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SECTION 1 – GENERAL

PART 1 – PRELIMINARY MATTERS

1.1.1 Project Parameters.

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

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

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

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

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

1.1.1.5.1 Delays by Design Professional

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

1.1.1.5.2 Delays by the Owner

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

1.1.1.6 Project Delivery Method. This Contract presumes that the construction of the Project shall be procured by using the Design-Bid-Build method with a single bid package.

1.1.2 Project Team.

1.1.2.1 Owner's Authorized Agent. For the purpose of administration of this Contract, the Owner's Authorized Agent is the Owner's Representative. The Owner's Authorized Agent has the right and power to bind the Owner in all Project matters requiring approvals, authorization, written notice, and Change Orders. The Owner's Authorized Agent shall be well acquainted with the Project and provide the Design Professional the information and services required of the Owner by this Contract so as not to delay the services of the Design Professional.

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

consent and agreement on the part of the Design Professional and its consultants to the checking, reviewing and commenting upon the deliverables provided under this Contract.

1.1.2.3 The Owner's Consultants. If the Owner elects to engage an independent consultant for any reason (e.g., a Commissioning Provider), the Design Professional agrees to cooperate with such consultant in the professional services provided under this Contract. The Owner will provide a copy of the Contract with such consultant to the Design Professional upon a written request from the Design Professional. If the addition of an independent consultant causes a substantial increase in the scope of services provided by the Design Professional, the Design Professional shall be entitled to request an increase in compensation for the Additional Services.

1.1.2.4 The Design Professional's Team.

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

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

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

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

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

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

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

1.1.2.6.3 Geotechnical Engineer. The Design Professional shall select a licensed geotechnical engineer which may be retained by the Design Professional or the Owner as the Owner directs.

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

1.1.2.6.5 Incorporation of Terms in Consultant Contracts. The Design Professional agrees to incorporate all of the material provisions of this Contract into each consultant contract, and that failure to accomplish such incorporation by an express provision in each consultant contract is a breach of an essential covenant of this

Contract. In the event of such breach the Design Professional shall, within five calendar days after demand of the Owner, furnish proof in writing that the deficiency has been remedied to the end that no Subcontractor or consultant may maintain that he has not assumed toward the Design Professional all the obligations and responsibilities that the Design Professional has assumed toward the Owner.

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

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

1.1.3 Project Team Cooperation, Partnering.

1.1.3.1 Concept. It is the Owner's expectation that the Program Manager, if any, the Design Professional, the Owner, Owner-retained consultants, the Program Manager, if any, Using Agency, any separate Contractors and the Contractor shall work as a project team to effect the commencement of and completion of construction in accordance with the Contract Documents. By its various Contracts with the other parties, the Owner shall require that each team member communicate with all other team members to encourage and facilitate overall coordination, cooperation, and efficiency, and cooperate fully with and coordinate fully with each other team member in order to achieve Project completion in an expeditious and economical manner. The Contractor, in consultation with the other team members, shall schedule regular meetings of the key principals of the project team in an effort to solve problems in a partnering atmosphere to facilitate the ability of each team member to meet its business objectives, so long as these objectives are consistent with the successful completion of the Project. It is the Owner's intent that all consensus decisions of the team, where differing from the Contract Documents, shall be reduced to writing in an appropriate Change Order or amendment or modification.

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

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

1.1.4 Construction Contract General Conditions.

A copy of the General Conditions to the Construction Contract is attached hereto as Exhibit E and is incorporated herein by reference. If the Design Professional is authorized by the Owner to perform Construction Contract Administration, the Design Professional shall perform all of the duties of the Design Professional called for in the General Conditions in addition to the duties called for in this Contract. Specific attention is directed to the definitions and concepts of Material Completion and Final Completion as defined in Section 6 of the General Conditions, as they differ substantively from the common concepts of substantial completion. The General Conditions, including all definitions, are expressly adopted and incorporated into this Contract.

1.1.5 Insurance.

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

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

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

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

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

- (a) For Projects with a budgeted construction cost of more than \$30,000,000:
 - i. For Design Professionals – \$3,000,000 per claim and \$4,000,000 in aggregate coverage;
 - ii. For Subconsultant Engineers and Architects – \$2,000,000 per claim and \$3,000,000 in aggregate coverage;
 - iii. For Other Consultants – \$1,000,000 per claim and \$2,000,000 in aggregate coverage. At the Design Professional's request, the Owner may, at its sole discretion, agree to a lower limit for certain consultants.
- (b) For Projects with a budgeted construction cost of \$20,000,000 up to \$30,000,000:
 - i. For Design Professionals – \$2,000,000 per claim and \$3,000,000 in aggregate coverage;
 - ii. For Subconsultant Engineers and Architects – \$1,000,000 per claim and \$2,000,000 in aggregate coverage;
 - iii. For Other Consultants – \$1,000,000 per claim and \$1,000,000 in aggregate coverage. At the Design Professional's request, the Owner may, at its sole discretion, agree to a lower limit for certain consultants.
- (c) For Projects with a budgeted construction cost of less than \$20,000,000:
 - i. For Design Professionals – \$1,000,000 per claim and \$1,000,000 in aggregate coverage;
 - ii. For Subconsultant Engineers and Architects – \$1,000,000 per claim and \$1,000,000 in aggregate coverage;
 - iii. For Other Consultants – \$1,000,000 per claim and \$1,000,000 in aggregate coverage. At the Design Professional's request, the Owner may, at its sole discretion, agree to a lower limit for certain consultants.
- (d) The Design Professional shall maintain professional liability insurance that shall be either a practice policy or project-specific coverage. Professional liability insurance shall contain prior acts coverage for services performed by the Design Professional for this Project. If project-specific coverage is used, these requirements shall be continued in effect for four years following the issuance of the Certificate of Final Completion for the Project.

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

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

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

[Insert the name and address of the Owner as shown in the Contract]

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

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

1.1.6 **Meaning of Terms.**

1.1.6.1 **Defined Terms.** Terms defined in other documents associated with this Project shall have the same meaning in this Contract. In case of conflict between or among any such documents, as between the parties hereto the definitions contained in this Contract shall control.

1.1.6.2 **Meaning of Terms.** Unless specifically defined pursuant to 1.1.6.1 above, words used in this Contract that have usual and common meanings, either in general usage or in technical or trade usage, shall have their usual and common meanings.

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

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

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

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

1.1.6.2.5 ***Predesign Study.*** This document includes the Program, site analysis, and other appropriate studies that provide essential information, including the cost estimates from the Predesign Study to support and advance the decision-making process prior to the design and implementation phases of the Project.

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

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

1.1.6.2.8 ***Schematic Design.*** See Section 2, Part 1, Article 2.1.4, Paragraph 2.1.4.2.

1.1.6.2.9 *Site Visit.* A visit to the Site for one day (8 hours) by the Design Professional or consultant, inclusive of all travel time, professional time, documentation time, travel expenses, meals, lodging, and incidental expenses. Site Visits shall be accounted in half-day increments (i.e., 0 to 4 hours expended in a single day equal one-half visit; 4 to 8 hours equal one visit). (See also Paragraph 2.2.6.1 below.)

1.1.6.2.10 *Stated Cost Limitation (SCL).* For the purpose of controlling the design of the Project, the Stated Cost Limitation is the amount allocated for the cost of construction of the Project as illustrated by the Statement of Probable Construction Cost. The SCL does not include the cost of fixtures, furniture, or equipment unless expressly designated to be supplied by the Contractor. The SCL does not include design costs, Owner contingency, or Site acquisition costs. See Subparagraph 2.1.1.4.2 for details and effect of the Stated Cost Limitation.

1.1.6.2.11 *Supplementary General Conditions.* The portion of the Construction Documents dealing with specific requirements of the construction process that are unique to the Project and are drafted by the Design Professional based on specimens provided by the Owner.

1.1.6.2.12 *Using Agency.* The State entity for which the Project is being constructed. The term may include a Tenant or Tenant Agency, such as an institution (e.g., University of Georgia) that is a part of a Using Agency.

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

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PART 2 – RESPONSIBILITIES OF THE PARTIES

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

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

1.2.3 Responsibilities of the Owner.

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

1.2.3.2 Predesign Study. The Owner shall provide the Design Professional with the Predesign Study, if any, as amended.

1.2.3.3 Program. In the event no Predesign Study is available, the Owner shall provide the Design Professional with a Program that describes the Owner's objectives, schedule, constraints, and criteria, including space requirements and relationships, special equipment, systems and Site requirements. If additional information or programming is required to enable the Design Professional to design the Project, it shall be provided by the Owner or provided by the Design Professional as an Additional Service.

1.2.3.4 Modification of the Owner's Requirements. In the event that the Statement of Probable Construction Cost of the work exceeds the Stated Cost Limitation stated in the Contract, the Owner, at its discretion, may modify the Owner's requirements sufficiently to permit balancing the Statement of Probable Construction Cost with the Stated Cost Limitation. It is also agreed that when the Design Professional has obtained laboratory test reports in accordance with Section 2 (Basic Services) of this Contract, the Design Professional shall furnish the Owner a current Statement of Probable Construction Cost for use in verifying that the total Project budget does not exceed the available funds for the Project. In the event the Statement of Probable Construction Cost exceeds the Stated Cost Limitation, the Design Professional agrees that modifications made for the purpose of balancing the Statement of Probable Construction Cost with the Stated Cost Limitation shall not create a claim for Additional Services under Section 3 (Additional Services) of this Contract, except in the event of the discovery of unforeseen conditions, in which case the Design Professional shall be compensated in accordance with Section 3.

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

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

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

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

1.2.4 Responsibilities of the Design Professional.

1.2.4.1 Authority to Act.

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

1.2.4.1.2 Not an Agent of the Owner. The Design Professional is not a representative or agent of the Owner, and has no authority to act on behalf of the Owner except to the extent provided in the General Conditions of the Construction Contract unless otherwise specifically directed by the Owner in writing.

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

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

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

To the best of my knowledge, information, and belief, the Bidding Documents comply with the applicable building codes.

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

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

1.2.4.7 No Fee for Changes Caused by the Design Professional's Oversight. Notwithstanding any other provision in this Contract to the contrary, the Design Professional shall receive no fee for Change Orders caused by the oversight of the Design Professional.

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

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

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

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

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

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

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

1.2.5 Access to Records and Documents.

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

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

1.2.6 Owner's Instructions and Guidelines for Design Professionals.

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

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SECTION 2 – BASIC SERVICES

PART 1 – DESIGN SERVICES

2.1.1 General. Basic Services shall include all normal and customary professional services of the Design Professional and its consultants required in connection with the Schematic Design, Design Development, Construction Documents, Bidding, and Construction Contract Administration Phases of the Project.

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

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

2.1.1.2 Meetings and Presentations. The Design Professional shall attend meetings, take appropriate minutes, distribute minutes to Owner, attendees and interested parties, and otherwise explain its work product as may be necessary to its implementation.

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

2.1.1.4 Evaluation of Project Budget.

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

2.1.1.4.2 Details and Effect of the Stated Cost Limitation:

- (a) The Design Professional recognizes and agrees that he will design this Project such that the lowest responsible and responsive bid will not exceed the Stated Cost Limitation;
- (b) In contracting with a public or governmental body to render services, the Design Professional is charged with knowledge of the amount of money allocated to the construction budget; and
- (c) The Stated Cost Limitation limits the Design Professional prior to, but not after, the execution of the Construction Contract.

2.1.1.4.3 Revision or Redrafting. It shall be the responsibility of the Design Professional to design the Project so that the lowest responsible and responsive bid will not exceed the Stated Cost Limitation. It is in the best interest of the public, and the intent of the Owner is, that the entire Project be constructed within the funds allocated in the construction budget. Notwithstanding this overriding public policy, in the event that the Design Professional finds, in its opinion, that the bid will potentially exceed the Stated Cost Limitation, the Design Professional shall immediately stop work and give written notice to the Owner, who will either revise the budget to increase the Stated Cost Limitation or direct the Design Professional to utilize deductive alternates, or to reduce the scope of the Project. If so directed by the Owner in writing, the Design Professional shall, at no additional cost to the Owner, revise or redraft any and all documents necessary for the construction award of the reduced scope Project so as to bring the Statement of Probable Construction Cost within the Stated Cost Limitation and maintain the Preliminary Design and Construction Schedule; *provided, however*, if the cost of redesign or inclusion of deductive alternates is extensive, and the budget changes are the result of unexpected market forces, the Design Professional shall be equitably reimbursed for such design services. The Design Professional shall promptly revise without additional compensation those documents that have not been previously approved by the Owner or to which the Owner has reasonable and timely stated objections.

2.1.1.4.4 Revision or Redrafting of Construction Documents After Bid and Prior to Construction.

- (a) If the Stated Cost Limitation is exceeded by the lowest responsive and responsible bid, the Owner may elect one of the following:
 - i. Approve an increase in the Stated Cost Limitation; or
 - ii. Require the Design Professional, without additional compensation, to revise the Construction Documents to reduce the Cost of the Work to the Stated Cost Limitation.
- (b) If the lowest responsive and responsible bid is more than five percent but not less than \$200,000 below the Stated Cost Limitation, and if the Design Professional under Subparagraph 2.1.1.4.3 reduced components of the design of the Project to bring the Probable Construction Cost within the Stated Cost Limitation, then the Owner may require the Design Professional, without additional compensation, to revise the Construction Documents to restore such components of the design that were omitted, but without exceeding the Stated Cost Limitation. Such components of the design will be implemented by Change Order.
- (c) After the Construction Contract has been executed, if additional funding is obtained to increase the Stated Cost Limitation and components reduced or eliminated during design are desired to be reinstated, the Design Professional will be entitled to the same compensation as is provided for Change Orders not the fault of the Design Professional.

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

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

2.1.2 Instruments of Service.

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

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

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

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

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

2.1.2.6 Documents in Electronic Format. Within forty-five calendar days of the receipt of the marked-up Construction Documents that are required to be furnished by the Contractor pursuant to the Contract Documents, the Design Professional shall provide the Owner with Record Drawings and Final Documents as specified in Article 2.2.11. In the event that the Project is terminated prior to construction, the Design Professional, upon the Owner's request, shall provide on CD ROMs two copies of all drawings and Project Manual content then existent. Electronic drawings shall be made available for viewing in PDF, Autodesk DWF, or other approved format.

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

readability of documents resulting from the use of software application packages, operating systems, or computer hardware different from those in use by the Design Professional and its consultants at the beginning of this assignment.

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

2.1.3 Site Evaluation and Planning Services.

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

2.1.3.2 Plot Plan. The construction drawings must include a Plot Plan designated as such on the drawing and consisting of one sheet only. The Plot Plan serves as the basis for the Site Memorandum. All work shall be sited on the plot plan to scale.

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

2.1.3.4 Land Disturbance Permitting.

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

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

2.1.3.4.3 Installation, Inspection, and Maintenance. The Contractor is responsible for installation and maintenance of the BMPs as a part of its Bid scope of Work. The Design Professional is responsible for and shall obtain the services of a qualified testing laboratory to inspect the BMPs in accordance with the permits, the costs of such inspections to be borne by the Owner.

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

2.1.3.5 Additional Information. The Design Professional shall advise the Owner of the need for any information that the Design Professional determines should be provided by a testing laboratory or similar service provider. With prior written approval of the Owner as to cost and other business terms, the Design Professional shall Contract for the information or, if the Owner elects, the Owner shall Contract as advised by the Design Professional. The Design Professional shall not be liable to the Owner for professional judgment of such testing laboratory or similar service provider unless the Design Professional knows, or should know from the exercise of reasonable diligence, that such judgment is in error. The Design Professional shall inform the Owner if the Design Professional discovers any defect in the information so provided. Except as provided above as to tests, the retention of independent Contractors or other assistance does not relieve the Design Professional of any responsibility under this Contract.

2.1.4 Schematic Design Services.

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

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

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

2.1.4.4 Statements of Probable Construction Cost. The Design Professional shall prepare and submit an initial Statement of Probable Construction Cost in the current CSI Master Format Division List. To the extent the Statement of Probable Construction Cost significantly deviates from the Stated Cost Limitation, the Design Professional shall discuss the deviations with the Owner and prepare and submit a plan to address the differences. As the design progresses, the Design Professional shall prepare and submit updated Statements of Probable Cost in like format.

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

2.1.5 Design Development Services.

2.1.5.1 Design Development Documents. In accordance with the approved Preliminary Design and Construction Schedule and based upon approval of and comments made by the Owner regarding the Schematic Design Documents,

the Design Professional shall prepare and submit to the Owner the Design Development Documents. (See current version of ASTM Standard Practice E 1804-02, Sections 6.4, 8.2 and 8.3 for guidance on information which is generally developed in Design Development Documents.) The Design Development Documents shall consist of a Site Plan, building plans, floor plans, sections, elevations, typical construction details, equipment layouts, and other drawings and outline specifications. These documents will fix and illustrate the size and character of the entire Project in its essentials, including but not limited to kinds of materials, criteria and sizing of major components, equipment sizes and capacities, approximate layouts including required spaces for clearances, type of structure, grade elevations, sidewalks, utilities, roads, parking areas, mechanical and electrical systems. Facility engineering/sustainability and equipment standards illustrating the design intent (such as ASHRAE standard 90.1, LEED, and the like) should also be indicated. The Design Professional shall also prepare Outline Specifications giving basic descriptions of essential components of all systems. The Outline Specifications shall identify major materials and systems and establish in general their quality levels. Upon the request of the Owner, the Design Professional shall furnish to the Owner perspective illustrations, physical models, and 3-D computer models at a specified size. Such illustrations and models shall be performed as an Additional Service to this Contract and shall be compensated at the rates shown in Exhibit A and Article 4.1.3, Reimbursable Expenses.

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

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

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

2.1.6 Construction Documents.

2.1.6.1 General. Utilizing the format developed by the Construction Specification Institute, the Design Professional shall prepare and submit to the Owner the Construction Documents from the approved Design Development Documents, consisting of working drawings and specifications and setting forth in detail the architectural and engineering work required of the Design Professional, including the General Conditions of the Construction Contract and any Supplementary General Conditions of the Construction Contract. A requirement for a CPM Schedule, using approved electronic scheduling software, must be included in the Specifications. The Design Professional must provide all documents required for building inspection agencies' approval that are necessary to receive a Certificate of Occupancy.

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

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

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

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

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

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

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

(a) Civil Engineering documents to consist of grading, storm drainage, erosion control, paving, fencing, Site sanitary system, and Site water system;

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

(c) Detailing and dimensions that comprehensively describe the design of the building and Site development in a consistent and coordinated manner;

(d) Wall sections and interior elevations at scales appropriate to illustrate with sufficient detail and clarity the intended work and thereby facilitate its construction;

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

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

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

(h) Electrical systems and separate signal and data/telecom conduit systems layouts, as well as riser diagrams for the building, and all other "end product" elements and fixtures. All electrical power and lighting plans must be fully coordinated with the architectural floor plans and reflected ceiling plans; and

(i) Electrical site plans at not less than $1" = 50'$ scale.

(j) Any specialty products, materials and supplies specified by the Design Professional must be reasonably available.

2.1.6.7 Defining the Contractor's Responsibilities. The Design Professional shall not require the Contractor to provide professional services that constitute the practice of architecture or engineering in the Construction Documents unless such services are proprietary for that portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Design Professional will specify all performance and design criteria that such services must satisfy. The Contract Documents shall specify when shop drawings or submittals require the seal of a specialty consultant, provided that the Owner shall be consulted and shall approve each instance in which submittals are required to be provided by the Contractor under seal of the Contractor's specialty consultant. The Design Professional is required to clearly identify any performance specifications or other requirements for design on the part of the Contractor.

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

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

2.1.7 Bidding Documents. The Design Professional shall prepare the Bidding Documents utilizing the format provided by the Owner. The Design Professional shall not knowingly issue incomplete Bidding Documents and shall not intentionally rely upon addenda to attain completeness.

2.1.7.1 Bid Date. The date for receipt of bids shall be established by the Owner after consultation with the Design Professional.

2.1.7.2 Alternates.

2.1.7.2.1 Owner Approval Required. Upon approval of the Owner, the Design Professional may include deductive alternates in the Bidding Documents. Deductive alternates should not be proposed unless the Design Professional's Statement of Probable Construction Cost is 95 percent or more of the construction budget. The acceptance of any deductive alternate shall be utilized as a last resort to accomplish the Project without requiring a redesign and rebidding of the Project. The alternates when bid must be accepted in sequential numerical order. Alternates must be arranged in such order that the most important work will be sacrificed last, and all alternates must be deductive.

(a) Design Fees for Owner-Requested Alternates. If the Owner requests the Design Professional to include alternates in the Bidding Documents, the cost of preparing such alternates shall be considered Additional Services and compensation shall be determined in accordance with Section 3 whether the alternates are accepted or not accepted.

(b) No Fees for Budget-Mandated Deductive Alternates. When the Design Professional is required to include deductive alternates for the purpose of having the design meet the construction budget as described in this subparagraph 2.1.7.2.1, no additional compensation will be allowed the Design Professional. The Design Professional must not rely upon alternates for the purpose of probing the market or experimenting to see which design or materials cost the least. If the Owner elects not to exercise a deductive alternate to bring the Project within the Stated Cost Limitation, thereby increasing the Project cost above the Stated Cost Limitation, then the Design Professional's fee shall not be affected. If, however, the Owner elects to add back such work by Change Order after the award of the Contract, then the Design Professional's fee shall be adjusted in accordance with Subparagraph 2.1.1.4.4 (c).

2.1.7.2.2 Effect of Alternates. No alternates shall be included in the Bidding Documents that would render the Project unusable.

2.1.7.3 Issuance of Documents. Upon receipt of the review comments and approval from the Owner, the Design Professional shall complete the Bidding Documents to respond to the review comments and furnish final copies to the Owner prior to issuance of the Bidding Documents for bid. The Bidding Documents shall be bound into a Project Manual, including the Invitation to Bid, Instructions to Bidders, Bid Form, Construction Contract, General Conditions, Supplementary General Conditions, and the Specifications.

2.1.8 Construction Procurement Services. Upon the direction of the Owner, the Design Professional shall proceed with the procurement of construction services. No changes shall be made in the Bidding Documents issued by the Design Professional after bids have been invited except by formal addendum approved by the Owner and issued by the Design Professional.

2.1.8.1 Assist The Owner. The Design Professional shall assist the Owner in obtaining bids from Contractors and assist in the awarding of the Construction Contract. Assistance may include preparing for any pre-bid conference, the determination of daily amounts for liquidated damages to be assessed the Contractor for failure to complete the Project on time, and determination of appropriate daily amounts to compensate the Contractor for Time Dependent Overhead Costs associated with approved extensions of time.

2.1.8.2 Prospective Bidders. The Design Professional shall assist the Owner in preparing a list of prospective bidders. Assistance may include the review and initial determination of qualifications of the various Contractors and Subcontractors. The Design Professional shall accumulate an attendance roster of firms attending any mandatory pre-bid conference and shall provide a copy of the roster to the Owner prior to the date set for receiving bids. The Design Professional shall provide the Owner with a list of the plan holders of record as of the date set for receiving bids. If pre-qualification of bidders is elected by the Owner, as an Additional Service, the Design Professional will assist in setting the qualifications and evaluating the qualifications of prospective bidders through a competitive qualifications process to be set forth in the Supplementary General Conditions. Any appeals of the Design Professional's decision as to pre-qualification of any prospective bidder shall be referred to the Owner.

2.1.8.3 Reproduction of Documents. The Design Professional shall arrange reproduction of Bidding Documents for distribution to prospective bidders, as required.

2.1.8.4 Competitive Bidding.

2.1.8.4.1 Distribution of Documents. The Design Professional shall distribute the Bidding Documents to prospective bidders and request their return upon completion of the bidding process. The Design Professional shall maintain a log of distribution and retrieval and the amounts of deposits, if any, received from and returned to prospective bidders.

2.1.8.4.2 Substitutions and Addenda. The Design Professional shall receive and review requests for substitution during the bidding period in strict accordance with Paragraph 9 of the Instructions to Bidders and the provisions of the General Conditions. The Design Professional shall prepare such necessary addenda and issue such addenda in sufficient time prior to the bid date to all holders of record of the Bidding Documents, or with approval of the Owner, extend the bid date. All changes in documents should be marked, circled, or designated by other means to make the change clearly recognizable.

2.1.8.4.3 Pre-bid Conference. If so directed by the Owner, the Design Professional shall conduct a pre-bid conference at the location designated by the Owner. At the conference, the Design Professional shall record and address questions from participating Contractors. The Design Professional shall respond by addenda to questions from participating Contractors. The Design Professional shall invite response to, revise with approval of the Owner, and confirm any unit costs called for in the Supplementary General Conditions. The Design Professional shall invite response to, revise with the approval of the Owner, and confirm the following items:

- (a) The Contract Time;
- (b) The daily rate for Liquidated Damages;
- (c) The daily rate for Time Dependent Overhead Costs;
- (d) Any Unit Prices to be added to the Bidding Documents by addenda; and
- (e) Any other units or percentages required to be set by the Bidding Documents.

2.1.8.4.4 Responses to Questions. The Design Professional shall, as outlined and illustrated in Subparagraph 2.1.8.4.2 above, issue clarifications and addenda in writing to all holders of record of the Bidding Documents.

2.1.8.5 Receiving and Opening of Bids. The Design Professional shall assist the Owner in the receiving and opening of bids at the time and place designated by the Owner. The Design Professional shall record the bids, validate the bids, and certify to the Owner that the bid tabulation is correct.

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

2.1.9.1 Commissioning. The systems listed on the Commissioning Checklist included in the Forms Section must be commissioned.

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

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

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PART 2 – CONSTRUCTION CONTRACT ADMINISTRATION SERVICES

2.2.1 – General Administration.

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

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

2.2.1.3 Site Visits. During the Construction Contract Administration Services phase, the Design Professional and its professional consultants shall make Site Visits to the Project Site to discharge their professional obligations as stipulated in the Contract, Paragraph 5 – Site Visits. The Design Professional shall submit for review and approval of the Owner a schedule of anticipated Site Visits for each design discipline, compatible with the approved construction schedule. Additional Site Visits shall be treated as Additional Services, except that additional Site Visits caused by any error or omission of the Design Professional shall be part of Basic Services and shall not be an Additional Service.

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

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

- Administering the Construction Contract;
- Monitoring the status of Owner's construction funds;
- Requiring receipts from all known Subcontractors and all known suppliers (1) if Design Professional has evidence of delinquency on the part of the Contractor in making payments or (2) if he is requested to do so by the Owner;
- Recommending withholding payments to the Contractor, as appropriate;
- Issuing certificates of payments;
- Reviewing and commenting on shop drawings and submittals;
- Making revisions, corrections, or clarifications to the Contract Documents by Bulletins and Change Orders;
- Maintaining correspondence and records;
- Performing associated clerical services;
- Reviewing / evaluating and processing of Change Order requests and claims;
- Issuing Change Orders as described in the General Conditions for changes in the work. (No changes in the Contract Documents shall be made except with the prior written consent of the Owner.);
- Responding to all RFI's (Requests For Information);
- Executing all other duties required of the Design Professional in the General Conditions;
- Reviewing the certificates, manuals and guarantees provided by the Contractor as required by the Contract Documents; and
- Recommending acceptance of the completed Project.

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

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

2.2.3.2 Construction Progress Meetings. The Design Professional shall attend Construction Progress Meetings periodically held by the Contractor at the Site on a schedule determined by the Contractor. The Design Professional shall review the minutes of the meeting and provide his written comments to the minutes to the Owner and Contractor within seven calendar days after receipt of the meeting minutes.

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

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

2.2.4 Monitoring Contractor Performance. The responsibility of the Design Professional for enforcing the performance of the Construction Contract is not affected in any respect by the presence of a Contract Compliance Specialist at the Site or by inspections by other employees or Contractors of the Owner. The Design Professional agrees that its responsibility for approving, accepting, consenting to the covering of, and certifying Work for payment is not shared with employees or other Contractors of the Owner. If a Contract Compliance Specialist or quality control inspector has been assigned to the Project, the Design Professional shall direct same to enter into the Project Diary the date on which the Design Professional approves or consents to covering of given Work together with precise identification of the Work.

2.2.5 Responding to the Contractor.

2.2.5.1 Requests for Information (RFI). The Design Professional shall review and respond to RFI's with reasonable promptness but not more than five business days from receipt of any RFI. The Design Professional shall prepare any responses to reasonable requests from the Contractor for additional information about the Contract Documents. The Design Professional shall prescribe the format for such requests and shall instruct and assist the Contractor in adhering to this format.

2.2.5.2 Supplemental Drawings. The Design Professional shall prepare all supplemental drawings to the Contract Documents as required for the successful completion of the Project or as requested by the Owner. The Design Professional agrees that it will not issue any supplemental drawings for omissions from, additions to, or changes in the Contract Documents until approved in writing by the Owner.

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

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

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

2.2.6 Evaluations of the Work.

2.2.6.1 Site Visits. The Design Professional shall see that it and its consultants make field observations and evaluations as called for in this Contract and during the critical phases of construction. To the extent practicable for visits not on the schedule established under Paragraph 2.2.1.3 above, the Design Professional shall provide advance notice to the Owner and Using Agency of its Site Visits and by its consultants. The services of the Design Professional's field representative, if any, shall not be utilized for checking shop drawings unless the field representative is a design professional of the firm or has a specific approval of the Owner. The Design Professional shall maintain a log of all its visits and its consultant's visits to the Site. The Design Professional shall not be responsible for construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Work, and shall not be responsible for a Contractor's failure to carry out the work in accordance with the Contract Documents. However, where such deficiencies are observed or where the Design Professional observes the Contractor failing to execute the Work in accordance with the Contract Documents, the Design Professional shall promptly notify the Contractor in writing of all such deficiencies and shall issue such notices of Non-Compliant Work that the Design Professional deems appropriate, including, when necessary, issuing a stop work order over such part of the Work as is necessary and expedient. The Design Professional shall inform the Owner promptly of all such actions, and provide copies of all notices and other back up documentation.

2.2.6.2 Deviations from the Contract Documents. The Design Professional shall report deviations from the Contract Documents and the Overall Project Schedule to the Owner and the Contractor through site observations and evaluations appropriate to the stage of completion of the work or as otherwise agreed to by the Owner. The Design Professional shall issue Notices of Non-Compliant Work for nonconforming work in accordance with the General Conditions. The Design Professional is responsible for its acts and its consultants, but shall not have control over and shall not be responsible for the acts or omissions of the Contractor, Subcontractors or their agents or employees.

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

2.2.6.4 Owner Communications. Both the Design Professional and the Owner agree that most communications on the Project should be through the Design Professional in order to keep the Design Professional informed of the status of the Project. The Owner also agrees that communications concerning matters relating to the Contract Documents with the Design Professional's consultants will be through the Design Professional. The Owner shall endeavor to keep the Design Professional informed of all communications between the Owner and the Contractor and vice versa

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

2.2.7 Certification of Payments to the Contractor.

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

2.2.7.2 Record. The Design Professional shall maintain a record of the Contractor's Applications for Payment.

2.2.7.3 Accounting Format. Applications for Payment (sometimes referred to as "Periodical Estimates") shall comply with the General Conditions.

2.2.7.4 Advice on Construction Progress. To each Application for Payment forwarded to the Owner, the Design Professional shall attach its Advice on Construction Progress, in the format provided in the Forms Section, and provide a copy to the Contractor.

2.2.8 **Submittals.**

2.2.8.1 The Design Professional's Review. Within fourteen calendar days from receipt, the Design Professional shall review and give comment or approval regarding the submittal schedule as detailed in Paragraph 2.2.3.1 of the Contractor's General Conditions. The Contract Documents shall specify when shop drawings or submittals require the seal of a specialty consultant. The Design Professional shall then review, approve, or take other appropriate action with respect to shop drawings, samples, or other submissions of the Contractor, including, but not limited to, confirmation of conformance with the design concept of the Project and with the Contract Documents. The Design Professional shall respond to the Contractor and return said items to the Contractor within fourteen calendar days from receipt, provided that the Contractor submits the submittals in accordance with the required submittal schedule. In establishing the Submittal Schedule, the Contractor shall be instructed to take into account large submittal documents that will require longer review times, e.g., submittals with over fifty sheets of drawings.

2.2.8.2 Record. The Design Professional shall maintain a record of submittals and copies of submittals supplied by the Contractor.

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

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

2.2.9 **Changes in the Work.**

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

2.2.9.2 Determination of Cost. The Design Professional shall review the Contractor's proposed cost of the work, time to complete, effect upon the Overall Progress Schedule, and effect upon time dependent costs, and provide appropriate comments within fourteen calendar days concerning such proposed costs and expenses.

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

2.2.9.4 Accounting Format. Cost breakdowns for Change Orders shall comply with the General Conditions.

2.2.9.5 Advice on Construction Progress. To each Change Order that grants an extension in the Contract Time, the Design Professional shall attach its Advice on Construction Progress, in the format provided in the Forms Section, and provide a copy to the Contractor.

2.2.10 **Project Completion.**

2.2.10.1 Inspection for Material Completion. Material Completion is specifically defined in the General Conditions and all references to substantial completion or the concept of substantial completion are deleted and of no force and effect in the Contract Documents. The Design Professional shall cooperate with the Contractor in preparing for and implementing the Inspection for Material Completion, and shall conduct and document its inspections and evaluations for Material Completion within ten business days from notice of request. Upon successful completion of the Inspection for Material

Completion as specified in the General Conditions, the Design Professional shall issue a Certificate of Material Completion. The Certificate of Material Completion shall include the Final Punch List that shall specify each item that constitutes either a Minor Item or Permitted Incomplete Work, as defined in the General Conditions, and shall additionally specify a value for each. It is the responsibility of the Design Professional to have its representative and representatives of its major consultants present for the inspection and evaluation for Material Completion. Otherwise, the inspection and evaluation will be canceled and rescheduled at the Design Professional's expense. The Design Professional who executes the Certificate of Material Completion must be the person who has executed the Design Professional's Contract or its successor.

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

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

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

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

2.2.11 Record Drawings and Final Documents.

2.2.11.1 Record Drawings and Final Documents. The Design Professional shall, upon final completion of the Project, revise the Bidding Documents based upon documents incorporated by Change Orders, additional sketches, field changes, answered RFI's issued by the Design Professional, and marked-up documents provided by the Contractor to show the Project "as built." The Design Professional shall furnish and deliver the Record Drawings to the Owner after the entire work is completed and not later than sixty calendar days after execution of its Certificate of Final Completion. Record Drawings and Final Documents shall reflect all changes caused by addenda, field changes, Change Orders, or observed changes by the Design Professional, the Contractor, or Subcontractors. The Design Professional shall furnish the Owner, at no additional cost, three bound sets of specifications, complete with all addenda and authorized Change Orders, and the following sets of Contract Drawings:

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

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

2.2.11.2 Operating Instructions. The Design Professional shall assemble and forward to the Owner all equipment and systems operation and maintenance manuals provided by the Contractor in compliance with the Specifications.

2.2.11.3 Capital Cost Accounting. Pursuant to the General Conditions, the Contractor shall provide a Final Certificate of Costs for Capital Asset Accounting to enable the Owner and Using Agency to reflect the Project accurately as a capital asset in accordance with generally accepted government accounting principles (GASB-34). The Design Professional, using its final Statement of Probable Construction Cost and the guides to useful life of capital assets, shall complete the certification on the Contractor's Certificate (the format for the Certificate is included in the Forms Section). Should there be a disagreement with the categorization of any cost between the Contractor and the Design Professional, both should consult with the Owner. The director of the Construction Division of GSFIC, consistent with established State accounting policies, shall make the final decision and adjust the Certificate accordingly.

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SECTION 3 – ADDITIONAL SERVICES

PART 1 – ADDITIONAL DESIGN SERVICES

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

PART 2 – ADDITIONAL CONSTRUCTION CONTRACT ADMINISTRATION SERVICES

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

SECTION 4 – COMPENSATION AND CONTRACT ADJUSTMENTS

PART 1 – COMPENSATION

4.1.1 Compensation for Basic Services.

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

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

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

4.1.1.2.2 Extended Additional Construction Contract Administration Services. If the completion of the Project is delayed past the Contract time established in the Construction Contract, the Design Professional and its consultants shall be paid a mutually agreed fixed price lump sum for any necessary Extended Additional Construction Contract Administration Services, provided that the facts indicate that the delay is not the result of the delinquency of the Design Professional. If the Owner and the Design Professional cannot mutually agree upon a fixed price lump sum fee, then compensation shall be based upon the hourly rates set forth listed in Exhibit A, plus reimbursable expenses pursuant to Article 4.1.3 below.

4.1.2 Compensation for Additional Services.

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

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

4.1.3 Reimbursable Expenses.

4.1.3.1 Additional Site Visits and Miscellaneous Travel.

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

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

4.1.3.2 Reproduction of Documents. In addition to the Design Professional's Basic Services fee as hereinbefore established, the Design Professional shall be reimbursed at actual cost, but not greater than the most competitive market rate, for reproductions of drawings and project manuals (specifications), for Owner and Using Agency review, reviews by authorities having jurisdiction, and for the copy to be provided to the Contractor pursuant to Paragraph 2.1.2.8.

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

4.1.3.4 Other Direct Expenses. Other such Project direct expenses shall be reimbursed as are approved in advance in writing by the Owner.

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

4.1.4 Payments to the Design Professional.

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

(a)	Schematic Design Phase	(20%)
(b)	Design Development Phase	(25%)
(c)	Construction/Bidding Documents Phase	(50%)
(d)	Construction Procurement Phase	(5%)

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

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

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

4.1.4.2.1 Monthly. Beginning with the issuance of the Contractor's Notice to proceed, 95% of the Basic Construction Contract Administration Services Fee shall be payable in equal monthly portions based on the number of months in the Construction Schedule to reach Material Completion.

4.1.4.2.2 Payment at Material Completion. When the Certificate for Material Completion has been executed by the Design Professional pursuant to the Section 6, Part 5, of the General Conditions, partial payment shall be made in a sum sufficient to increase payment to 95 percent of the Basic Construction Contract Administration Services Fee.

4.1.4.2.3 Final Payment. When the Certificate for Final Payment has been executed by the Design Professional pursuant to the Section 6, Part 5, of the General Conditions, and the Design Professional has completed all requirements of this Contract including the furnishing of Record Documents, final payment shall be made in a sum sufficient to increase payment to 100 percent of the Basic Construction Contract Administration Services Fee.

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

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

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

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

4.1.4.5 Payment Due Dates and Interest. Should the Owner fail to pay a proper invoice within thirty calendar days of receipt, the Design Professional shall notify the Owner in writing by Certified or Statutory mail. If the Owner fails to pay within five business days of receipt of the notice, the Design Professional shall receive, in addition, the sum named in the proper invoice, interest thereon at the rate of one-half percent per month on the unpaid balance as may be due.

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

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

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PART 2 – CONTRACT ADJUSTMENTS

4.2.1 General.

4.2.1.1 **Change in Duties.** The duties, responsibilities, and limitations of authority of the Design Professional under this Contract shall not be restricted, modified, or extended except by Change Order.

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

4.2.2 **Modifications and Supplemental Fee Agreements.** Changes in the Design Professional fees resulting from a modification in the scope of services defined in this Contract are not valid or effective until executed by the Owner and the Design Professional. Until execution of the modifications and of the supplemental fee agreement, there shall be no liability upon the Owner for payment, and neither shall there be an obligation on the part of the Design Professional to commence services on the modified work.

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

4.2.4 **Claims for Additional Fees.** Any claim for additional fees shall be made to the Owner no more than twenty calendar days after the occurrence of the event giving rise to the claim. If the Owner and the Design Professional cannot agree on the additional fee requested, the dispute will be resolved in accordance with Section 5.

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SECTION 5 – DISPUTES, TERMINATION AND MISCELLANEOUS PROVISIONS

PART 1 – DISPUTES

5.1.1 Initial Dispute Resolution. If a dispute arises out of or relates to this Contract or its breach, the parties shall endeavor to settle the dispute first through direct discussions between the Owner and the Design Professional representatives, who shall have the authority to settle the dispute. If the Owner and the Design Professional representatives are not able to settle the dispute promptly, the senior executives of the Owner and the Design Professional, who shall have the authority to settle the dispute, shall meet within twenty-one calendar days after the dispute first arises. If the dispute is not settled within seven calendar days from the referral of the dispute to the senior executives, the Owner and the Design Professional may submit the dispute to mediation in accordance with Article 5.1.2.

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

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

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

5.1.3 Arbitration. Arbitration is neither contemplated nor allowed under this Contract.

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

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PART 2 – TERMINATION

5.2.1 Termination or Suspension by the Design Professional.

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

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

5.2.2 Termination or Suspension by the Owner.

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

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

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

5.2.2.4 Use of Documents After Termination. In the event that the Design Professional is terminated without cause or for convenience of the Owner and the Project continues, the Owner shall retain another qualified Design Professional to complete the Project and the Owner shall release the Design Professional from any and all damages that could have been avoided had the Design Professional continued performing its services and exercised the appropriate standard of care in the performance of its services.

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

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PART 3 – MISCELLANEOUS PROVISIONS

5.3.1 **Matters of Interpretation.**

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

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

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

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

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

5.3.1.6 Project Name and Number. The Owner shall assign the Project name and number. The Design Professional shall use that identical and full name and number of the Project on all correspondence, Contract Documents, and invoices.

5.3.2 **Matters of Law.**

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

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

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

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

5.3.2.5 Gratuities. The Design Professional agrees that neither it nor any of its employees nor consultants shall accept any gratuities nor receive any compensation from the Contractor, Subcontractors, or material suppliers involved in the construction of the Project. The Design Professional shall notify each of its employees and all consultants of the Design Professional's commitments under this provision of this Contract. This provision expressly precludes any compensation to the Design Professional, including any employee and consultant, by the Contractor, Subcontractors, or material suppliers involved in the construction of the Project for preparation of detail drawings, preparation of shop drawings,

checking shop drawings or any other service for work performed by the Design Professional under the Contract without prior written approval of the Owner.

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

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

5.3.2.8 Compliance with Executive Orders Concerning Ethics. The Design Professional warrants that it and its firm have complied in all respects with the Governor's Executive Orders concerning ethics matters, including, but not limited to, Executive Order dated January 13, 2003 (establishing Code of Ethics for Executive Branch Officers and Employees, including provisions governing former officers and employees), and Executive Order dated October 1, 2003 (governing vendors to state agencies and disclosure and registration of lobbyists). In this regard, the Design Professional certifies that any lobbyist employed or retained by the Design Professional or its firm has both registered and made the required disclosures required by the Executive Orders, as amended.

5.3.3 Other Contract Provisions.

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

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

5.3.3.3 Advertising by the Design Professional. The Design Professional shall not use any photographic representation or verbal description of the Owner, the Using Agency, or the Project in a derogatory manner.

5.3.3.4 Successors and Assigns.

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

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

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

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