contract Work, and CM/GC shall remedy any defects or omissions resulting therefrom and pay for any damage to other Work resulting therefrom.

6.6.1.1 Notice of Non-Compliant or Defective Work. The Owner, or Design Professional, shall give notice of observed defects or omissions with reasonable promptness. Attached to or included within the notice shall be a Notice of Non-Compliant Work.

6.6.1.2 Correction of the Work. The CM/GC shall within the space of time designated in Notices of Non-Compliant Work and without expense to the Owner, correct, remedy, replace, re-execute, supply omitted Work, or remove from the premises all Work designated as Non-Compliant by the Design Professional. The CM/GC shall give prompt notice in writing to the Design Professional, with copy to the Owner, upon completion of the supplying of any omitted Work or the correction of any Work designated as Non-Compliant by the Design Professional. In the absence of said notice, it shall be and is presumed under this Contract that there has been no correction of the Non-Compliant Work or supplying of omitted Work. If the CM/GC does not remove, make good the deficiency, correct, or remedy faulty Work, or supply any omitted Work within the space of time designated in Notices of Non-Compliant Work without expense to the Owner, the Owner, after ten (10) days' notice in writing to the CM/GC, may remove the Work, correct the Work, remedy the Work or supply omitted Work at the expense of the CM/GC. In case of emergency involving health, safety of property, or safety of life, the Owner may proceed at once with correction of the Work without waiving any rights of the Owner. Correction of Defective Work executed under the plans and Specifications or supplying of omitted Work, whether or not covered by warranty of a Subcontractor or materialmen, remains the primary, direct responsibility of the CM/GC. The foregoing obligation of the CM/GC shall remain in effect until the expiration of the statute of limitations covering the Work.

6.6.2 Warranty and Guaranty. As additional security for the fulfillment of such obligation, but in no way limiting the same, the CM/GC warrants and guarantees (1) that all Work executed under the plans and Specifications shall be free from defects of materials or workmanship for a period of two years from the date of the Final Certificate of the Design Professional, and (2) that for not less than two years from the date of the Final Certificate of the Design Professional, or for such greater space of time as may have been designated in the Specifications, products of manufacturers shall be free from defects of materials and workmanship. Whenever written guaranties or warranties are called for, the CM/GC shall furnish the aforesaid for such period of time as may be stipulated. The aforesaid instruments shall be in such form as to permit direct enforcement by the Owner against any Subcontractor, materialmen, or manufacturer whose guaranty or warranty is called for. The CM/GC further agrees that:

6.6.2.1 Jointly and Severally Liable. The CM/GC is jointly and severally liable with such Subcontractors, materialmen, or manufacturers; and

6.6.2.2 Agents of the CM/GC. The said Subcontractors, materialmen, or manufacturers are agents of the CM/GC for purposes of performance under this article, and the CM/GC, as principal, ratifies the warranties or guaranties of his aforesaid agents by the filing of the aforesaid instruments with the Owner. The CM/GC, as principal, is liable for the acts or omissions of his agents.

6.6.2.3 Service of notice. Service of notice on the CM/GC that there has been breach of any warranty or guaranty will be sufficient to invoke the terms of the instrument.

6.6.2.4 Bind Subcontractors, etc. The CM/GC will bind his Subcontractor, materialmen, and manufacturers to the terms of this article.

6.6.2.5 Warranties No Limitation. The calling for or the furnishing of written warranties shall in no way limit the contractual obligation of the CM/GC to correct the Work as set forth in this Part. The remedies stated in this article are in addition to the remedies otherwise available to the Owner, do not exclude such other remedies, and are without prejudice to any other remedies.

6.6.2.6 Warranty Bonds. CM/GC shall also furnish certain Warranty Bonds, as described in Section 1.5.1.

6.6.3 Warranty Complaint Item Procedure.

6.6.3.1 Notice of Warranty/Guaranty Complaint Items. The CM/GC, Design Professional, and Owner acknowledge that many malfunctions in building equipment and systems do not constitute Non-Compliant or defective Work as contemplated in Article 6.6.1 above. Accordingly, the Owner may provide notice of such apparent warranty Work by a Warranty Complaint letter, sent by statutory mail, or facsimile, or as otherwise allowed by Article 1.1.5 to the CM/GC. The letter should outline, in non-technical language, the complaint item. In emergency situations, the initial notification may be oral to a person or office designated by the CM/GC. The CM/GC shall respond promptly to all such notices.

6.6.3.2 Duty to Correct. In light of the above stated CM/GC's warranty and guarantee, during the two year period of the warranty and guarantee, any defects of material or workmanship that become apparent shall be the responsibility of the CM/GC until and unless the CM/GC can show abuse or design defect. The CM/GC shall immediately correct all defects that become known during the two year period at no cost to the Owner unless notice is given to the Design Professional and Owner, prior to correcting the defect that the cause of the defect is the result of abuse or design deficiency.

6.6.3.2.1 Initial Response. When the Owner or the Design Professional notifies the CM/GC of a defect, the CM/GC will visit the Site to review the complaint within five (5) days and shall promptly correct the Work. If the CM/GC fails to respond within this time limit, the Owner may correct the defect or malfunction and charge the CM/GC for the Work. The CM/GC shall give notice in writing to the Owner when corrections have been completed.

6.6.3.2.2 Design Defect or Owner Abuse. If the CM/GC believes that a design defect or Owner abuse has caused the malfunction or defect, he will notify the Design Professional, and the Design Professional will issue a formal decision in his capacity as Design Professional and impartial interpreter of the conditions of the Contract. If it is determined the complaint is not the responsibility of the CM/GC, the CM/GC shall be promptly paid for the cost of the corrective Work.

6.6.3.2.3 Emergency Situations. If the condition is an emergency, this will be communicated to the CM/GC with the request that no matter what he finds, corrections are to be accomplished immediately. The CM/GC shall respond to the notice in emergency situations within twenty-four (24) hours. If the CM/GC fails to respond within this time limit, the Owner may correct the defect and charge the CM/GC for the Work. If it is determined the complaint is not the responsibility of the CM/GC, the CM/GC shall be promptly paid for the cost of the corrective Work; provided that the Owner must approve such changes in writing prior to being incurred (unless safety requires an immediate remedy, in which case the CM/GC shall immediately proceed with the corrective Work). The CM/GC shall give notice in writing to the Owner when corrections have been completed.

6.6.3.3 Inspection. An inspection shall be conducted by the Owner or its representative(s) near the completion of the of the two-year general warranty period to identify any issues that must be resolved by the CM/GC. Expiration of such two (2) year warranty period shall not affect the CM/GC's continued liability under an implied warranty of merchantability and fitness or as otherwise provided by Article 6.6.1.

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SECTION 7 – CONTRACT FORMS

FORMS INCLUDED:

Performance Bond
Payment Bond
Certificates of Compliance – Federal and State Work Authorization Programs
Non-Collusion Affidavit
Final Affidavit
Five Year Bond on Roofs and Walls
Specimen Certificate of Manufacturer
Certificate of Insurance
Subcontractor Retainage Release Certificate

[Remainder of Page Intentionally Left Blank]

PERFORMANCE BOND

CITY OF MILTON

Bond No. _____

Project No. _____

KNOW ALL MEN BY THESE PRESENTS:

That _____ as principal (hereinafter referred to
(Legal Name and Address of the CM/GC)
as ("CM/GC"), and _____ as CM/GC's surety (hereinafter referred to
(Legal Title and Address of Surety)
as "Surety"), are held and firmly bound unto City of Milton as Obligee (hereinafter referred to as "Owner"), in the amount of
(Insert GMP Cost Limitation of GMP)
_____ DOLLARS (\$ _____), lawful money of the United States of America,
for payment of which

the CM/GC and Surety bind Themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bounden Principal has entered, or is about to enter, into a certain written contract with the Owner dated the _____ of _____, 20____, for construction of a project known as

_____ *(Here insert Name of Project)*
in accordance with Drawings and Specifications prepared by: _____, which
(Full Name and Title)
said contract is incorporated herein by reference in its entirety and made a part hereof, and is hereinafter referred to as the Contract.

NOW THEREFORE, THE CONDITIONS OF THIS OBLIGATION are as follows:

1. That, if the CM/GC shall promptly, fully and completely perform and comply with each and all of the terms, provisions, requirements and conditions of said Contract, including and during but not limited to the period of any warranties or guarantees required thereunder, and all modifications, amendments, changes, deletions, additions, and alterations thereto that may hereafter be made, and if the CM/GC and Surety shall indemnify and hold harmless the Owner against and from any and all losses, liability and damages, expenses, injury or loss, claims, judgments, liens, cost and fees of every description, including but not limited to any damages for delay, which the Owner may incur, sustain or suffer by reason of the failure or default on the part of the CM/GC in the performance of any and all of the terms, provisions, and requirements of the Contract, including but not limited to all modifications, amendments, changes, deletions, additions, and alterations thereto, and any warranties or guarantees required thereunder, or by reason of any wrongdoing, including but not limited to patent infringement, misconduct, want of care or skill, default or failure of performance on the part of said CM/GC, his agents, subcontractors or employees, in the execution or performance of said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.
2. That in the event of a failure of performance of the Contract by the CM/GC, which shall include, but not be limited to, any breach or default of the Contract:
 - a. The Surety shall commence performance its obligations and undertakings under this Bond no later than thirty (30) days after written notice from the Owner to the Surety; and
 - b. The means, method or procedure by which the Surety undertakes to perform its obligations under this Bond shall be subject to the advance written approval of the Owner.
3. It is expressly agreed by the CM/GC and the Surety that the Owner, if he desires to do so, is at liberty to make inquiries at any time of subcontractors, laborers, materialmen, or other parties concerning the status of payments for labor, materials, or services furnished in the prosecution of the Work.

4. The said Surety to this bond, for value received, hereby stipulates and agrees that no change(s), omission(s), extension(s) of time, alteration(s) or addition(s) to the terms of the Contract or to the Work to be performed thereunder, or the Specifications or Drawings accompanying same, or the exercise of the Owner's right to do Work, pursuant to the Contract (including but not limited to Articles 1.3.8, 1.7.8, 3.4.2, 3.6.2, 5.3.2 or 6.6.1.3), or advance payments or deferred payments in or about the Contract (collectively referred to as "Changes to the Contract") shall in any way affect its obligation on this bond, and Surety does hereby waive notice of any such change(s), extension(s) of time, alteration(s) or addition(s) to the terms of the Contract or to the Work or to the Specifications or Drawings, Owner's decision to exercise its right to do Work, and advance or deferred payments on or about the Contract. In addition, the Surety to this bond, for value received, hereby agrees to the provisions of Article 1.5.1, including Paragraph 1.5.1.3 for increases in the penal amount of this bond, and waives notice from the Owner of any such changes.
5. Both the CM/GC and Surety agree that, pursuant to Article 5.3.4 of the Contract, the Owner, after fourteen (14) calendar days' written notice to the CM/GC, may terminate the Contract if the CM/GC abandons the Project without affecting the Surety's obligation on this bond.
6. For the purposes of this bond, the name and address of the **responsible official of the Surety's claims department**, to whom correspondence and telecommunications may be addressed and/or with whom business concerning this bond may be conducted will be as follows:

NAME _____

TITLE _____

ADDRESS _____

CITY _____ STATE _____ ZIP CODE _____

TELEPHONE _____

7. Further, this bond shall be the Performance Bond furnished under O.C.G.A. §§ 36-91-40, 36-91-70 and shall be subject to increase in the penal amount of the bond pursuant to such statutes and Article 1.5.1 of the Contract.
8. The Parties further expressly agree that any action on this Bond may be brought within the time allowed by Georgia law for suit on contracts under seal.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the CM/GC and Contractor's Surety have hereunto affixed their corporate seals and caused this obligation to be signed by their duly authorized officers or attorneys-in-fact, this _____ day of _____, 2012.

CM/GC ("Principal"):

By: _____ (signature)

_____ (print)

Attest:

Title: _____ (SEAL) (*)

_____ (signature)

_____ (print)

Title: _____

Date: _____

SURETY:

By: _____ (signature)

_____ (print)

Attest:

Title: _____ (SEAL) (*) (*)

_____ (signature)

_____ (print)

Title: _____

Date: _____

(ATTACH SURETY'S POWER OF ATTORNEY)

(*) Please apply seal of Corporation over Secretary's Signature.

(*)(*) Please apply seal of Surety and arrange for countersignature by a "Georgia Licensed Agent" of Surety pursuant to O.C.G.A. §33-23-5. Kindly show title of the aforesaid agent as "Georgia Licensed Agent."

PAYMENT BOND

CITY OF MILTON

Bond No. _____

Project No. _____

KNOW ALL MEN BY THESE PRESENTS:

That _____ as Principal (hereinafter referred to as the
(Legal Title and Address of the CM/GC)
"Principal") and _____ as Surety (hereinafter referred to as "Surety",
(Legal Name and Address of the Surety)

are held and firmly bound unto City of Milton as Obligee (hereinafter referred to as "Owner") for the use and benefit of "Claimant," as hereinafter defined, in the amount of:

_____ DOLLARS (\$ _____)
(Insert GMP Cost Limitation of GMP)

lawful money of the United States of America, for the payment of which the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, the above bounden Principal has entered, or is about to enter, into a certain contract with Owner dated _____ for the construction of a project known as _____ (hereinafter referred to as the "Work") in accordance
(Insert Name of Work)

with the Drawings and Specifications prepared by: _____, which contract is incorporated herein
(Here insert Full Name and Title)

by reference in its entirety and made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal shall promptly make payment to any Claimant, as hereinafter defined, for all labor, services, and materials supplied, used or reasonably required in the performance of the Work provided for in said Contract, then this obligation shall be void; otherwise it shall remain in full force and effect.

- (1) The said Surety to this bond, for value received, hereby stipulates and agrees that no change(s), extension(s) of time, alteration(s) or addition(s) to the terms of the Contract or to the Work to be performed thereunder, or the Specifications or Drawings accompanying same, or the exercise of the Owner's right to do Work, pursuant to the Contract (including but not limited to Articles 1.3.8, 1.7.8, 3.4.2, 3.6.2 5.3.2 or 6.6.1.3) , shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change(s), extension(s) of time, alteration(s) or addition(s) to the terms of the Contract or to the Work or to the Specifications or Drawings. In addition, the Surety to this bond, for value received, hereby agrees to the provisions of Article 1.5.1, including Paragraph 1.5.1.3, for increases in the penal amount of this bond and waives notice from the Owner of any such changes.
- (2) A "Claimant" is defined as any Subcontractor, person, Party, partnership, corporation or other entity supplying labor, services, materials, machinery, or equipment used or reasonably required for use in the prosecution of the Work provided for in said Contract, without regard to whether such labor, services, or materials were sold, leased, or rented, and without regard to whether such Claimant is or is not in privity of the Contract with the Principal or any Subcontractor performing Work on the Project.
- (3) It is expressly agreed by the Principal and the Surety that the Owner, if he desires to do so, is at liberty to make inquiries at any time of Subcontractors, laborers, materialmen, or other parties concerning the status of payments for labor, materials, or services furnished in the prosecution of the Work.
- (4) Both the Principal and Surety agree that, pursuant to Article 5.3.4 of the Contract, the Owner, after fourteen (14) calendar days' written notice to the Principal, may terminate the Contract if the Principal abandons the Project without affecting the Surety's obligation on this bond.
- (5) For the purposes of this bond, the name and address of **the responsible official of the Surety's claims department**, to whom correspondence and telecommunications may be addressed and/or with whom business concerning this bond may be conducted will be as follows:

NAME _____

TITLE _____

ADDRESS _____

CITY _____ STATE _____ ZIP CODE _____

TELEPHONE _____

(6) Further, this bond shall be the Payment Bond furnished under O.C.G.A. §§ 36-91-40, 36-91-90 *et seq.* and shall be subject to increase in the penal amount of the bond pursuant to such statutes and Article 1.5.1 of the Contract.

(7) In the event of any claim made by the Claimant against the City, or the filing of a Lien against the property of the City affected by the Contract, the Contractor's Surety shall either settle or resolve the Claim and shall remove any such Lien by bond or otherwise as provided in the Contract.

(8) The Parties further expressly agree that any action on this Bond may be brought within the time allowed by Georgia law for suit on contracts under seal.

IN WITNESS WHEREOF, the Principal and Surety have hereunto affixed their corporate seals and caused this obligation to be signed by their duly authorized officers on this ____ day of _____, 2012.

PRINCIPAL:

By: _____ (signature)

_____ (printed)

Title: _____ (SEAL) (*)

Attest:

_____ (signature)

_____ (printed)

Title: _____

Date: _____

SURETY:

By: _____ (signature)

_____ (printed)

Title: _____ (SEAL) (*) (*)

Attest:

_____ (signature)

_____ (printed)

Title: _____

Date: _____

(ATTACH SURETY'S POWER OF ATTORNEY)

(*) Please apply seal of Corporation over Secretary's Signature.

(*)(*) Please apply seal of Surety and arrange for countersignature by a "Georgia Licensed Agent" of Surety pursuant to O.C.G.A. §33-23-5. Kindly show title of the aforesaid agent as "Georgia Licensed Agent."

CONTRACTOR AFFIDVIT AND CERTIFICATE OF COMPLIANCE

**GEORGIA SECURITY AND IMMIGRATION CERTIFICATION
(FEDERAL AND STATE WORK AUTHORIZATION PROGRAMS)**

STATE OF GEORGIA;
COUNTY OF _____:

PROJECT No. _____ PROJECT NAME: _____

CONTRACTOR AFFIDAVIT, CERTIFICATE AND AGREEMENT

COMES NOW before me, the undersigned officer duly authorized to administer oaths, the undersigned contractor ("Contractor"), who, after being duly sworn, states, warrants, agrees and certifies as follows to City of Milton, Georgia ("Owner"):

By executing this affidavit, the undersigned Contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of City of Milton, Georgia has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned Contractor will continue to use the federal work authorization program throughout the contract period and the undersigned Contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the Contractor with the information required by O.C.G.A. § 13-10-91(b).

Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User
Identification Number

Date of Authorization

Name of Contractor

Name of Project

Name of Public Employer

I hereby declare under penalty of perjury
that the foregoing is true and correct.

Executed on _____, ____, 201__ in
_____(city), _____(state).

Contractor

Signature of Authorized Officer or Agent

FURTHER AFFIANT SAYETH NOT.

Printed Name and Title of Authorized
Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF
_____, 201____.

NOTARY PUBLIC

My Commission Expires:

SUBCONTRACTOR AFFIDAVIT AND CERTIFICATE OF COMPLIANCE

**GEORGIA SECURITY AND IMMIGRATION CERTIFICATION
(FEDERAL AND STATE WORK AUTHORIZATION PROGRAMS)**

STATE OF GEORGIA;
COUNTY OF _____:

PROJECT No. _____ PROJECT NAME: _____

SUBCONTRACTOR AFFIDAVIT, CERTIFICATE AND AGREEMENT

COMES NOW before me, the undersigned officer duly authorized to administer oaths, the undersigned subcontractor, supplier or consultant ("Subcontractor"), who, after being duly sworn, states, warrants, agrees and certifies as follows to City of Milton, Georgia ("Owner"):

1.

By executing this affidavit, the undersigned Subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with _____ (CM/GC) on behalf of City of Milton, Georgia has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned Subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned Subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the Subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned Subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the CM/GC within five (5) business days of receipt. If the undersigned Subcontractor receives notice that a sub-subcontractor has received an affidavit from any other contracted sub-subcontractor, the undersigned Subcontractor must forward, within five (5) business days of receipt, a copy of the notice to the CM/GC.

Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

2.

Subcontractor verifies and warrants it employs the following employees as of this date:

<i>Initials</i>	<i>Number of Employees</i>
_____	Over 500 employees
_____	100 to 499 employees
_____	1 to 99 employees

[SIGNATURES ON FOLLOWING PAGE]

Federal Work Authorization User
Identification Number

Date of Authorization

Name of Subcontractor

Name of Project

Name of Public Employer

FURTHER AFFIANT SAYETH NOT.

I hereby declare under penalty of perjury
that the foregoing is true and correct.

Executed on _____, ____, 201__ in
_____(city), _____(state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized
Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF
_____,201__.

NOTARY PUBLIC

My Commission Expires:

NON-COLLUSION AFFIDAVIT

STATE OF GEORGIA;
COUNTY OF _____:

_____, being first duly sworn, deposes and says that:

(1) He is _____(Owner, Partner, Officer, Representative, or Agent) of _____ (the “_____” (Proposer/Bidder)) that has submitted the attached _____ (Proposal/Bid);

(2) He is fully informed respecting the preparation and contents of the attached _____ (Proposal/Bid) and of all pertinent circumstances respecting such _____ (Proposal/Bid);

(3) Such _____ (Proposal/Bid) is genuine and is not a collusive of sham _____ (Proposal/Bid);

(4) Neither the said _____ (Proposer/Bidder) nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, included in this affidavit, has in any way colluded, conspired, connived, or agreed, directly or indirectly, with any other _____ (Proposer/Bidder), firm or person to submit a collusive or sham _____ (Proposal/Bid) in connection with the Contract for which the attached _____ (Proposal/Bid) has been submitted to or refrain from proposing in connection with such Contract, or has in any collusion or communication or conference with any other _____ (Proposer/Bidder), firm or person to fix the price or prices in the attached _____ (Proposal/Bid) or of any other _____ (Proposer/Bidder), or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against City of Milton or any person interested in the proposed Contract; and,

(5) The price or prices quoted in the attached _____ (Proposal/Bid) are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the _____ (Proposer/Bidder) or any of its agents, representatives, owners, employees, or parties in interest, included in this affidavit.

(6) _____ (Proposer/Bidder) has not directly or indirectly violated any law, ordinance or regulation related to the _____ (Proposal/Bid).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON
THIS THE _____ DAY OF _____, 2012.

Notary Public

[NOTARY SEAL]

My Commission Expires:

FINAL AFFIDAVIT

STATE OF GEORGIA;
COUNTY OF _____:

FROM: _____
CM/GC

TO: _____
Owner

Re: Contract entered into the ____ day of _____, 20____, between the above-mentioned parties for the construction of Project No. _____ located at _____

KNOW ALL MEN BY THESE PRESENTS:

1. The undersigned hereby certifies that all Work required under the above Contract has been performed in accordance with the terms thereof, that all Suppliers of materials, equipment and service, materialmen, Subcontractors, Trade Contractors, mechanics, and laborers employed by CM/GC or any of its Subcontractors in connection with the construction of the Project for City of Milton have been paid and satisfied in full as of _____, 20____, and that there are no outstanding obligations or claims of any character [including but not limited to disputed claims or any claims to which the CM/GC has or will assert any defense] arising out of the performance of the Contract, or the payment of which City of Milton might be liable, or subject to, in relation to the above-named Project in any lawful proceeding, that have not been paid and satisfied.

2. The undersigned further certifies that to the best of his knowledge and belief there are no unsatisfied claims for damages resulting from injury or death to any employees, Trade Contractors, or the public at large arising out of the performance of the Contract, or any suits or claims for any other damage of any kind, nature, or description that might constitute a lien upon the property of the Owner.

3. The undersigned makes this affidavit for the purpose of receiving final payment in full settlement of all claims against the Owner arising under or by virtue of the Contract, and acceptance of such payment is acknowledged as a release of the Owner from any and all claims arising under or by virtue of the Contract.

This ____ day of _____, 20_____.

Signature

Title

Firm

Personally appeared before me this _____ day of _____, 20____, the undersigned authority, _____, who is known
(NAME OF PERSON SIGNING AFFIDAVIT)

to me to be an official of the firm of _____ who, after being duly sworn, states and deposes on his
(NAME OF CM/GC)

oath that he had read the above statement and that to the best of his knowledge and belief the same is an exact, true and correct statement.

Notary Public
[NOTARY SEAL]
My commission expires _____

FIVE YEAR BOND ON ROOFS AND WALLS

STATE OF GEORGIA;
COUNTY OF _____:

Firmly Bound. Know all men by these presents, that we _____ (CM/GC) as Principal, and _____ as Surety, are held and firmly bound unto the _____ (Owner)

in the sum of _____ Dollars (\$ _____) for the payment of which well and truly to be made and done, we bind ourselves, our executors and administrators, our successors and assign, jointly and severally, by these presents.

Condition of Obligation. The condition of the above obligation is such that WHEREAS CM/GC has entered into a Contract with Owner dated _____ for construction of Project No. _____.

Warranty. WHEREAS, the said CM/GC warrants with respect to the said Work that for a period of five years from the date of the execution of the Certificate of Final Completion of the Design Professional, or the date Owner occupies the Project, whichever is earlier, the roofs of the building (or buildings) and roofs of passages, including but not limited to the following: the roof envelope (including but not limited to the roof decking); deck sheathing; material used as a roof base or insulation over which roof is applied; roofing materials; promenade decks or any other Work on the surface of the roof; flashing; base flashing; counter flashing; metal work, gravel stops; or roof expansion joints shall be absolutely watertight and free from all leaks. At no expense to the Owner, the CM/GC will make repairs to any defects that may develop in the Work including but not limited to the following: blisters, exposed felts, ridges, wrinkles, splits, warped insulation, and loose flashing, in a manner compatible to the system and acceptable under industry standards and in accordance with the construction Specifications. The CM/GC also warrants that for the same five-year period the walls of the building (or buildings) and building envelope, including but not limited to the following: vertical and/or horizontal expansion joints, below and/or above grade waterproofing, below and/or above grade damp-proofing, thru-wall flashing, damp course flashing and waterproofing of joints at openings in walls (including but not limited to door perimeters, window perimeters, vents and pipe openings) shall be absolutely watertight and free from all leaks, seepage or dampness, and that he shall, at no expense to the Owner, make repairs to any defects that may develop in the Work in a manner compatible to the system and acceptable under industry standards and in accordance with the construction Specifications, provided, however, that the following are excluded from the warranty:

- (a) Defects or failures resulting from abuse by the Owner, upon presentation of competent evidence of same by the CM/GC.
- (b) Defects in design for which the said CM/GC shall produce competent evidence of having had provided clear written notice in writing to the Owner prior to commencing installation of the Work, except, however, that the CM/GC shall not be responsible, insofar as liability under this bond is concerned, for bringing to the attention of the Owner defects in design involving failure of only the following three structural elements of which the CM/GC was unaware:
 - (1) Structural Frame,
 - (2) Load bearing walls, and
 - (3) Foundations;

nor shall the CM/GC be responsible for correction of leaks resulting from said failure.

- (c) Damage caused by fire, tornado, hail, hurricane, acts of God, wars, riots, or civil commotion upon presentation of competent evidence of same by the CM/GC.
- (d) The CM/GC is not an insurer; nor is he a guarantor of the design. Any other provisions of this bond to the contrary notwithstanding, the CM/GC shall not be required to remedy any errors or omissions of design.

Leaks or Defect. WHEREAS the said CM/GC agrees that should any leaks or defects occur in the roof envelope or wall envelope of the said (Name and Number of Project), the said CM/GC will promptly remedy the said leaks or defects and pay for any damage to other Work of said Project resulting therefrom, except, however, that when this instrument is executed by a Trade Contractor, this Contract, shall, insofar as the Trade Contractor is concerned, extend only to the Work executed by said Trade Contractor.

Notice to Surety. If the CM/GC shall have been given notice to remedy leaks or defects pursuant to the Contract Documents and has been declared in default by the Owner and the Owner has terminated the CM/GC's right to complete the remedy, the Surety shall be notified in writing and shall promptly perform this bond agreement in accordance with its terms and conditions. If Surety chooses to investigate, Owner shall cooperate with the Surety in its investigation and shall make all public Project records available for inspection by Surety in accordance with Georgia's Open Records Act. It shall be the duty of the Surety to give an unequivocal notice in writing to the Owner, within twenty-five (25) days after receipt of such notice, of the Surety's proposed remedy, to be approved by Owner in its sole discretion. In said notice of election, the Surety shall indicate the date on which the remedy or performance will commence, and it shall then be the duty of the Surety to give prompt notice in writing to the Owner immediately upon completion of the remedy and/or correction

of the leaks or defects. The Surety shall not assert its Principal (the "CM/GC") as justification for its failure to give notice of election or for its failure to promptly remedy the leaks or defects.

Full Force and Effect. NOW, THEREFORE, the condition of this obligation is such that, if the CM/GC shall in all things promptly and faithfully perform and comply with the terms and conditions hereinbefore set forth, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed this

_____ day of _____, 20__.

WITNESS

PRINCIPAL

BY
(SEAL)

TITLE _____

WITNESS

SURETY

BY
(SEAL)

TITLE _____

(*) Attach Power of Attorney

Instructions for execution:

- (a) If the firm is a partnership, all members of the partnership must execute.
- (b) If the firm is a corporation, the president must sign, the secretary must attest, and the seal of the corporation must be affixed.
- (c) If the firm operates as a sole proprietorship, the proprietor must execute.

SPECIMEN CERTIFICATE OF MANUFACTURER

INSTRUCTIONS FOR PREPARATION OF CERTIFICATE: To be acceptable, the certificate must be prepared in the form indicated by this specimen on the official letterhead of the manufacturer. No portions of the certificate may be omitted. Attached is a copy of the Contract provision under which the certificate is required. The Owner needs only one copy of the certificate. If equipment of a manufacturer is not installed in strict compliance with the recommendations of the manufacturer or if in the design of the Work the equipment is not applied in strict compliance with the recommendations of the manufacturer, a letter from the manufacturer should be forwarded to the CM/GC [with copies to the Design Professional and the Owner] setting forth a list of the deviations from the recommendations of the manufacturer and stating what remains to be done in order to bring the Work into strict compliance with the recommendations of the manufacturer. Prior to calling upon the representative of the manufacturer for performance of the services necessary to enable him to execute a certificate in accordance with this specimen, it is the obligation of the CM/GC to have installed the Work in strict compliance with the recommendations of the manufacturer [See Article 2.2.6 of the Contract], and it is likewise the obligation of the CM/GC to have put the equipment in good operating condition in absolute and final readiness for the "start-up," "testing," and "placing into operation", as defined herein below, by the representative of the manufacturer.

Date: _____

To: _____ (OWNER)

Re: Certificate of JOHN DOE CORPORATION that equipment or components furnished by it has [or have, as the case may be] been installed in strict compliance with its recommendations and is [or are, as the case may be] operating properly at PROJECT NO. _____

1. We certify through our duly authorized and acting agent that the following item [or items, as the case may be] furnished by us to the Project named in the caption was [or were, as the case may be] started up, tested, and placed in operation by our authorized field representative on [enter the date on which the field representative performed the start-up, test, and placing into operation] and is [or are, as the case may be] operating properly:

[List the item or items furnished to the job. Show catalogue number or numbers.]

2. We certify further that the aforesaid equipment was installed in strict compliance with our recommendations as published by us in the following document [or documents, as the case may be]:

[Insert the date, name or other positive means of identifying the exact document or documents in which the recommendations for installation and use of the item or items are published.] (*)

3. A copy of the aforesaid document(s) is (are) attached hereto.

This _____ day of _____, 20____

JOHN DOE CORPORATION

By: _____
Authorized Representative

(*) The date must be shown

DEFINITIONS:

1. "Start-up" is defined as putting the equipment into action.
2. "Testing" is defined as performing such testing as is stipulated in the Contract Documents to be performed.
3. "Placing into operation" is defined as operating the equipment for a sufficient period of time for the determination to be made that it is performing properly.

SUBCONTRACTOR RETAINAGE RELEASE CERTIFICATE

(To be Originated by Subcontractor)

TO: Owner

RE: Project Name and Number: _____ :
Certificate Regarding Subcontractor's Completed Work and Retainage Release

1. This is to certify that our Work is one hundred percent complete for our subcontract number _____ . Our retainage is due in accordance with the Contract Documents for our scope of Work included the _____ . The total amount of retainage now due is \$ _____ .

2. The Subcontractor hereby certifies that all Work required under the above contract has been performed in accordance with the terms thereof, that all materialmen, subcontractors, mechanics, and laborers have been paid and satisfied in full, and that there are no outstanding claims of any character (including but not limited to disputed claims or any claims to which the Subcontractor has or will assert any defense) arising out of the performance of the contract which have not been paid and satisfied in full except as listed hereinbelow, which exceptions apply only to the release in Paragraph 5, below:

[Enter: "None" or List or Make Reference & Attach Exhibit A.]

3. The Subcontractor further certifies that to the best of his knowledge and belief there are no unsatisfied claims for damages resulting from injury or death to any employees, subcontractors, or the public at large arising out of the performance of the contract, or any suits or claims for any other damage of any kind, nature, or description which might constitute a claim or lien upon the property of the Owner.

4. The Subcontractor has received final payment in full settlement of all claims against the Owner arising under or by virtue the contract, and acceptance of such payment is acknowledged as a release of the Owner from any and all claims arising under or by virtue of the contract. This release includes any claims set forth or excepted in Paragraph 2 above.

5. [*Strike out if not applicable*] The Subcontractor has received final payment in full settlement of all claims against the CM/GC arising under or by virtue the contract, and acceptance of such payment is acknowledged as a release of the CM/GC from any and all claims arising under or by virtue of the contract except as set forth in Paragraph 2 above.

6. Payments pursuant to this certificate shall in no way diminish, change, alter or affect the rights of the Owner under the Contract Documents.

SUBCONTRACTOR:

By: _____

Date:

CM/GC:

By: _____

Date:

DESIGN PROFESSIONAL:

By: _____

Date:

NOTICE: OWNER MUST RECEIVE A COPY WITH ALL ORIGINAL SIGNATURES.

EXHIBITS

Exhibit A	Owner's Existing Documents
Exhibit B	Initial Construction Budget
Exhibit C	Budget Format
Exhibit D	Monthly Report Format
Exhibit E	CM/GC's Fee Proposal
Exhibit F	Preliminary Outline Schedule
Exhibit G	Specimen Component Change Order
Exhibit H	Specimen GMP Change Order
Exhibit I	Specimen Change Order
Exhibit J	Wage Rates and Labor Cost
Exhibit K	Application for Payment
Exhibit L	Final Cost Certification
Exhibit M	Certificate of Material Completion
Exhibit N	Certificate of Final Completion
Exhibit O	Project Documents
Exhibit P	Key Personnel

EXHIBIT A

OWNER'S EXISTING DOCUMENTS

- i. Construction Manager At Risk Request for Proposals
- ii. Construction Manager At Risk's Proposal
- iii. Design Professional Agreement ("Architectural Contract")

EXHIBIT B

[INTENTIONALLY OMITTED]

EXHIBIT C
BUDGET FORMAT

The purpose of providing the CM/GC a format for the Project budget is to allow easy comparison from one phase of design and construction to the next as well as easy comparison of estimates from others. The budget format shall conform to the CSI format and shall have as much detail as the information and time allows.

GMP				
Division	Name	Units	Unit Cost	Cost
01	General Requirements			
02	Site Work			
03	Concrete			
04	Masonry			
05	Metals			
06	Woods & Plastics			
07	Thermal / Moisture Prot.			
08	Doors & Windows			
09	Finishes			
10	Specialties			
11	Equipment			
12	Furnishings			
13	Special Construction			
14	Conveying System			
15	Mechanical			
16	Electrical			
17	Security Electronics & Communications			
	General Conditions			
	Construction Contingency			
	Fee			
	Design Contingency			
Total Construction				
Owner's Disbursements				
Subtotal				
Total Project				

EXHIBIT D
MONTHLY REPORT FORMAT

The monthly report shall consist of the following items:

1. Executive Summary
2. Monthly and Year to Date Budget Report
3. Contract Awards
 - a. Contract Awards to Date
 - b. Award recommendations made
 - c. Contracts closed out
 - d. Buyout Status
4. Critical Information and Approvals Required
5. Logs
 - a. Request for Information
 - b. Submittal Log
 - c. Subcontractor Insurance Log
 - d. Approval Letter Log
 - e. Non-conformance Log
6. Safety Report
7. Schedule Status
8. Permits and Inspections
9. Job Photographs
10. Quality Report

CM/GC FEE PROPOSAL
(Submit in a Sealed Envelope with Project Cost Matrix)

1. CM/GC'S FEE:

Basis of Fee. The CM/GC's Fee is the amount, established by and agreed to by both parties, which is the full amount of compensation due to the CM/GC as gross profit, and for any and all expenses of the Project not included and identified as a Cost of the Work, provided that the CM/GC performs all the requirements of the Contract Documents within the time limits established. (See Article 4.1.1 of the General Requirements.)

Preconstruction Services Fee

Service	Unit	Total
Preconstruction Fee	Lump Sum	

Overhead

The City shall pay to the CM a fixed, lump sum fee for Overhead/General Conditions associated with this project.

The CM shall provide an itemized breakdown of all services and fees included in the General Conditions on a separate sheet(s).

Service	Unit	Total
Overhead/General Conditions	Lump Sum	

Construction Services Fee

The City shall pay to the CM a percentage fee based on the agreed upon Guaranteed Maximum Price (GMP).

Service	Unit	Fee Percentage
Construction Services Fee	Lump Sum	

EXHIBIT F
SCHEDULE

[Attach Design Professional's Preliminary Design and Construction Schedule]

EXHIBIT G

COMPONENT CHANGE ORDER

CM/GC PROPOSED COMPONENT CHANGE ORDER NO. _____

Project No. _____

TO: Owner

This proposed Component Change Order is submitted pursuant to Section 3 Part 2 of the Construction Management At Risk Agreement dated _____, 20____, the terms of which are incorporated herein by reference.

Having carefully examined the Component Construction Documents prepared by (*Design Professional*) and approved by Owner on _____, 20____, listed on attached Schedule A (*Construction Documents*), as well as the Site and conditions affecting the Work, the undersigned submits this proposed Component Change Order under Section 3 Part 2 of the Construction Management At Risk Agreement to furnish all service, labor and materials called for by the Construction Documents for the entire Work related to this Component in accordance with the aforesaid Construction Documents and the Construction Management Contract.

Description of Component: _____

A. The Change Order Sum comprises the following amounts:

- | | | |
|----|---|----|
| 1. | Construction Sum due Trade Contractors. Subcontractors and
and Suppliers | \$ |
| 2. | CM/GC's Estimated Cost
for Work or Material Supplied by
CM/GC | \$ |
| 3. | CM/GC's component contingency | % |
| 4. | CM/GC's proportional Fee | % |

B. The Construction Budget is attached as Schedule B.

C. The Component Construction Progress Schedule is attached as Schedule C.

D. The undersigned guarantees the final completion of the Component on or before _____, 20____.

E. The undersigned agrees that this Component Change Order, together with the Notice of Acceptance, upon approval of the Owner, shall constitute a Change Order to the Contract Documents for the Project.

F. The CM/GC has visited the Site, familiarized itself with the conditions under which the Work described in the Contract Documents is to be performed, and correlated its observations with the requirements of the Contract Documents, including the requirements set forth in Schedule A.

CM/GC

By: _____

DATED: _____, 20____.

RECOMMENDED FOR OWNER'S ACCEPTANCE:

Design Professional

By: _____

NOTICE OF ACCEPTANCE OF COMPONENT CHANGE ORDER NO. _____

for

PROJECT NO. _____

TO: _____ (CM/GC)

Notice is hereby given to CM/GC that the Owner hereby ACCEPTS the foregoing Component Change Order.

DATED: _____, 20____.

Owner

By: _____

EXHIBIT H

**GUARANTEED MAXIMUM PRICE
CHANGE ORDER**

for

PROJECT NO. _____
PROJECT NAME AND DESCRIPTION

TO: Owner

In accordance with Section 3 Part 3 of the Construction Management At Risk Agreement dated _____, 20____, Project No. _____, _____, the terms of which are incorporated herein by reference, the undersigned offers to provide all services, labor and material to perform in accordance with the Contract Documents the construction of the Project described in the Component Change Orders, entered into prior to the date of this proposal, and the Construction Documents prepared by _____ and Construction Documents to be hereafter prepared by the Design Professional in accordance with Schedule A and the Construction Management At Risk Agreement, for a Guaranteed Maximum Price.

The undersigned guarantees the Material Completion of the Work on or before the Material Completion Date and Final Completion of the Work on or before the thirtieth day following the Material Completion Date.

The Guaranteed Maximum Price comprises the following components:

1.	Estimated Cost of the Work	\$
2.	CM/GC's Contingency	\$
3.	CM/GC's Fee	\$
4.	CM/GC's Maximum Construction Overhead Costs	\$
	TOTAL (Guaranteed Maximum Price)	\$

5. This proposed GMP Change Order is based on the Component Change Orders, Component Construction Documents entered into prior to the date of this proposal, and the Construction Documents specified in Exhibit A and to be hereafter prepared by the Design Professional in accordance with the assumptions stated in Schedule A.

6. The Guaranteed Maximum Price includes the costs listed in Schedule B, and the Construction Contingency, the CM/GC's Fee, and the Maximum Construction Overhead Costs, as set forth on Schedule B.

7. The Guaranteed Maximum Price does not include the trades, Work categories, or other items listed, if applicable, in Schedule C.

8. The Construction Documents Schedule is attached as Schedule D.

9. The Submittal Approval Schedule is attached as Schedule E.

10. The Component Change Order Schedule is attached as Schedule F.

11. The Construction Progress Schedule is attached as Schedule G.

12. The Construction Budget is attached as Schedule H.

13. The concurrence of the Design Professional to Schedules D, E, F and G is attached as Schedule I.

14. Each of Schedules A through I are part of this Proposed GMP Change Order and are incorporated herein by reference.

15. The proposed Material Completion Date is: _____.

16. This offer is submitted as the proposed GMP Change Order pursuant to Section 3 Part 3 of the General Requirements of the Construction Management Contract.

17. The undersigned agrees that this proposed GMP Change Order, together with the Notice of Acceptance, upon approval of the Owner, shall constitute a Change Order to the Contract Documents for the Project.

18. The CM/GC has visited the Site, familiarized itself with the conditions under which the Work described in the Contract Documents is to be performed, and correlated its observations with the requirements of the Contract Documents, including the requirements set forth in Schedule A.

CM/GC

By: _____

DATED: _____, 20____.

RECOMMENDED FOR OWNER'S ACCEPTANCE:

Design Professional

By: _____

NOTICE OF ACCEPTANCE OF GMP CHANGE ORDER

for

PROJECT NO. _____

TO: _____ (CM/GC)

Notice is hereby given to CM/GC that the Owner hereby ACCEPTS the foregoing GMP Change Order.

DATED: _____, 20____.

Owner

By: _____

EXHIBIT I
CHANGE ORDER FORMAT
(Lump Sum)

NOTE TO DESIGN PROFESSIONAL:

Please prepare each Change Order for any lump sum payment in the form and wording given below, deleting inapplicable wording and adding such explanations as may be necessary. The wording in Paragraph 11 may not be changed or altered in any way by either the Design Professional or the Contractor. Send four copies, signed by you and the Contractor, to the Owner. *Do not forward a Change Order unless it is accompanied by a breakdown which has been certified by the CM/GC .*

CHANGE ORDER No. _____

Note to Design Professional:
Please leave the Change Order number blank. The Owner will assign a number.

Project Name: _____
Project Number: _____

_____, Owner

Note to Design Professional: *No Change Order should be forwarded unless you have been furnished with a letter from the Owner authorizing same.*

1. Submission of this Change Order for consideration was authorized by letter from the Owner, dated _____, 20____, Encumbrance Record No. _____.
2. The changes hereinafter described are applicable to the Contract for the construction of the above-referenced Project and amend the Contract Documents.
3. Description of Change:

Note to Design Professional: *Be sure to give a complete statement describing the changes in the Work, including the Specifications. If Drawings are necessary, refer to them by date, etc., and state they are made a part of the Change Order. Copy of Drawings should be attached to the Change Order.*

4. This Change Order is deemed necessary and originated with the (Design Professional) (Owner) (CM/GC). *(Indicate applicable entity.)*
5. This Change Order is necessary to:

Note to Design Professional: *Give a complete description of conditions which necessitate the change.*

6. The amount of the Change Order was determined by:

- Choose one:
- a. Estimate and acceptance in lump sum.
 - b. Unit Prices stated in contract or subsequently agreed upon.
 - c. Cost and percentage as described in general conditions.

7. A memorandum is attached showing cost breakdown of labor and materials by unit and quantities as prepared by the CM/GC and checked by the Owner.

8. We have verified the quantity and quality of all materials shown on the memorandum. We have verified that all prices are reasonable and do not exceed current costs for like services or materials, and we have verified that the quality of the materials meets the requirements of the Contract Documents.

Note to Design Professional: Please observe that verification of quantities and prices means the Design Professional who signs the Change Order has personal knowledge that the quantities shown in the memorandum referred to under paragraph 7 above are correct, that he has personally satisfied himself that full credit has been extended for any Work or materials deleted or omitted, and that he has conclusively established by such checking or inquiry as may be necessary that the prices and allowances shown in the memorandum comparable with current costs for like services and materials.

9. The CM/GC shall be allowed _____ additional calendar days for completion. The Material Completion Date is: _____ and the Final Completion Date is the thirtieth (30th) calendar day thereafter.

Note to Design Professional: Please insert the number of additional Days allowed and the new Material Completion and Occupancy Date, or, if no additional time is allowed, insert "0" for the Days and "No Change" for the date.

10. The Guaranteed Maximum Price shall be *(increased) (decreased)* by \$ _____ on account of this change. The CM/GC's Fee shall be increased by \$ _____. The Maximum Amount Allowable for CM/GC's Overhead Costs and Expenses shall be *(increased) (decreased)* by \$ _____.

Note to Design Professional: Please delete inapplicable language in parentheses and enter the dollar amount for this change. Ensure that cost of the Work, percentage markup for profit, and the daily rate of general conditions costs is accurate and included in the amount of an additive change. If a deductive change, the amount is generally cost of the Work only; however, consult with the Owner in significant deductive Change Orders to determine if time or profit should be included in the deducted amount.

11. The payment and extension of time, if any, provided by this Change Order constitutes compensation in full to the CM/GC and its Subcontractors, Suppliers, and Trade Contractors for all costs and markups, directly and indirectly attributable to the changes ordered herein, and for all delays or time related costs thereto and for any acceleration costs for performance of changes within the time stated and to be completed by the Material or Final Completion Date and for any claims related thereto against the Owner and the Design Professional, and design consultants.

APPROVED AND AGREED BY CM/GC:

By: _____

RECOMMENDED FOR OWNER'S
ACCEPTANCE:

(DESIGN PROFESSIONAL)

By: _____

APPROVED AND AGREED BY OWNER:

Owner

By: _____

Date approved by Owner: _____

CHANGE ORDER FORMAT (Force Account)

NOTE TO DESIGN PROFESSIONAL:

Please prepare each Change Order for Force Account or Indeterminate Units in the form and wording given below, deleting inapplicable wording and adding such explanations as may be necessary. The wording in Paragraph 8 may not be changed or altered in any way by either the Design Professional or the Contractor, except for the insertion of the relevant information as indicated. The wording in Paragraph 5 of the Final Cost Amendment may not be changed or altered in any way by either the Design Professional or the Contractor. Send four copies, signed by you and the Contractor, to the Owner. *Do not forward a Change Order unless it is accompanied by a breakdown which has been checked by the CM/GC (if applicable).*

CHANGE ORDER No. _____

Note to Design Professional:
Please leave the Change Order number blank. The Owner will assign a number.

Project Name: _____

Project Number: _____

_____, Owner

Note to Design Professional: *No Change Order for Force Account or Indeterminate Units should be forwarded unless you have been furnished with a letter from the Owner authorizing same.*

1. Submission of this Change Order for consideration was authorized by letter from the Owner, dated _____, 20____, Encumbrance Record No. _____.

2. The changes hereinafter described are applicable to the Contract for the construction of the above-referenced Project and amend the Contract Documents.

3. Description of Change:

Note to Design Professional: *Be sure to give a complete statement describing the changes in the Work, including the Specifications. If Drawings are necessary, refer to them by date, etc., and state they are made a part of the Change Order. Copy of Drawings should be attached to the Change Order.*

4. This Change Order is deemed necessary and originated with the (Design Professional) (Owner) (CM/GC). *(Indicate applicable entity.)*

5. This Change Order is necessary to:

Note to Design Professional: *Give a complete description of conditions which necessitate the change.*

6. The Maximum Allowable Cost of the Change Order was estimated by:

Choose one:

- a. Estimate in lump sum.
- b. Unit Prices stated in contract or subsequently agreed upon, and an estimated number of units.

7. A memorandum is attached showing the estimated cost breakdown of labor and materials by unit and quantities as prepared by the CM/GC and checked by the Owner.

8. The Maximum Allowed Cost for this Change Order is \$ _____, and is established as Encumbrance Record No. _____. This Maximum Allowed Cost may be amended by the Owner in the event the Actual Costs are expected to exceed the Maximum Allowed Cost, provided that CM/GC shall give written notice of such fact prior to incurring Actual Costs in excess of ninety (90) percent of the Maximum Allowable Cost. In no event shall Actual Costs be incurred in excess of the Maximum Allowed Cost, as it may be amended.

APPROVED AND AGREED BY CM/GC:

By: _____

RECOMMENDED FOR OWNER'S
ACCEPTANCE:

(DESIGN PROFESSIONAL)

APPROVED AND AGREED BY OWNER:

Owner

By: _____

By: _____

Date approved by Owner: _____

**FINAL COST AMENDMENT
TO
CHANGE ORDER NO. _____
(Regarding Force Account)**

1. A memorandum is attached showing cost breakdown of labor and materials by unit and quantities as prepared by the CM/GC and checked by the Owner.

2. We have verified the quantity and quality of all materials shown on the memorandum. We have verified that all prices are reasonable and do not exceed current costs for like services or materials, and we have verified that the quality of the materials meets the requirements of the Contract Documents.

Note to Design Professional: Please observe the fact that verification of quantities and prices means the Design Professional who signs the Change Order has personal knowledge that the quantities shown in the memorandum referred to under paragraph 7 of the Change Order for Force Account or Indeterminate Units above are correct, that he has personally satisfied himself that full credit has been extended for any Work or materials deleted or omitted, and that he has conclusively established by such checking or inquiry as may be necessary that the prices and allowances shown in the memorandum are comparable with current costs for like services and materials.

3. The CM/GC shall be allowed _____ additional calendar days for completion. The Material Completion Date is: _____, and the Final Completion Date is the thirtieth (30th) calendar day thereafter.

Note to Design Professional: Please insert the number of additional Days allowed and the new Material Completion and Occupancy Date, or, if no additional time is allowed, insert "0" for Days and "No Change" for the date.

4. The Guaranteed Maximum Price shall be (increased) (decreased) by \$ _____ on account of this change. The CM/GC's Fee shall be increased by \$ _____. The Maximum Amount Allowable for CM/GC's Overhead Costs and Expenses shall be (increased) (decreased) by \$ _____.

Note to Design Professional: Please delete inapplicable language in parentheses and enter the dollar amount for this change. Ensure that cost of the Work, percentage markup for profit, and the daily rate of general conditions costs is accurate and included in the amount of an additive change. If a deductive change, the amount is generally Cost of the Work only; however, consult with the Owner in significant deductive Change Orders to determine if time or profit should be included in the deducted amount.

5. The payment and extension of time, if any, provided by this Change Order constitutes compensation in full to the CM/GC and its Subcontractors, Suppliers, and Trade Contractors for all costs and markups, directly and indirectly attributable to the changes ordered herein, and for all delays or time related costs thereto and for any acceleration costs for performance of changes within the time stated and to be completed by the Material or Final Completion Date and for any Claims related thereto against the Owner and the Design Professional, and design consultants.

APPROVED AND AGREED BY CM/GC:

By: _____

RECOMMENDED FOR OWNER'S
ACCEPTANCE:

(DESIGN PROFESSIONAL)

By: _____

APPROVED AND AGREED BY OWNER:

Owner

By: _____

Date approved by Owner: _____

**EXHIBIT J
MAXIMUM WAGE RATES, SALARY AND LABOR COST**

The following schedules represent the agreement between the Owner and CM/GC as to the maximums for wages and salary, including employer-paid taxes and approved benefits, which may be paid. Notwithstanding the maximums set forth, in all cases only the Actual Cost paid may be reimbursed, so long as the following maximums are not exceeded. As economic conditions change over the life of the Construction Management At Risk Agreement, these maximums may be adjusted based upon documented evidence of changed rates presented by the party requesting the change; however, any such changes shall not effect any change in the established GMP.

In all cases, particularly salary rates, the Actual Cost invoiced for payment must be the actual amounts paid, adjusted for the proportion of the rate applicable to the proportion of time the worker spent upon Project services as against all services for which the worker was paid. No overtime or bonus may be paid without verification that the need for such overtime or extra Work was caused by the Owner and with the express prior written approval of the Owner. No "profit," "overhead," or "burden" based upon percentages, statistics, or otherwise are permitted.

Schedule J-1: Wage Rates (Collective Bargaining or Prevailing Wage Rate in Area)

Category	Rate Hourly	Employer-paid Taxes				Approved Benefits
		FICA	GUTA	FUTA	W/C Rate	
<i>Examples:</i>						
Brick Mason (Journeyman)	\$18.50	\$1.42	\$.17	\$1.48	2.41	
Carpenter (Journeyman)	\$17.85	\$1.37	\$.16	\$1.47	3.39	
Carpenter (Helper)	\$12.30	\$.95	\$.11	\$1.00	2.34	
Administrative	\$ 6.50	\$.45	\$.06	\$.50	1.35	

Etc.

Schedule J-2: Reasonable Annual Salary Rates

Category	Rate Gross	Employer-paid Taxes				Approved Benefits
		FICA	GUTA	FUTA	W/Comp	
<i>Examples:</i>						
Project Superintendent	\$80,000	\$5603.42	\$60.17	\$110.48	1.41	
Cost Manager	\$37,850	\$2101.37	\$33.16	\$81.47	1.39	

Etc.

DATA TO BE SUPPLIED BY CM/GC
AND REVIEWED/APPROVED BY OWNER PRIOR TO INCLUSION HEREIN

**EXHIBIT K
APPLICATION FOR PAYMENT**

APPLICATION FOR PAYMENT NO. _____ PROJECT NO. _____

**CERTIFICATE OF THE CM/GC OR HIS DULY AUTHORIZED
REPRESENTATIVE**

To the best of my knowledge and belief, I certify that all items, units, quantities, and prices of Work and material shown on this Application for Payment No. _____ are correct; that all Work has been performed and materials supplied in full accordance with the terms and conditions of the Contract Documents between _____
(Owner)

and _____ dated _____
(CM/GC)

and all authorized changes thereto; and that the following is a true and correct statement of the contract account up to and including the last day of the period covered by this Application and that no part of the "amount due this Application" has been received.

(a)	Total cost for Work in place (original contract)	\$
(b)	Total cost for Work in place (Change Orders)	\$
(c)	Cost of materials stored at Site	\$
(d)	CM/GC Fee earned through Application Date	\$
(e)	Total cost ((a) plus (b) plus (c) plus (d))	\$
(f)	Amount retained (10%)	\$
(g)	Total cost less retained percentage ((e) minus (f))	\$
(h)	Total of previous payments approved	\$
(i)	Amount due this Application ((g) minus (h))	\$
(j)	Retainage release for Completed Subcontractors and Suppliers per Owner Approval (See Articles 4.3.6 and 4.3.7)	\$
(k)	AMOUNT DUE CM/GC ((i) plus (j))	\$

I further certify that all claims outstanding against the undersigned CM/GC for labor, materials, and expendable equipment employed in the performance of said contract have been paid in full in accordance with the requirements of said Contract, except such outstanding claims as are listed below or on the attached sheet, which statement contains all claims against the CM/GC which are not yet paid, including but not limited to all disputed claims and any claims to which the CM/GC has or will assert any defense.

I further certify that all of the materials indicated on this Application for Payment that are being stored on the Site, but that are not yet incorporated into the building, have been purchased, delivered, and are now stored on the Site for future incorporation into the building, and until so incorporated, the title to same is, upon payment of this statement, vested in the Owner. Furthermore, the undersigned CM/GC assumes full responsibility for the existence, protection, and, if necessary, replacement of the above-mentioned materials until the completion of this contract.

CM/GC _____

By _____

Date _____

Title _____

CERTIFICATE OF THE DESIGN PROFESSIONAL

I certify that I have verified this Application for Payment and, to the best of my knowledge and belief, it is a true and correct statement of Work performed and statement of materials stored on Site by the CM/GC and that the CM/GC's certified statement of his account and the amount due him is correct and just. I further certify that all Work has been performed and materials have been supplied in full accordance with the terms and conditions of the Contract Documents and authorized changes thereto.

Name _____ Design Professional.

Date: _____

SCHEDULE OF CHANGE ORDERS

In support of Application for Payment No. _____

Project No. _____ Period Ending: _____

CM/GC: _____

CHANGE ORDERS		ADDITIONS TO GMP			DEDUCTIONS
Number (1)	Date (2)	Authorized Amount (3)	Amount this Period (4)	Completed Previous Periods (5)	Authorized Deductions (6)

WORK PERFORMED TO DATE
In support of Application for Payment No. _____ For the period from _____, through _____ inclusive. Project No. _____ Name and location of Project _____ CM/GC's Name and Address _____
WORK INCLUDED IN CONTRACT

ACTUAL COSTS				WORK PERFORMED TO DATE			
CSI Category and Description Item No. and Designation (1)	Number & Kind of Units (2)	Unit Price (3)	Actual Cost (4)	No. of Units (5)	Amount Earned to Date (6)	Value of Incomplete Work (7)	Percent Complete (8)

A. Contracting Requirements: * a. b. c.							
1. Division 1 – General Requirements: * a. b. c.							
2. Division 2 – Site Construction: ** (i) Building a. b. c. (ii) Infrastructure a. b. c.							
3. Division 3 – Concrete: * a. b. c.							
4. Division 4 – Masonry: ** (i) Building a. b. c. (ii) Infrastructure a. b. c.							
5. Division 5 – Metals: * a.							

b. c.							
6. Division 6 – Wood and Plastics: * a. b. c.							
7. Division 7 – Thermal & Moisture: ***** a. b. c. Roof:							
8. Division 8 – Doors & Windows: * a. b. c.							
9. Division 9 – Finishes: * a. b. c.							
10. Division 10 – Specialties: * a. b. c.							
11. Division 11 – Equipment: *** (i) Fixed or Built-in: a. b. c. (ii) Moveable: a. b. c.							
12. Division 12 – Furnishings: *** (i) Fixed or Built-in: a. b. c. (ii) Moveable: a. b. c.							
13. Division 13 – Special Construction: * a. b. c.							
14. Division 14 – Conveying Systems: * a. b. c.							
15. Division 15 – Mechanical: ***** (i) Building a. b. c. (ii) Infrastructure a. b. c.							
16. Division 16 – Electrical: **							

(i) Building a. b. c. (ii) Infrastructure a. b. c. 17. Division 17 – Special Inspections: ** (i) Building a. b. c. (ii) Infrastructure a. b. c. (iii) Documents							
A. Total GMP of original contract							
B. Plus or minus total previously approved C. O.'s incl.		Nos.-----					
C. Plus or minus C. O.'s Nos.-----incl. approved covered by this est.-----		during period					
D. Total Net Adjusted GMP							

NOTES: The following breakdowns must be accomplished in order to comply with Government Accounting requirements. Upon completion of the Project, the final Application for Payment must show all divisions and sections, and a Final Certification of Costs for Capital Asset Accounting completed and submitted with the Application for Final Payment.

- * Report Items in each division, by CSI division and such other breakdown as is useful to the CM/GC.
- ** These items must be broken down into 2 categories, (i) Building and (ii) Infrastructure, reported by specification section. Infrastructure for these purposes is defined as everything outside a line five feet from the building footprint.
- *** These items must be broken down into 2 categories; (i) fixed equipment & furnishings and (ii) Moveable equipment & furnishings and reported by specification section.
- **** Division 15 – Mechanical. This item must be broken down into 2 categories, (i) Building and (ii) Infrastructure, reported by specification section. Chillers and HVAC units that serve the facility are to be included as a part of the Building, even if they are outside the 5-foot limit. Chillers and HVAC units that are outside the 5 foot limit and serve more than one facility, such as equipment used in a central plant, are to be included in Infrastructure.
- ***** Division 7 – Thermal & Moisture Components of the Roof system should be reported as a separate line item. Generally, this includes components of Sections 7500 and 7600.

SUMMARY OF MATERIALS STORED

In support Application for Payment No.

Project No. _____ Period Ending:

CM/GC:

ITEM NO.	NAME (Contractor or Subcontractor)	TYPE OF MATERIAL	QUANTITY	AMOUNT (Dollars)
		TOTALS		

Prepared by _____ for _____ (Contractor)

Date _____, and certified by him to be a true and accurate statement.

Checked:

By:

Date:

FINAL CERTIFICATION OF COSTS FOR CAPITAL ASSET ACCOUNTING

Date: _____

To: _____ (Owner)

The following accounting of costs for Project No. _____, Project Name: _____
_____ at _____

is submitted as follows, with the breakdown of costs as specified in the Final Pay Request attached hereto and incorporated herein, for the purposes of capital asset accounting pursuant to GASB 34 Accounting Statements:

- 1. **BUILDING AND BUILDING IMPROVEMENTS: *** \$ _____
 - 2. **INFRASTRUCTURE: **** \$ _____
 - 3. **FURNISHINGS AND EQUIPMENT: ***** \$ _____
- =====
- TOTAL:** \$ _____

Notes: (Contractor must insure costs from all Change Orders are apportioned and included in each line item above)

- * **Building:** Include totals from Items A, 1, 3, 5, 6, 7, 8, 9, 10, 13, 14, 15 and "Building" portions of Items 2, 4, and 16 (as described in the Work Performed to Date).
- ** **Infrastructure:** Include totals from the "Infrastructure" portions of Items 2, 4 and 16 (as described in the Work Performed to Date).
- *** **Furnishing and Equipment:** Include totals from only the "moveable" portions of Items 11 and 12 (as described in the Work Performed to Date).

I certify to the best of my knowledge and belief that all of the amounts set forth on this Certificate are true and correct and are supported by the financial records for this Project on file with the Contractor.

CM/GC _____ By: _____

Date _____ Title: _____

CERTIFICATE OF THE DESIGN PROFESSIONAL

I certify to the best of my knowledge, information and belief that the amounts certified by the CM/GC are consistent with the estimates provided in my final Statement of Probable Cost for the Project; that the Building Improvement contains a footprint based upon a line 5 feet outside the building structure) of _____ square feet, a total of _____ gross square feet, and contains _____ floors (including basements). The building fire protection system is _____ (include type of system). The Certificate of Occupancy was issued on _____. I further certify that the design intent for this Project is that the Building and Building Improvements are of Building Construction Class _____ and ISO Occupancy Type(s) _____ and have an expected useful life of _____ years from the date of this Certificate, and that my observations of the construction confirm these expectations.

Name _____ Design Professional. Date: _____

CERTIFICATE OF THE OWNER

I certify that to the best of my knowledge, information, and belief that the cost of the real property covered by this Project, to the boundaries on the final Site Plan, was \$ _____ and the cost of additional government-supplied furnishings and equipment acquired for this Project was \$ _____.

Name _____ Title: _____ Date: _____

_____ (OWNER)

CERTIFICATE OF MATERIAL COMPLETION

Date: _____

Institution _____

Project Number _____

Project Name _____

Design Professional _____

The Design Professional issues this Certificate of Material Completion of the Project and certifies as follows:

1. The above-named Project has achieved Material Completion, as provided in the Contract Documents, on _____.

2. The punchlist is attached hereto. The CM/GC shall complete all items on the punchlist and achieve Final Completion not later than 30 days from the date hereof.

This _____ day of _____, _____.

DESIGN PROFESSIONAL

(Name of Firm)

By:

Title:

REVIEWED AND ACCEPTED:

Date: _____

Owner

(Owner)

CERTIFICATE OF FINAL COMPLETION

Date: _____

Institution _____

Project Number _____

Project Name _____

Design Professional _____

The Design Professional issues this Certificate of Final Completion of the Project and certifies as follows:

1. The above-named Project was fully constructed and completed as provided in the Contract Documents on _____ and is accepted by the undersigned under the terms and conditions of such Contract Documents.
2. The Contract Sum, as amended by Change Order and reduced by properly assessed Liquidated Damages, and further reduced by the attached Schedule of Credits to the Owner, is due and payable.
3. The CM/GC has furnished evidence satisfactory to the undersigned that all payrolls, material bills, and other indebtedness connected with the Work have been paid.
4. A (temporary) certificate of occupancy has been issued by the State Fire Marshal dated _____ and numbered _____. Said certificate has been delivered to the following person:

Name: _____
Address: _____
5. The total cost of labor, materials, and equipment incorporated in the Project are as provided in the attached FINAL CERTIFICATION OF COSTS FOR CAPITAL ASSET ACCOUNTING.
6. All tests and inspections provided for in the Contract Documents have been made in the presence of a registered architect or registered engineer, and all Work was found to meet said tests and inspections in accordance with plans and Specifications. All mechanical systems, equipment, apparatus and controls (plumbing, heating, electrical, water, septic tank and sewerage disposal fields, refrigeration, kitchen equipment, fire alarm, program and public address, etc.) have been found to be in compliance with the Contract Documents and all applicable codes and to be in safe operational condition. Copies of all tests and certifications are included with the Final Documents.
7. All Work has been installed in such a manner as to comply strictly with all laws, ordinances, codes, rules, and regulations bearing on the conduct of the Work as provided in the Contract Documents.
8. There are no credits due the Owner for changes, deviations, omissions, or non-compliances other than as shown on the attached Schedule of Credits.
9. As Built Documents are to be furnished in accordance with the CM/GC Contract.
10. No Work has been certified for payment which was covered prior to consent of the Design Professional.
11. Attached is one copy of each bond, guarantee, or warranty as called for in the Contract Documents.
12. Attached are two copies of the affidavit of CM/GC as called for in the Contract Documents.

13. With exceptions noted below, there are, to the best of the knowledge and belief of the undersigned, no claims outstanding against the CM/GC arising out of the Contract Documents.

This _____ day of _____, _____.

DESIGN PROFESSIONAL

(Name of Firm)

By:

Title:

**SCHEDULE OF CREDITS
TO OWNER**

[None]

REVIEWED AND ACCEPTED:

Owner

Date: _____

EXHIBIT "O"
PROJECT DOCUMENTS

[Not Used]

EXHIBIT "P"

Project Manager
Field/Construction Superintendent