

**SMALL CONSTRUCTION & RENOVATION
DESIGN-BID-BUILD
PROJECT MANUAL**

Version 4/30/2021

FOR

Georgia Department of Corrections

FOR

**PROJECT NO. GDC-22-AUGU-MP-001
Augusta State Medical Prison
Mechanical Upgrades, Phase Two**



August 23, 2021

**BIDDING MANAGER:
GEORGIA STATE FINANCING AND INVESTMENT COMMISSION
270 Washington Street, Second Floor
Atlanta, Georgia 30334**

DESIGN-BID-BUILD PROJECT MANUAL

ASMP Mechanical Upgrades, Phase Two
PROJECT NO. GDC-22-AUGU-MP-001

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BID REQUIREMENTS:

INSTRUCTIONS TO BIDDERS

1. **Bidding Documents.** The Bidding Documents include the Bid Requirements, Specifications, Drawings, and all Addenda.
2. **Bids Shall Comply with Georgia Law.** All bids submitted in response to this Invitation to Bid shall be made in general accordance with the applicable provisions of Georgia Law and the provisions of the DOAS Georgia Procurement Manual that are applicable to Public Works Construction Contracts.
3. **Bid Submission.** All bids must be submitted electronically through e-Builder by the time stated in the Invitation to Bid. The Bid Verification and Statement of Qualifications, Bid Bond, E-Verify Affidavit and any other forms required to be submitted at the time of bid shall be uploaded through e-Builder. All blanks on the Bid Verification and Statement of Qualification Form must be completed. Failure to complete entries in all blanks in the Bid Verification and Statement of Qualification Form, or any other required form may be considered sufficient cause for rejection of a bid. The inclusion of any condition, alternate, qualification, limitation, or provision not called for may render the bid non-responsive and may be sufficient cause for rejection of a bid.
4. **Alternates.** Bids must include prices for all specified alternates, if any. If a price is not provided for all alternates, the bid may be determined non-responsive and not considered for award. Unless otherwise stipulated, all alternates are deductive. Any alternate or alternates, if taken, will be taken in numerical sequence, starting with Alternate #1, to the extent necessary.
5. **Bid Bond Required.** Each bid must be accompanied with a BID BOND in an amount equal to 5% of the base bid, payable to Owner, in order to guarantee that the successful bidder will enter into the Contract, substantially in accordance with the Contract shown in the Bidding Documents, to construct the project strictly in compliance with the Bidding Documents and Contract. Bid Bonds should be furnished on forms accepted as standard by the insurance industry.
6. **Withdrawal of Bids.** Bids may be withdrawn by bidders prior to the time set for official opening. After bids have been opened, no bid may be withdrawn for a period of sixty (60) days after the time and date of opening, except as provided in O.C.G.A. § 13-10-22 (appreciable error in calculation of bid). Negligence or error on the part of any bidder in preparing its bid confers no right of withdrawal or modification of the bid after bid opening, except as otherwise provided by Georgia law.
7. **Owner's Right to Reject Bids.** Owner reserves the right to reject any or all bids and to waive technicalities and irregularities. Owner further reserves the right, in its sole and complete discretion, to reject any bid that is over budget and to reject any bid from a bidder that is not responsible. In judging whether the bidder is responsible, Owner will consider, but is not limited to consideration of, the following:
 - (a) Whether the bidder or its principals are currently ineligible, debarred, suspended, or otherwise excluded from bidding or contracting by any local, state, or federal agency, department, or authority;
 - (b) Whether the bidder or its principals have been terminated for cause or are currently in default on any contract;
 - (c) Whether the bidder can demonstrate a commitment to safety with regard to Workers' Compensation by having an Experience Modification Rate (EMR) over the past three years not exceeded an average of 1.2; and
 - (d) Whether the bidder's past work provides evidence of an ability to successfully complete public works projects within the established time, quality, or cost, and to comply with the bidder's contract obligations.

- 8. Owner's Right to Negotiate with the Lowest Bidder.** In the event all responsive and responsible bids are in excess of the budget, Owner, in its sole and absolute discretion and in addition to the rights set forth above, reserves the right to negotiate with the lowest responsive and responsible bidder (after taking all deductive alternates) only for the purpose of making changes to the Project that will result in a cost to Owner that is within the budget, as it may be amended.
- 9. Bid Preparation Expenses.** All expenses for preparing and submitting bids are the sole cost of the party submitting the bid. Owner is not obligated to any party to reimburse such expenses. All bids, upon receipt, become the property of Owner.
- 10. Open Records Act.** As required by the Open Records Act, the details of the bids will remain confidential until final award. Labeling information provided in submittals as "proprietary" or "confidential," or any other designation of restricted use will not protect the information from public view unless it is otherwise not subject to disclosure under the Open Records Act. Bidders shall be solely responsible for taking all steps necessary to ensure such documents are exempted from disclosure by law.
- 11. Award.** The Contract will be awarded, if at all, on a lump sum basis to the lowest responsible, responsive bidder. The lowest bid will be the bid, whose price, after incorporating all accepted alternates, is the lowest responsive bid which was received from a responsible bidder.
- 12. Contract Forms and Bonds.** The Contract, if awarded, will be substantially in accordance with the Contract shown in the Bidding Documents. If the Contract is awarded, the successful bidder shall be required to execute the Contract and return it to Owner within ten (10) business days. The successful bidder shall also be required to furnish payment and performance bonds, both in amounts equal to 100% of the Contract Sum along with the executed Contract.
- 13. Failure to Execute Contract.** If the successful bidder fails to execute the Contract within ten (10) business days after notice of such acceptance or if the bidder fails to furnish performance and payment bonds, the obligation of the bid bond, if applicable, will remain in full force and effect and the money payable thereon shall be paid into the funds of Owner.
- 14. Surety and Insurance Companies.** The Contract provides that the surety and insurance companies must be acceptable to Owner. Only those sureties listed in the Department of Treasury's Listing of Approved Sureties (Department Circular 570) are acceptable to Owner. At the time of issuance, all insurance policies and bonds must be issued by a company licensed by the Georgia Insurance Commissioner to transact the business of insurance in the State of Georgia for the applicable line of insurance. Such company shall be an insurer with an A.M. Best Financial Strength Rating of "A-" or better and with an A.M. Best Financial Size Category of Class V or larger.
- 15. Interpretations.** No oral interpretations will be made to bidders as to the requirements of the Bidding Documents. Requests for interpretation of the Bidding Documents shall be made in writing not later than **six (6)** business days prior to the date set for receipt of bids. All interpretations made to the bidders will be issued in the form of addenda to the Bidding Documents and will be posted to the e-Builder web site. Such addenda are to be acknowledged at the appropriate location on the electronic Bid Form. No addenda will be issued within three (3) business days of the date set for receipt of bids without an extension of the bid date.
- 16. Trade Names.**

 - a. *No Restriction of Competition.* When reference is made in the Bidding Documents to trade names, brand names, or to the names of manufacturers, such references are made solely to indicate that products of that description may be furnished and are not intended to restrict competitive bidding. If it is desired to use products of trade or brand names or of manufacturers' names which are different from those mentioned in the Bidding Documents, application for the approval of the use of such products

must be received by the Design Professional and the Contracting Officer at least ten (10) business days prior to the date set for the opening of bids.

- b. *Request for Approval of Substitute Product.* All requests for approval of substitution of a product must be made to the Design Professional in writing. The request shall include a copy of the published recommendations of the manufacturer for the installation of the product, together with a complete schedule of changes in the Drawings and Specifications, if any, that must be made in other work in order to permit the use and installation of the proposed product in accordance with the recommendations of the manufacturer of the product. The application must be accompanied by a schedule setting forth in which respects the materials or equipment submitted for consideration differ from the materials or equipment designated in the Bidding Documents. To be approved, a proposed product must also meet or exceed all express requirements of the Bidding Documents.
 - c. *Issuance of Addenda.* If the submittal is approved by the Design Professional, an addendum will be issued to all prospective bidders. The successful bidder may furnish no products of any trade names, brand names, or manufacturers' names except those designated in the Bidding Documents or any addenda.
 - d. *Conference with Owner.* Any party who alleges that rejection of a submittal is the result of bias, prejudice, caprice, or error on the part of the Design Professional may request a conference with a representative of Owner; PROVIDED that the request for said conference, submitted in writing, is received by Owner at least five business days prior to the date set for the opening of bids, time being of the essence.
- 17. Sales Tax.** Unless otherwise provided in the Bidding Documents, the successful bidder shall pay all sales, consumer, use and other similar taxes, which are legally enacted at the time bids are received.
- 18. Examination of Site.** In submitting a bid for the Project, the bidder acknowledges that it has visited the Project Site and has taken into consideration all observed conditions that might affect its work.
- 19. Employment of Georgia Citizens and Use of Georgia Products.** It is the desire of Owner that materials and equipment manufactured or produced in Georgia shall be used in the work and that Georgia citizens shall be employed in the work at wages consistent with those being paid in the general area in which the work is to be performed. This desire on the part of Owner is not intended to restrict or limit competitive bidding or to increase the cost of the work; nor shall the fulfillment of this desire be asserted by the successful bidder as an excuse for any noncompliance or omission to fulfill any obligation under the Contract.
- 20. Trading with the State, Ethics.** By submitting a bid, the bidder certifies that the provisions of law contained in O.C.G.A. §§ 45-10-20 to 45-10-71, which prohibit officials and employees of the State from engaging in certain transactions with the State and State agencies, and the Governor's Executive Orders governing ethics, have not and will not be violated in any respect in regard to this Contract.
- 21. Reciprocal Preference Law.** In accordance with O.C.G.A. § 13-10-3, vendors resident in the State of Georgia will be granted the same preference over vendors resident in another State in the same manner, on the same basis, and to the same extent that preference is granted in awarding bids for the same goods or services by such other State to vendors resident therein over vendors resident in the State of Georgia. A Georgia resident business shall include any business that regularly maintains a place from which business is physically conducted in Georgia for at least one year prior to submitting this bid or a new business that is domiciled in Georgia which regularly maintains a place from which business is physically conducted in Georgia; provided, however, that a place of business shall not include a post office box, site trailer, or temporary structure.
- 22. Experience Requirement Limitations.** No bidder will be disqualified from a bid based upon its lack of previous experience if prohibited by O.C.G.A. § 13-10-4.

23. Georgia Security and Immigration Compliance Act. All bids shall include a Contractor Affidavit required under O.C.G.A § 13-10-91(b)(1), a form of which is attached hereto (“E-Verify Affidavit”). Failure to submit this form with submission of a bid will result in the rejection of the bid.

BID REQUIREMENTS:

BID VERIFICATION AND STATEMENT OF QUALIFICATIONS

(To be subscribed and sworn to before a notary public)

Under oath, the undersigned submits the following bid verification and statement of qualifications for consideration by Owner:

Firm Name: _____
LEGAL NAME OF BUSINESS (As registered with Secretary of State)

Address: _____
LEGAL BUSINESS ADDRESS (P.O. BOX IS INSUFFICIENT)

CITY STATE ZIP

MAILING ADDRESS IF DIFFERENT FROM ABOVE

Telephone Number: _____ Facsimile Number: _____

Contact Person Name: _____ Contact's Email Address: _____

Year Organized: _____ Where Incorporated: _____

Is Firm a Georgia Resident: YES NO

Form of Organization: Proprietorship Corporation Partnership LLC

Federal I.D. No.: _____ or Social Security No.: _____

The firm's principals are as follows:

(1) _____
Check One: President Partner Owner

(2) _____
Check One: Vice President Secretary Partner

(If incorporated, the names of both the President and Corporate Secretary must be indicated. If a partnership, all partners must be indicated.)

Number of years engaged in the contracting business under the firm's current name: _____

Georgia General Contractor: YES NO License Number(s): _____

Other State General Contractor Licenses, Trade or Specialty Licenses:

• Type: _____ License Number: _____

Issuing State or Issuing Authority: _____

• Type: _____ License Number: _____

Issuing State or Issuing Authority: _____

Has the bidder refused to execute a contract upon award? YES NO

Has the bidder been declared in default on a contract? YES NO

Has the bidder ever been terminated for cause on a contract? YES NO

Has the bidder, its principals, or officers been convicted of building code violations, bribery, bid rigging, or any other felony involving moral turpitude? YES NO

Is the bidder or its principals or officers currently debarred, suspended, or declared ineligible or otherwise excluded from contracting with the Federal government or any state or local governmental entity? YES NO

Is the bidder's current Experience Modification Rate (EMR) greater than 1.2? YES NO

If answer is "Yes" to any statement above, please explain (attach additional sheets if necessary):

1. **Bid Certification.** Having carefully examined the Bidding Documents titled ASMP Mechanical Upgrades, Phase Two, dated August 23, 2021, and any Addenda, as well as the premises and conditions affecting the Work, the undersigned certifies its bid, submitted via e-Builder, to furnish all services, labor, and materials called for by said Bidding Documents.

2. **Bid Bond.** Enclosed herewith is a bid bond in the amount of _____ DOLLARS (\$ _____) (being not less than 5% of the base bid) payable to Georgia Department of Corrections. The undersigned hereby agrees that this bid may not be revoked or withdrawn after the time set for the opening of bids, but shall remain open for acceptance for a period of 60 days following such time.

3. **Certification of Proper Licenses.** Bidder certifies that it has been granted and possess all necessary, valid, and current licenses to do business in the State of Georgia as issued by the respective State Boards and Government Agencies responsible for regulating and licensing the services to be provided and performed pursuant to this Agreement.

4. **Certification of No Fraud or Collusion.** I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of State and Federal law and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of this bid and certify that provisions of O.C.G.A. § 45-10-20 *et seq.* have not and will not be violated in any respect.

Under oath I certify that I am a principal or other representative of the bidder and that I am authorized by it to execute this Bid Verification on its behalf. I am personally knowledgeable of the foregoing statements of fact, which are true and correct.

BY: _____
Authorized Signature (BLUE INK PLEASE)

Typed/Printed Name Title

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE

_____ DAY OF _____, 20____

Notary Public

[NOTARY SEAL]

My Commission Expires:

NOTICE TO BIDDERS

- 1) **MAKE SURE YOU HAVE SIGNED THIS BID VERIFICATION AND STATEMENT OF QUALIFICATIONS IN THE SPACE PROVIDED ABOVE.**
- 2) **MAKE SURE YOU AND YOUR SURETY HAVE PROPERLY EXECUTED THE BID BOND.**
- 3) **YOU MUST UPLOAD THE FOLLOWING FORMS INTO E-BUILDER WHEN YOUR BID IS SUBMITTED:**
 - **BID VERIFICATION AND STATEMENT OF QUALIFICATIONS**
 - **BID BOND**
 - **CONTRACTOR AFFIDAVIT UNDER O.C.G.A § 13-10-91 (E-VERIFY AFFIDAVIT)**
 - **TAX COMPLIANCE FORM**

CONTRACTOR AFFIDAVIT UNDER O.C.G.A. § 13-10-91

The undersigned contractor ("Contractor") executes this Affidavit to comply with O.C.G.A § 13-10-91 related to any contract to which Contractor is a party that is subject to O.C.G.A. § 13-10-91 and hereby verifies its compliance with O.C.G.A. § 13-10-91, attesting as follows:

- a) The Contractor has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program;
- b) The Contractor will continue to use the federal work authorization program throughout the contract period, including any renewal or extension thereof;
- c) The Contractor will notify the public employer in the event the Contractor ceases to utilize the federal work authorization program during the contract period, including renewals or extensions thereof;
- d) The Contractor understands that ceasing to utilize the federal work authorization program constitutes a material breach of Contract;
- e) The Contractor will contract for the performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the Contractor with the information required by O.C.G.A. § 13-10-91(a), (b), and (c);
- f) The Contractor acknowledges and agrees that this Affidavit shall be incorporated into any contract(s) subject to the provisions of O.C.G.A. § 13-10- 91 for the project listed below to which Contractor is a party after the date hereof without further action or consent by Contractor; and
- g) Contractor acknowledges its responsibility to submit copies of any affidavits, drivers' licenses, and identification cards required pursuant to O.C.G.A. § 13-10-91 to the public employer within five business days of receipt.

Federal Work Authorization User Identification Number

Date of Authorization

Name of Contractor

ASMP Mechanical Upgrades, Phase II
Name of Project

Georgia Department of Corrections
Name of Public Employer

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

Executed on _____, _____, 20____ in _____ (city), _____ (state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF _____, 20_____.

NOTARY PUBLIC
My Commission Expires: _____



TAX COMPLIANCE FORM

INSTRUCTIONS TO SUPPLIERS

Please complete the following information:

- Supplier's Name:
- Physical Location Address:
- Federal Identification Number (FEI):
- Have you ever been registered in the State of Georgia?
- If so, please provide the following information, if applicable:
 - State Taxpayer Identification Number (STI):
 - Sales and Use Tax Number:
 - Withholding Tax Number:
- What type of service will you perform?
- Will you sell any tangible personal property or goods?
- Supplier's Affiliate's Name:
 - FEI:
 - STI:
 - Sales and Use Tax Number:
 - Withholding Tax Number:

If there is more than one affiliate, please attach a separate sheet listing the information above.

- Person responsible for handling supplier's tax issues (such as the CFO, the company tax officer, etc.):
 - Name:
 - Telephone Number:
 - E-mail Address:

NOTICE TO SUPPLIER:

In the event the supplier is considered for contract award, the information provided in the form will be submitted by the State Entity to the Georgia Department of Revenue ("DOR") for a determination as to whether the supplier is a "prohibited source" (as defined by O.C.G.A. §50-5-82) or whether there are any other outstanding tax issues. **MISSING, INCOMPLETE, OR ERRONEOUS DATA MAY DELAY OR PROHIBIT VERIFICATION OF YOUR ELIGIBILITY FOR CONTRACT AWARD. NO PROHIBITED SOURCE MAY RECEIVE CONTRACT AWARD; THEREFORE, YOU ARE STRONGLY ENCOURAGED TO CHECK YOUR TAX STATUS NOW AND RESOLVE ANY OUTSTANDING TAX LIABILITIES AND/OR MISSING TAX RETURNS.**

STATE ENTITY: Please submit this form via email to DOR at tsd-state-contractors@dor.ga.gov for processing in accordance with the *Georgia Procurement Manual*.

FORM OF CONTRACT

THIS CONSTRUCTION CONTRACT (hereinafter the "Contract") is made this _____ day of _____, by and between (Insert Name of Contractor), hereafter "Contractor," and the Georgia Department of Corrections, hereafter called "Owner," for the construction of Project GDC-22-AUGU-MP-001, ASMP Mechanical Upgrades, Phase Two (hereinafter the "Project").

Contractor and Owner agree as follows:

1. The Contract and Scope of Work. The Contract includes this Form of Contract, Contract General Requirements, Supplementary Contract Requirements, Exhibits, and all Drawings and Specifications included in the Bidding Documents titled ASMP Mechanical Upgrades, Phase Two, and all Addenda, each of which are incorporated herein. Contractor shall furnish all the materials and perform all the Work described in the Contract and shall do everything required by or reasonably inferable therefrom.

2. The Contract Sum. Owner shall pay Contractor for the full performance of the Work the Contract Sum as follows:

Dollars (\$ _____)

3. Notice. Notice in accordance with Section 1.1.6 of the General Requirements shall be given to the following addresses:

Contractor:	Attention: Phone Number:
OWNER:	Georgia Department of Corrections 300 Patrol Road Forsyth Ga 31029 Attention: Frederick Hastings Phone Number: 678-628-6581
DESIGN PROFESSIONAL:	PFA Engineering, Inc. 1201 Broad Street Augusta GA 30901 Attention: Brian Messer Phone Number: 706-722-3959

4. Material Completion. The Material Completion Date is **10 days** from the date of Notice to Proceed.

5. Liquidated Damages. The agreed amount for Liquidated Damages is **One Hundred Forty Dollars (\$140.00)** per day.

6. Energy Efficiency and Sustainable Construction Act of 2008. This project is subject to the Energy Efficiency and Sustainable Construction Act of 2008 (“Energy Act”). Projects subject to the Energy Act require commissioning, water-use reduction, and use of not less than 10% of Georgia products.

7. No Assignment. This Contract and the proceeds of this Contract shall not be assigned, nor may the performance hereunder be assigned, without the prior written consent of Owner. Any attempted assignment without such prior written consent shall be void.

8. Full Performance; No Waiver. Owner and Contractor hereby agree to the full performance of the Contract. The failure of Owner at any time to require performance by Contractor of any provision will not affect the right of Owner thereafter to enforce such provision or any other provision of the Contract. The failure of Owner to enforce or exercise remedies as a result of any breach of any provision shall not be considered a waiver of such provision, such remedies, any subsequent breach of such provision, or any other provision, or a modification or rescission of the Contract. No provision of this Contract, or right or remedy of Owner, will be deemed waived unless such waiver is in writing and executed by Owner.

9. Severability. If any provision of this Contract, or the application thereof to any person or circumstance, is declared invalid or unenforceable to any extent, then the remainder of this Contract, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Contract shall be valid and enforced to the fullest extent permitted by law.

10. Full Agreement. The Contract supersedes all prior negotiations, discussions, statements, and agreements between Owner and Contractor and constitutes the full, complete, and entire agreement between Owner and Contractor. There can be no changes to this Contract by oral means, by course of conduct of the parties, or by custom of the trade. No change to this Contract will be binding on either party unless such change is properly authorized, in writing, and in accordance with the terms of this Contract.

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

<p>Contractor</p> <p>By: _____</p> <p>Title: _____</p>	<p>GEORGIA DEPARTMENT OF CORRECTIONS Owner</p> <p>By: _____</p> <p>Title: _____</p>
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1 GENERAL PROVISIONS

1.1 Miscellaneous Contract Requirements

1.1.1 Administration of Contract. Both the Owner and Design Professional have construction contract administration duties under the Contract. Design Professional is not the agent of Owner, except to the extent so specified in writing. Design Professional has no authority to unilaterally amend the Contract, orally or in writing, either expressly or by implication.

1.1.2 Requirement for Written Amendment. No amendment to this Contract shall be effective unless it is in writing and signed by duly authorized representatives of the parties. No representation, request, instruction, directive or order, made or given by any official of any agency of the State of Georgia, whether verbal or written shall be effective to amend this contract or excuse or modify performance hereunder unless reduced to a formal amendment and executed as set forth above. Contractor shall not be entitled to additional compensation, delay in performance, or other benefit claimed for relying upon or responding to any such representation, request, instruction, directive, or order. Contractor expressly acknowledges the constitutional prohibition of claims (including Claims) against Owner based solely upon oral statement, course of conduct, customs of the trade, quasi-contract, unjust enrichment, quantum meruit, or O.C.G.A. § 13-4-4 (mutual departure from contract terms)

1.1.3 Work Not Subject to Lien. Title to the Site and the Project is vested in the State of Georgia as public property of the State of Georgia and is therefore not subject to levy or lien.

1.1.4 Legal Compliance. This Contract shall be interpreted and governed by the laws of Georgia without regard to principles of conflicts of laws. Contractor shall comply with all laws, rules, regulations, ordinances, and orders of any governmental authority having jurisdiction over the Project or the performance of the Work, and the specific laws noted below, and shall ensure such compliance of its Subcontractors.

1.1.4.1 Open Records Act. Owner and Contractor acknowledge and agree that certain records of the Project and the Work, including records of Subcontractors, are subject to the Georgia Open Records Act, O.C.G.A. § 50-18-70 *et seq.*, with particular attention being called to O.C.G.A. § 50-18-70(a) regarding the records of private persons, firms, corporations, or other private entities engaged in performance of services or functions on behalf of a state agency, public agency, or public office.

1.1.4.2 Energy Efficiency and Sustainable Construction Act of 2008. All projects subject to the Georgia Energy Efficiency and Sustainable Construction Act of 2008 (“Energy Act”) must be designed so that not less than 10 percent of all building materials used in the project are materials that are harvested, extracted, or manufactured in the State of Georgia where such products are commercially available. Contractor shall track the value of all Georgia-based materials installed in the project. Contractor shall provide documentation to ensure compliance with, and shall complete the Georgia-Based Materials and Products Checklist to certify compliance with, the requirements of the Energy Act. A copy of Georgia-Based Materials and Products Checklist is included in the GSFIC Forms Packet.

1.1.4.3 Use of Georgia Materials and Equipment and Georgia Forest Products. Contractor shall use materials and equipment manufactured or produced in Georgia when the use of Georgia products does not sacrifice quality, increase the cost of the Work, or restrict or limit competitive bidding. If the Work includes forest products, Contractor and its Subcontractors shall use exclusively Georgia forest products if Georgia forest products are available. These provisions shall not apply when in conflict with Federal law, rules, and regulations concerning interstate commerce or construction.

1.1.4.4 Illegal Immigration Reform and Enforcement Act of 2011. Contractor certifies its compliance with Illegal Immigration Reform and Enforcement Act of 2011 and specifically those provisions codified at O.C.G.A. § 13-10-90 *et seq.* Contractor warrants that it has registered with and uses the federal work authorization program commonly known as “E-Verify.” Contractor further agrees that it will contract for the physical performance of services in satisfaction of this Contract only with Subcontractors who present an affidavit as

required by O.C.G.A. § 13-10-91. Contractor warrants that it will include a similar provision in all contracts entered into with Subcontractors for the physical performance of services in satisfaction of this Contract.

1.1.4.5 Drug-Free Workplace. Contractor certifies that it will provide a drug-free work place in accordance with the Drug-Free Workplace Act, O.C.G.A. §§ 50-24-1 *et seq.*. Contractor certifies that it will secure from all Subcontractors the following written certification: “As part of the subcontracting agreement with (contractor’s name), (subcontractor’s name) certifies to the contractor that a drug-free workplace will be provided for the subcontractor’s employees during the performance of this contract pursuant to paragraph (7) of subsection (b) of Code Section 50-24-3.”

1.1.4.6 Applicable Sales and Use Taxes. Contractor shall pay all applicable sales and use taxes, including such taxes on Owner supplied tangible personal property that is to be incorporated into the Project as required by O.C.G.A. 50-24-1(h)(1). Prior to supplying such property, Owner shall provide notice of the amount of tax owed for such tangible personal property.

1.1.4.7 No Boycott of Israel. Contractor certifies that it is not currently engaged in, and agrees for the duration of this Contract not to engage in, a boycott of Israel, as defined in O.C.G.A. §§ 50-5-85.

1.1.4.8 Sexual Harassment Prevention. The State of Georgia is committed to providing a workplace environment free from sexual harassment for its employees and for all persons who interact with state government. The State of Georgia requires that its contractors and their employees and subcontractors who interact with State employees to act in a professional manner to contribute to a work environment that is free from sexual harassment. The State of Georgia has adopted a Statewide Sexual Harassment Prevention Policy, a copy of which is available on-line at <http://doas.ga.gov/human-resources-administration/board-rules-policy-and-compliance/jointly-issued-statewide-policies/sexual-harassment-prevention-policy> Pursuant to the State of Georgia’s Statewide Sexual Harassment Prevention Policy, all contractors who are regularly on State premises or who regularly interact with State employees must complete sexual harassment prevention training on an annual basis. If Contractor has employees and Subcontractors that are regularly on State premises or who will regularly interact with State personnel, Contractor certifies that:

1.1.4.8.1 Contractor will ensure that such employees and Subcontractors have received, reviewed, and agreed to comply with the State of Georgia’s Statewide Sexual Harassment Prevention Policy;

1.1.4.8.2 Contractor has provided sexual harassment prevention training in the last year to such employees and subcontractors and will continue to do so on an annual basis; or Contractor will ensure that such employees and Subcontractors complete the Georgia Department of Administrative Services’ sexual harassment prevention training located at this direct link <https://www.youtube.com/embed/NjVt0DDnc2s?rel=0> prior to accessing State premises and prior to interacting with State employees; and on an annual basis thereafter; and

1.1.4.8.3 Upon request of the State, Contractor will provide documentation substantiating such employees and subcontractors’ acknowledgment of the State of Georgia’s Statewide Sexual Harassment Prevention Policy and annual completion of sexual harassment prevention training.

1.1.5 Applicable Codes. The latest edition of the regulations, rules, and codes listed below, with all amendments as of the date of permitting for construction, shall govern all Work. The following codes, rules, and regulations are adopted and incorporated into the Contract, and it shall be the responsibility of Contractor to familiarize itself with the requirements of these codes, rules, and regulations as applied to the performance of the Work.

1.1.5.1 Building Codes. The following Building Codes, as approved by the Georgia Department of Community Affairs, shall be used. (See O.C.G.A. § 8-2-20 *et seq.*) Design Professional will designate any additional codes or special modifications in the Construction Documents.

- International Building Code, with Georgia Amendments
- International Fire Code, with Georgia Amendments
- International Plumbing Code, with Georgia Amendments
- International Mechanical Code, with Georgia Amendments
- International Fuel Gas Code, with Georgia Amendments
- National Electrical Code, with Georgia Amendments

- International Energy Conservation Code, with Georgia Supplements and Amendments

1.1.5.2 Fire, Life Safety, and Accessibility Codes. The following codes, in the versions approved by the Georgia State Fire Marshal/Fire Safety Commissioner and Department of Human Resources, shall be used. Design Professional will designate any additional codes or special modifications in the Supplementary General Requirements.

- Georgia State Life Safety Code (NFPA 101)
- State Accessibility Codes (See O.C.G.A. § 30-3-3)
- Rules and Regulations of the Georgia Safety Fire Commissioner

1.1.5.3 Adherence to Contract When in Excess of Code. The Construction Documents shall govern when they call for quality of materials, quality of workmanship, or quality of construction which is equal to or in excess of the quality required by the codes stated above.

1.1.5.4 Variations. If Contractor observes that the Construction Documents are at variance with any laws, ordinances, rules, regulations, or codes stated above, it shall promptly give Notice to Owner. If Contractor performs any Work contrary to such laws, ordinances, rules, regulations, or codes without providing such prior Notice to Owner, it shall bear all costs arising therefrom. No variances from the Contract are allowed except to the extent that the said variances are necessary to comply with the above-stated codes. If any express requirements of the Contract are at variance with the above-stated codes, a Change Order shall be executed to bring the Contract into compliance with the above-stated codes.

1.1.6 Notice. Any Notice or other material communication required or permitted under this Contract shall be in writing, dated, and signed by an officer or duly authorized representative of the party making same. Unless otherwise required by the provisions of this Contract, Notice may be sent via electronic mail, fax, U.S. Mail, or hand delivered to the addresses shown in Section 3 of the Form of Contract. All members of the Project Team shall be copied on any Notice. The persons and addresses to which notices should be given may be changed by Notice given in accordance with this Section. Such Notice shall be effective as of the date on which it is received or would have been received but for the refusal of the addressee to accept delivery.

1.1.7 Order of Precedence of Contract and Changes. In the event of conflict among the Contract documents, a Change Order shall control over any previous Change Order; and a Change Order shall control over the Supplementary General Requirements, which shall control over the Form of Contract, which shall control over the General Requirements, which shall control over the Specifications.

1.1.8 Order of Precedence in Construction Documents. The following general principles shall govern the settlement of disputes that may arise over conflicts in the Construction Documents: (a) as between the drawings and specifications, the specifications shall govern; (b) as between figures given on drawings and the scaled measurements, the figures shall govern; and (c) as between large-scale drawings and small-scale drawings, the larger scale shall govern. Conflicts discovered shall be immediately reported to Design Professional.

1.1.9 Intellectual Property Rights in Construction Documents, Drawings, and Models. The Construction Documents and other documents prepared by Design Professional for the Project are the property of Owner. Neither Contractor nor any Subcontractor shall own or claim a copyright in such drawings, specifications, and other similar or related documents; Owner shall retain all common law, statutory, and other intellectual property rights with respect thereto. All models are the property of Owner.

1.1.10 Licenses, Easements and Surveys. Permanent easements for structures shall be obtained and paid for by Owner unless otherwise specified. Any licenses necessary for the permanent operation of the completed Project shall be obtained by the Owner unless otherwise specified. Owner shall furnish all surveys unless otherwise specified.

1.1.11 Owner's Right to Perform Other Work at the Project Site. Owner reserves the right at any time, upon Notice to Contractor, to perform other work at the Site. Contractor shall afford Owner and Separate Contractors reasonable access to the Site, subject to the Separate Contractors' compliance with Contractor's safety rules and Site specific policies, reasonable areas for storage of materials and equipment, and reasonable opportunity to execute work at the Site. Contractor shall, if required by the Contract, coordinate its work with Owner's Separate Contractors but shall have no responsibility to certify the suitability or correctness of any work performed by Separate Contractors.

1.2 Bonds, Insurance and Indemnification

1.2.1 Bonds. Upon execution of the Contract, Contractor shall furnish both a performance bond and a payment bond, in the exact form attached hereto, with a penal sum equal to at least the Contract Sum. Surety companies must be acceptable to Owner. Only those sureties listed in the Department of Treasury’s Listing of Approved Sureties (Department Circular 570, as amended) are acceptable to Owner. All bonds at the time of issuance must be issued by a company authorized by the Insurance Commissioner to transact the business of suretyship in the State of Georgia, and shall have an A.M. Best Policyholders Rating of "A-" or better and with a financial size rating of Class V or larger. When any subsequent Change Order, or combination of Change Orders, increases the Contract Sum by five percent (5%) or more, Contractor shall obtain a rider to the payment and performance bonds increasing the penal sum to match the increased Contract Sum.

1.2.2 Indemnification Obligation. Contractor shall indemnify, defend, and hold harmless Owner, the State of Georgia and its departments, agencies and instrumentalities, and all of their respective officers, members, employees, and directors (hereinafter collectively referred to as the "Indemnitees") from and against any and all claims, suits, judgments, liability, demands, losses, costs, or expenses, including reasonable attorneys' fees and other costs of litigation including expert witnesses, arising out of bodily injury (including death), personal injury, and property damage arising out of or resulting from the performance of this Contract or any act or omission on the part of Contractor, its Subcontractors, its agents, employees, or others working at the direction of Contractor or on its behalf, or due to any breach of this Contract by Contractor, or due to the application or violation of any applicable Federal, State or local law, rule, or regulation. The indemnification obligation set forth in this Section extends to the successors and assigns of Contractor, and will survive the termination of the Contract or Contractor’s performance hereunder and the dissolution or, to the extent allowed by law, the bankruptcy of Contractor. If and to the extent such damage or loss (including costs and expenses) covered by such indemnification obligations is paid by the State Tort Claims Trust Fund, the State Authority Liability Trust Fund, the State Employee Broad Form Liability Fund, the State Insurance and Hazard Reserve Fund, or other self-insured funds (all such funds hereinafter collectively referred to as the "Funds") established or maintained by the State of Georgia Department of Administrative Services Risk Management Division (hereinafter "DOAS"), Contractor agrees to reimburse the Funds for such monies paid out by the Funds. Whenever Contractor is obligated to defend the Owner or any other Indemnitee pursuant to this Agreement, Contractor shall use counsel selected or approved by Owner.

1.2.2.1 This indemnification obligation does not extend beyond the scope of the Project, this Contract, and the Work or obligations undertaken thereunder. Nor does this indemnification extend to claims for losses or injuries or damages incurred due to the sole negligence of the Indemnitees.

1.2.2.2 This indemnification does not extend to claims for losses or injuries or damages incurred by the Indemnitees due solely to the negligent acts, errors, or omissions of Design Professional in the performance of professional services in connection with the Project that fail to meet the applicable professional standard of care, skill, and ability as employed by others in their profession.

1.2.3 Insurance Coverage. Contractor shall procure the insurance coverages identified below in accordance with the policy requirements listed below. Contractor shall provide Owner with a Certificate of Insurance showing the required coverage prior to execution of this Contract. If Owner requests, Contractor shall provide a certified copy of insurance policies required hereunder. Owner owes no duties or contractual obligations to any third party and will not be liable to any third party for Contractor’s failure to obtain, or failure to require its Subcontractors to obtain, the insurance required hereunder or required by law.

Worker’s Compensation Insurance	Minimum Coverage Limit
	Coverage to meet Georgia statutory requirements
Employer’s Liability Insurance	Minimum Coverage Limit
Bodily Injury by Accident	\$1,000,000 per Accident
Bodily Injury by Disease	\$1,000,000 per Employee \$1,000,000 Aggregate
Commercial General Liability Coverage	Minimum Coverage Limit

Premises and Operations	\$ 1,000,000.00 per Occurrence and \$2,000,000 General Aggregate
Products and Completed Operations	\$1,000,000.00 per Occurrence and \$2,000,000 General Aggregate
Personal and Advertising Injury	\$ 1,000,000.00 per Occurrence
Commercial Automobile Liability Coverage	Minimum Coverage Limit
	\$ 1,000,000.00 combined single limits covering all owned, non-owned, leased or borrowed vehicles used by Contractor in connection with the Work
Commercial Umbrella Liability	Minimum Coverage Limit
Projects with Contract Sum Less than \$5,000,000	\$ 5,000,000 Per Occurrence and General Aggregate
Projects with Contract Sum Less than \$15,000,000	\$ 10,000,000 Per Occurrence and General Aggregate
Projects with Contract Sum Equal to or Greater than \$15,000,000	\$20,000,000 Per Occurrence and General Aggregate
Builder's Risk	Minimum Coverage Limit
	Coverage in an amount equal to Contract Sum

1.2.3.1 Workers' Compensation Policy Requirements. A group insurer must submit a certificate of authority from the Insurance Commissioner approving the group insurance plan.

1.2.3.2 Commercial General Liability Policy Requirements. Commercial General Liability Insurance shall be provided by the 2004 ISO Occurrence Form, or its equivalent, that shall include, without limitation, coverage for bodily injury and property damage arising from premises and operations liability, independent contractors, products and completed operations, blasting and explosion, collapse of structures, underground damage, personal and advertising injury, and contractual liability. The Commercial General Liability policy shall contain no exclusion for Subcontractor work and may not contain ISO endorsement CG 22 94 10 01 or similar. The policy must include separate aggregate limits per project.

1.2.3.3 Commercial Business Automobile Liability Requirements. The Commercial Business Automobile Liability Insurance shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned, or hired automobile and shall be issued on an "occurrence" basis.

1.2.3.4 Commercial Umbrella Liability Requirements. Commercial Umbrella Liability Insurance shall provide excess coverage above the Commercial General Liability, Commercial Business Automobile Liability and the Workers' Compensation and Employers' Liability and shall be issued on an "occurrence" basis.

1.2.3.5 Additional Insured Requirements. Contractor shall cause its insurer to issue an additional insured Endorsement naming Owner and all Indemnitees as additional insureds on all required liability policies (except for Workers Compensation and, if required, Professional Liability).

1.2.3.6 Builders Risk Policy Requirements. Builder's Risk Policy shall be made payable to Owner and Contractor, as their interests may appear, and shall include in the interests of Contractor's Subcontractors. The policy shall be written on a Builder's Risk "All Risk," or its equivalent, and include coverage for collapse, pollution, water or flood damage, earthquake, subsidence, testing, and boiler and machinery perils (unless covered by separate insurance). The form of policy for Builder's Risk shall be "Completed Value." The Builder's Risk Policy shall have a deductible of not more than \$25,000 (or such other amount as approved by Owner in writing), and payment of the deductible shall be the responsibility of Contractor, except to the extent the loss is caused by Owner, in which case Owner shall pay a share of the deductible proportionate to its fault. The Builder's Risk Policy shall cover portions of the Work stored off site or in transit. The policy shall be endorsed as follows:

The following may occur without diminishing, changing, altering or otherwise affecting the coverage and protection afforded the insured under this policy:

- (i) *Furniture and equipment may be delivered to the insured premises and installed in place ready for use;*

- (ii) Partial or complete occupancy by Owner; and*
- (iii) Performance of work in connection with construction operations insured by Owner, by agents or lessees or other Contractors of Owner*

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

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

1.2.3.8 Insurer Qualifications. All insurance providers shall be authorized by the Insurance Commissioner to transact the business of insurance in the State of Georgia for the applicable line of insurance, and shall have an A.M Best Policyholders Rating of "A" or better and with a financial size rating of Class V or larger.

1.2.3.9 Termination of Obligation to Insure. Unless otherwise expressly provided to the contrary, the obligation to insure as provided herein shall not terminate until Design Professional issues the Certificate of Final Completion. Contractor's obligation to provide Builder's Risk insurance shall terminate upon the issuance of the Certificate of Material Completion. In addition, any "claims-made" policies required hereunder shall be kept in full force and effect for a period of four (4) years after the issuance of the Certificate of Material Completion.

1.2.3.10 Deductibles. All deductibles shall be paid for by Contractor, except as provided in Section 1.2.3.7. The maximum deductible, except for Builder's Risk and Workers' Compensation qualified self-insurers or group self-insurers, in any policy shall not exceed one hundred thousand dollars (\$100,000.00). Owner will consider larger deductible amounts on a case-by-case basis.

1.2.3.11 Certificate of Insurance Requirements. Contractor shall provide Owner with certificates of insurance, completed by a duly authorized representative, evidencing that at least the minimum coverages required herein are in effect and specifying that the liability coverages (except professional liability, if required) are written on an occurrence form. The certificates of insurance shall contain a provision that the coverage afforded under the policy or policies will not be canceled or non-renewed without thirty (30) days' prior written notice to Owner. The failure of Owner to demand such a certificate or other evidence of full compliance with these requirements or the failure of Owner to identify a deficiency from evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance. The acceptance of delivery by Owner or its designated representative of any certificate of insurance evidencing the required coverages and limits does not constitute approval or agreement by Owner that the insurance requirements have been met or that the insurance policies shown in the certificates of insurance are in compliance with the requirements. Owner shall have the right, but not the obligation, of prohibiting Contractor and its Subcontractors from entering the Project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Owner. If Contractor fails to maintain the insurance as set forth herein, Owner shall have the right, but not the obligation, to purchase said insurance at Contractor's expense. Alternatively, Contractor's failure to maintain the required insurance shall constitute a material breach hereof and may result in termination of this contract at Owner's option. Provision of proper certificates of insurance as set forth herein by Contractor on behalf of itself and all Subcontractors actively operating on site is a condition precedent to payment hereunder. If any of the coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverages shall be submitted with Contractor's final invoice and annually thereafter. Upon demand by the Owner, Contractor shall provide certified copies of any policy set forth herein.

1.2.3.12 Subcontractor Insurance Requirements. Contractor shall require each Subcontractor performing Work or performing any activity on the Project Site to obtain an insurance certificate showing proof of Commercial General Liability, Workers' Compensation Coverage and Employers Liability Insurance, Commercial Automobile Liability, Umbrella Liability, and Professional Liability (where required) with limits commercially appropriate for

the work of such Subcontractor and in no event less than \$1,000,000 per occurrence, claim, accident, or employee, as applicable to each line of coverage, and Contractor shall provide Owner with an insurance certificate for each Subcontractor evidencing compliance with this provision annually and before such Subcontractor begins work on the Project.

1.3 Defined Terms and Basic Definitions

1.3.1 Defined Terms. Wherever used in the Contract, the terms defined in this Contract will have the meanings indicated that are applicable to both the singular and plural, and to the masculine and feminine thereof.

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

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

1.3.1.3 Sections Not Plenary. This Section and Section 1.3.2 are not entire, plenary, or exhaustive of all terms used in this Contract.

1.3.2 Basic Definitions.

1.3.2.1 Bidding Documents. The Bid Requirements, Contract, Specifications, Drawings, and all Addenda, which form the basis for the bid submitted by the bidder.

1.3.2.2 Certificate of Material Completion. The Notice from Design Professional certifying achievement of Material Completion.

1.3.2.3 Change Order. A document which, in conformity with the Contract, authorizes a change or changes to the Contract Sum, the Contract Time, or the Contract.

1.3.2.4 Change Order Sum. The amount of compensation payable under a Change Order or, when applicable, a portion thereof.

1.3.2.5 Change Order Work. Work that is authorized or changed by a Change Order.

1.3.2.6 Claim. A demand or assertion by Contractor seeking an adjustment of the Contract Sum, Contract Time, or both, or regarding other disputes or requests by Contractor for relief arising out of or relating to the terms of the Contract.

1.3.2.7 Construction Documents. The Specifications and Drawings that set forth the design for the Project, including any Drawings and Specifications that have been incorporated into the Contract by Change Order.

1.3.2.8 Construction Phase. The phase of the Project, commencing with the first Proceed Order, when physical work is performed on the Site.

1.3.2.9 Construction Progress Schedule. A schedule, as more fully defined in Section 2.1.1, prepared by Contractor indicating proposed milestone dates, activity sequences, and durations.

1.3.2.10 Contract. The Contract include the Contract, General Requirements, Supplementary General Requirements, Change Orders, and any Construction Documents that have been incorporated into the Contract by Change Order.

1.3.2.11 Contract Sum. The sum of all compensation authorized by the Contract and any Change Orders.

1.3.2.12 Contract Time. The period of time established for completion of the Work and the Project by the Contract.

- 1.3.2.13 Cure Period. The time stated in a Notice of Non-Compliant Work for correction of Non-Compliant Work.
- 1.3.2.14 Days, Months, Years. All references to the terms "day," "days," "month," or "months" mean calendar day, calendar days, calendar month, or calendar months, respectively.
- 1.3.2.15 Drawings. The graphic portion of the Construction Documents showing the design, location and dimensions of the Work.
- 1.3.2.16 Certificate of Final Completion. The certificate issued by Design Professional stating that all Work has been completed in accordance with the terms of the Contract.
- 1.3.2.17 Final Completion. The full and final completion of all Work in accordance with the Contract.
- 1.3.2.18 Final Punchlist. The Punchlist compiled by the Design Professional at the Inspection for Material Completion which lists all Minor Items and Permitted Incomplete Work.
- 1.3.2.19 Initial Punchlist. Punchlist prepared by Contractor prior to the inspection for Material Completion that lists all Minor Items and Permitted Incomplete Work.
- 1.3.2.20 Material Completion. Material Completion occurs when the Work of the Project is complete in accordance with the Contract, except for any Minor Items or Permitted Incomplete Work, so that Owner can occupy and utilize the Work for its intended use.
- 1.3.2.21 Material Completion Date. The date by which Contractor shall achieve Material Completion of the Project.
- 1.3.2.22 Minor Item. A Minor Item is a portion of Work designed by Design Professional that is incomplete at Material Completion but does not interfere with the complete use and enjoyment of the Project by the Owner and which can be completed within thirty (30) days while the Owner occupies the Project without interfering with the Owner's use and occupation of the Project.
- 1.3.2.23 Notice. The written document from any Project Team Member that invokes a right or requests a remedy under this Contract or provides any notice required by the terms of this Contract.
- 1.3.2.24 Non-Compliant Work. Work that, for any reason, is not in compliance with the Contract in any respect, including but not limited to quality of Work or timeliness of Work. Such term shall also include the failure of Contractor to perform any obligation of the Contract in a proper or timely manner, to meet the Overall Project Schedule, or to supply an adequate and skilled work force.
- 1.3.2.25 Notice of Non-Compliant Work. The official Notice from Design Professional or Owner regarding Non-Compliant Work.
- 1.3.2.26 Notice of Readiness. The Notice provided by Contractor stating that the Work is ready for inspection by Design Professional.
- 1.3.2.27 Overall Project Schedule or OPS. The final Construction Progress Schedule that is recommended by Design Professional and approved by Owner, as amended from time to time as provided in this Contract.
- 1.3.2.28 Payment Application. The form, and any required supporting documentation, that must be submitted by Contractor to request payment from Owner.
- 1.3.2.29 Permitted Incomplete Work. Work that is required by the Contract to be completed after Material Completion, such as HVAC Seasonal Test and Balance or seasonal landscaping or Work that is incomplete through no fault of Contractor, such as recently added Change Order Work that is permitted by the Change Order to be performed after Material Completion.

- 1.3.2.30 Proceed Order. Notice from Owner to Contractor that authorizes Contractor to commence Work at the Project Site.
- 1.3.2.31 Project. The total and complete undertaking for the public works facility to be constructed under this Contract.
- 1.3.2.32 Request for Information (RFI). A request issued by Contractor to Design Professional requesting information or clarification of the Construction Documents.
- 1.3.2.33 Separate Contractor. Any person or entity other than Contractor that contracts directly with Owner to perform work on the Site.
- 1.3.2.34 Site. The real property furnished by Owner for the Work and use of Contractor.
- 1.3.2.35 Specifications. The portion of the Construction Documents consisting of written requirements for materials, equipment, and standards of workmanship.
- 1.3.2.36 Maximum Sum. The amount stated in a Force Account Authorization that sets the maximum amount payable for Work thereunder.
- 1.3.2.37 Subcontractor. Generic term for any party contracting to perform the Work or supply materials for the Work.
- 1.3.2.38 Submittals. Shop drawings, samples, schedules, data, catalogue cuts, manufacturers' published recommendations, charts, bulletins, brochures, illustrations, circulars, roughing drawings or formulae, or other documents that are submitted by Contractor to illustrate some portion of the Work or for use in installing the Work. Submittals are not Construction Documents.
- 1.3.2.39 Warranty Complaint. Notice that is given by the Owner to Contractor of apparent non-compliant or defective Work that arises or is discovered after Material Completion.
- 1.3.2.40 Work. All construction, materials, and services required by the Contract or reasonably inferable therefrom. The Work may refer to the whole Project or only a part of the Project.

1.4 Time

1.4.1 Duty to Commence and Complete Work. Contractor shall commence physical Work at the Project Site within ten (10) days of the issuance of the Proceed Order but shall not commence any physical Work on the Site until a Proceed Order is issued. Contractor shall achieve Material Completion of the Project not later than the Material Completion Date.

1.4.1.1 Time is of the Essence. Time is of the essence of this Contract and all obligations hereunder. Time being of the essence, it is mutually agreed that Owner will suffer damages if Contractor does not achieve Material Completion by the Material Completion Date and Contractor shall therefore compensate Owner for the delay as provided herein. Contractor has carefully examined and analyzed the Site, the Contract, Construction Documents, and all known factors related to its ability to achieve Material Completion by the Material Completion Date. Contractor agrees that the stipulated Contract Time is fair and reasonable.

1.4.1.2 Liquidated Damages for Delay. The parties may agree to an amount to paid as Liquidated Damages if Contractor fails to achieve Material Completion by the Material Completion Date. If the parties agree to Liquidated damages, such Liquidated Damages shall be stated in Section 5 of the Form of Contract. The specified liquidated damages are not a penalty but are agreed to in advance because of the difficulty of determining and proving the amount of delay damages incurred by the Owner as a result of the delay. Liquidated Damages shall be charged beginning upon the day following the contractually required Material Completion Date and ending on the date that the Certificate of Material Completion is issued. Liquidated Damages shall be deducted from payments due to Contractor as they accrue and such deduction shall be in addition to the retainage provided for in the Contract. If the parties do not agree to a sum for Liquidated Damages, Owner shall be entitled to recover its actual damages if Contractor fails to reach Material Completion by the Material Completion Day.

1.4.2 General Rule – No Damages for Delay, Extension of Time Sole Remedy. If, between the Proceed Order Date and the Material Completion Date, the critical path of Work based on the Overall Project Schedule is delayed without any fault of Contractor or its Subcontractors by an event that is beyond the reasonable control of Contractor or its Subcontractors, then such delay shall be excused and the Contract Time shall be extended for such period of delay. Contractor's sole remedy for such delays shall be an extension of time with no increase to the Contract Sum.

1.4.3 Exception to General Rule – Compensable Delay. Contractor shall be entitled to an extension of Contract Time and adjustment to the Contract Sum for the delays caused by an act or neglect of Owner, Design Professional, or Separate Contractor, on the condition that it submits a Notice of Claim in conformance with, and by the time set forth in, Section 1.5.3. As an additional condition precedent to such extension of Contract Time and adjustment to the Contract Sum, Contractor must prove that (i) such delays extended the critical path of Work based on the Overall Project Schedule; (ii) Contractor has taken all reasonable actions to mitigate the effects of the delay events; (iii) the fault or negligence of Contractor or Contractor's Subcontractors did not contribute to such delay events; and (iv) Contractor shall have provided Notice to Owner of the cause or causes of such delay within seven (7) days from the date on which Contractor first becomes aware, or should have become aware, of such delay.

1.5 Design Professional's Decisions and Claims

1.5.1 Continuation of the Work. Unless otherwise agreed in writing, and notwithstanding any other rights or obligations of either of the parties under the Contract, Contractor must proceed with the performance of the Work during the pendency of any Claim, dispute, protest, and other matter in question or during any alternative dispute resolution proceeding, court proceeding, or other proceeding to resolve any Claim, dispute, protest, and other matter in question. Unless otherwise provided herein, Owner will continue to make payments in accordance with the Contract, but Owner is under no obligation to make payments on or against such Claim, dispute, protest, and other matter in question during the time required to resolve such Claim, dispute, protest, and other matter in question.

1.5.2 Design Professional's Decisions. Whenever the Contract requires the Design Professional to make a determination on any issue, Design Professional shall issue its decision ("Design Professional's Decision") promptly. All Design Professional's Decisions on matters of aesthetics are final and binding on all parties if consistent with the requirements of the Contract. If Contractor desires to protest any Design Professional's Decision, then it shall issue a Notice of Protest to Owner and Design Professional no later than thirty (30) days after the Design Professional's Decision. Contractor's Notice of Protest shall be made in writing, shall include a title or subject line that clearly identifies the document as a "Notice of Protest" and shall set forth in detail the basis for the Protest. All Design Professional's Decisions shall be final and binding on Contractor in the absence of a timely Notice of Protest

1.5.3 Claim. If Contractor desires to assert a Claim against Owner, it shall issue a Notice of Claim within the time and in the form provided in this Section. Any and all Claims not made within the required time period, or in the required form, are waived by Contractor. The requirement of Contractor to provide a Notice of Claim under this Section shall be in addition to any requirement to provide Notice under any other Section hereof.

1.5.3.1 Form of Claims. A Notice of Claim shall be made in writing, shall be hand delivered or sent via U.S. Mail with return receipt, shall include a title or subject line that clearly identifies the document as a "Claim," shall identify the specific provision of the Contract upon which the Claim is based, and must set forth in detail the basis for the Claim. Claims for adjustments to the Contract Sum or other damages or compensation shall identify the amount of the Claim and shall include appropriate documentation of the amount claimed. Claims for extensions of Contract Time shall identify the number of days claimed, the cause of any delay, the affected schedule activities, and information to demonstrate critical path was extended.

1.5.3.2 Time for Submission of Claims. A Notice of Claim shall be made within fourteen (14) days after the occurrence of the event giving rise to the Claim or within fourteen (14) days after the event giving rise to the Claim should have been first observed, whichever is first, unless the Contract specifies a shorter or longer period with respect to such event, in which case such specific provision shall govern. In the case of a continuing delay as a result of a single event, only one Notice of Claim is necessary.

1.5.4 Claims Limited to Actual Costs. Unless otherwise provided herein, Claims for increase in the Contract Sum shall be no greater than the actual direct, jobsite costs incurred by Contractor. If any other provision of the Contract limits or precludes additional compensation to Contractor in certain events or circumstances, then any Claim for additional compensation related to such event or circumstance shall be limited or precluded as provided in such provision. As an additional condition to increase the Contract Sum, Contractor shall retain contemporaneous documentation of all costs supporting such increase and shall submit copies thereof to Owner along with the Notice of Claim or, for continuing Claims, on a daily basis after submitting the Notice of Claim.

1.6 Contract Suspension and Termination

1.6.1 Right to Suspend Work. Owner or Design Professional may stop the Work upon observation of apparent Non-Compliant Work or whenever such stoppage may be necessary to protect the Work or protect the interests of Owner. The stop work order may be given orally, with Notice to be provided to Contractor within seventy-two (72) hours. If the Work is later determined by Design Professional to be conforming Work, and Contractor then complies with Section 1.5.3, Contractor shall be entitled to a compensable time extension in accordance with Section 1.4.3. If the Work is determined by Design Professional to be Non-Compliant Work, then Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time, and Owner may exercise any right hereunder with regard to such Non-Compliant Work.

1.6.2 Owner's Right to Terminate Contract Without Cause. Owner may terminate the Contract at any time, without cause, upon giving Contractor fifteen (15) days' Notice. In the event Owner elects to terminate the Contract after, Owner shall pay Contractor, in accordance with the terms of the Contract for all Work executed prior to termination, and for the costs incurred by Contractor because of the termination, up to the unpaid balance of the Contract Sum.

1.6.3 Owner's Right to Terminate Contract for Cause. Owner may terminate the Contract if Contractor is in breach of a Notice of Non-Compliant Work; if Contractor makes a general assignment for the benefit of its creditors or if a receiver is appointed on account of its insolvency; if Contractor persistently disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction over the Project; if Contractor abandons the Project for a period of fourteen (14) or more days; if Contractor is otherwise guilty of a substantial violation of any provision of this Contract; or for any reason that would permit Owner to terminate the Contract under applicable law. Owner may terminate the Contract for these causes, without prejudice to any other right or remedy under this Contract, at equity, or in law, upon giving Contractor fifteen (15) days' Notice of Owner's intent to terminate for cause.

1.6.3.1 Owner's Right to Complete Work Upon Termination for Cause. Upon termination for cause, Owner shall have the right to take possession of the Work, together with all materials, equipment, tools, and improvements thereon and to finish the Work by whatever reasonable method Owner may deem expedient.

1.6.3.2 Payment Due Upon Termination for Cause. Upon termination for cause, Contractor shall not be entitled to receive any further payment until the Work is completed. Upon completion, Contractor shall pay to Owner the positive excess of (i) Owner's cost of completion of the Work, plus any damages incurred by Owner due to such termination and the basis for such termination, including but not limited to liquidated damages for delays in completion, over (ii) the unpaid balance of the Contract Sum. Upon completion, Owner shall pay the positive excess of (i) the unpaid balance of the Contract Sum over (ii) Owner's cost of completion of the Work, plus any damages incurred by Owner due to such termination or the basis for such termination, including but not limited to liquidated damages for delays in completion.

1.6.3.3 Determination of Wrongful Termination. In the event a court of competent jurisdiction determines (or the parties agree to settle with a consent determination) that a termination for cause is wrongful or not authorized by the terms of the Contract, the termination shall be considered to be a Termination For Convenience, and the sole remedy available to Contractor shall be the contractual treatment of the termination pursuant to Section 5.1.2 without any other damages, relief, or compensation.

1.6.4 Contractor's Right to Terminate for Nonpayment. If Owner fails to pay Contractor the amount due within the time required by the Contract, Contractor must give Notice to Owner of such nonpayment. If Owner fails to pay such amount or provide a Notice of a dispute as to the amount sought by Contractor within thirty (30) days after receipt of Contractor's Notice of nonpayment, Contractor may terminate this Contract by giving the Owner fifteen days' Notice of Contractor's Intent to Terminate. Upon such termination and upon providing Owner with all releases in the same manner as would be required upon Final Completion, Owner will pay Contractor, as provided in the applicable provisions of Section 4, for the Work properly executed, and, only if Contractor submits a Claim in the manner and time provided in Section 1.5.3, for any proven damages sustained or cost incurred for any materials, equipment, tools, construction equipment and machinery, and cancellation charges on obligations of Contractor outstanding as of the termination. The remedies provided in this Section shall be the sole remedies of Contractor for such termination for cause.

1.6.5 Notices of Termination. Notwithstanding any other provision of this Contract, if either party elects to terminate this Contract under any provision in Section , then the terminating party will issue a written Notice of Termination that shall be sent by Certified Mail, Return Receipt Requested.

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

2 THE WORK

2.1 Pre-Construction Requirements

2.1.1 Pre-Construction Phase. The Pre-Construction Phase commences with the execution of the Contract and ends with the issuance of the Proceed Order. No physical Work may be done at the Project Site until the Proceed Order is issued.

2.1.2 Pre-Construction Meeting. Upon execution of the Contract, a Pre-Construction Meeting shall be held between the Owner, the Contractor and the Design Professional to review the Project, inspect the existing facilities, and set up the approximate work sequence schedule.

2.1.3 Inspection of Existing Facilities Prior to Commencing Work. If the Project involves renovations or modifications to existing facilities, the Owner, Contractor, and Design Professional shall jointly inspect the existing facilities to identify any damage to existing work and shall prepare a schedule identifying and showing the location of any damage to the existing work which is ascertainable by inspection. It is agreed that the preparation of the schedule is for the benefit of the Contractor and is intended to enable it to have the protection afforded by a record of such existing damage as is visually ascertainable. The Contractor shall have no responsibility to repair any damage that shall appear on the above-mentioned schedule nor shall he be responsible for repairing any existing damage which was not ascertainable by visual inspection or which was not the result of negligence on his part, unless such repair is included in the Work.

2.1.4 Submission of Overall Project Schedule. Within ten (10) days of the Pre-Construction Meeting, Contractor shall submit to the Owner and Design Professional for approval a Construction Progress Schedule showing the critical path of the Work, agreed upon milestone dates through Material Completion, and dates for submission of Submittals. Upon recommendation by Design Professional and approval by Owner, the Construction Progress Schedule shall become the Overall Project Schedule, which shall be utilized by Design Professional, Owner, and Contractor.

2.1.5 Submission of Safety Plan. Within ten days of the Pre-Construction Meeting, the Contractor shall prepare and submit to the Owner a specific safety program for the Work which shall identify the person in charge of Project Safety for the Contractor. The Contractor shall establish and require all subcontractors to establish reasonable safety programs.

2.1.6 Submission of Schedule of Values. Within ten days of the Pre-Construction Meeting, Contractor shall submit a Schedule of Values in accordance with Section 2.6.1.

2.1.7 Permits & Licenses. Contractor shall obtain and pay for all permits and licenses necessary for the prosecution of the Work. Owner shall cooperate with Contractor as it secures building and other permits, licenses, and inspections that are required to be obtained by Contractor.

2.1.8 Utilities. If permanent utilities are available at the Site, the Owner shall furnish without cost to the Contractor water and electricity as presently available at the Site as required to do the Work, provided however that the Contractor shall pay the costs of any separate connections. The Contractor shall make connection to utilities at locations agreeable to the Owner. The Contractor shall pay all costs for connections and extending these to the area where it proposes to use them. If permanent utilities are not available at the Site, Contractor shall obtain temporary utilities and provide sewage disposal at its expense until the extension and connection of permanent utilities and shall pay for all such utility services until Material Completion has been achieved.

2.1.9 Submission of Documents for Issuance of Proceed Order. Contractor shall submit the following documents as a prerequisite to Owner's issuance of the Proceed Order: Payment and Performance Bonds, Insurance Certificates, Worker's Compensation and Employer's Liability Insurance Certificates for all Subcontractors, Subcontractors' Affidavit for Georgia Security and Immigration Compliance, Project Safety Plan, Construction Progress Schedule, and Schedule of Values.

2.2 Construction Phase Requirements

2.2.1 Review of Construction Documents. Prior to commencing the Work, Contractor shall review all Construction Documents for any inconsistency, ambiguity, error, or omission. When potential design issues are identified, Contractor shall annotate the Construction Documents and shall issue an RFI in writing to the Design Professional. Design Professional shall furnish complete, definite, and clear instructions in response to the RFI in writing, or by issuing drawings, or both. In the event instructions are given orally for expediency, they shall be confirmed in writing or by drawings within five (5) days following the oral instructions. Any such additional instructions shall be consistent with the Construction Documents and reasonably inferable therefrom. Contractor shall not proceed with the affected Work until receiving a response from the Design Professional. Contractor shall exercise skill and judgment in the performance of its review of the Construction Documents but does not warrant or guarantee any design services furnished by Design Professional

2.2.2 Construction Documents at Site and Recording Changes. Contractor shall keep at the Site at least one copy of the Construction Documents in good order and available to Design Professional and to its representatives. Contractor shall record all changes and shall annotate a copy of the Construction Documents to reflect the as-built condition.

2.2.3 Progress Reports. During the Construction Phase, Contractor shall monitor the progress of the Work for conformance with the Overall Project Schedule and keep Owner informed of such progress and shall maintain records documenting the progress of the Work. Contractor shall submit progress reports at intervals reasonably determined by the Owner. Progress Reports shall document the progression of the Work and shall include information on the percentage of completion and indicate completed activities and any changes in sequencing or activity durations, including approved Change Orders. Progress Reports also note dates by which Non-Compliant Work shall have been cured and note the actual date of cure of the Non-Compliant Work.

2.2.4 Supervision of Work. Contractor shall supervise and direct the Work using diligent skill and attention in order to ensure satisfactory progress of the Work and that the quality of the Work complies with the Contract. Contractor shall be responsible for and shall coordinate all construction means, methods, techniques, sequences, and procedures. Contractor is fully responsible to Owner for the acts and omissions of its officers, employees, agents, all Subcontractors and their respective officers, employees and agents, and all other persons on the Site at the direction of Contractor or to perform Work. Non-performance, improper performance, or other default by any Subcontractor or employee or agent of Contractor shall not excuse Contractor from its obligation to assure timely performance of the Work in compliance with the Contract.

2.2.5 Project Superintendent. Contractor shall ensure that a competent Superintendent remains on the Project, on a full-time basis, until Material Completion. A Superintendent shall be present to supervise completion of all Punchlist Items and Permitted Incomplete Work. All directions given to the Superintendent shall be as binding as if given to Contractor. The Superintendent shall not be changed except with the consent of Owner unless the Superintendent ceases to be in Contractor's employ. Contractor must obtain Owner's prior written approval before engaging a replacement Superintendent and must ensure that the replacement has similar qualifications and experience to the original Superintendent.

2.2.6 Protection of Work, Property, and People. The Contractor shall provide protection of the Work, adjacent property, and persons on the Site and adjacent thereto. Contractor shall make good any damage, injury, or loss such Work, persons, or property, except to the extent the damage, injury, or loss is directly the result of errors in the Construction Documents or such as shall be caused directly by agents or employees of the Owner.

2.2.7 Safety. The Contractor is responsible for the safety of the Site and the Work. The Contractor shall comply with the rules and regulations of OSHA and/or the Department of Labor (O.C.G.A. § 34-2-6), and, where not inconsistent with the foregoing, the "Manual of Accident Prevention in Construction" issued by the Associated General Contractors of America, Inc., for safety and prevention of accidents. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, proper safeguards for the protection of workmen and the public and shall post danger warnings against any hazards created thereby.

2.2.8 Emergencies. In an emergency affecting the safety of life or the work or of adjoining property, the Contractor, without special instruction or authorization from the Design Professional or Owner, shall act, at his discretion, to prevent such threatened loss or injury. Any compensation claimed by the Contractor on account of emergency work shall be determined in accordance with the Allowable Costs under Section 2.4.6.

2.2.9 Use of Premises. The Contractor shall confine its operation and storage to the Project Site and any other areas specifically indicated in the Contract. The Contractor shall have access to Site between 7:30 A.M. and 5:00 P.M. Monday through Friday and, upon written permission of the Owner, may make deliveries and have access to the Site at any hour of any day. Contractor's promise to perform the Work within the Contract Time stated is not dependent on the availability of the Site for hours other than identified hereinabove unless other hours are agreed upon at Contract execution.

2.2.10 Building Occupancy. Contractor acknowledges that portions of the Site are occupied by State employees performing essential tasks necessary to the efficient operation of State government. Contractor agrees that it shall perform all Work in such a manner as to provide the least possible disruption to the occupants. Contractor shall schedule Work and provide temporary ventilation and/or isolation to insure that fumes from welding, other construction tasks, and out-gassing from construction materials do not migrate to occupied areas. The Contractor shall provide such mats, drop cloths, etc., as shall be necessary to protect the surrounding areas from soil or damage. The Contractor and its personnel shall not use the passenger elevators for transportation of equipment, supplies, goods and material unless otherwise agreed to in writing by the Owner. Contractor shall use only those bathroom facilities specifically designated by the Owner for Contractor's use unless the Owner instructs Contractor to provide for temporary toilets.

2.2.11 Cleaning Up. The Contractor shall at all time keep the Site free from accumulations of waste material or rubbish caused by his employees or Work. At the end of each working day, Contractor shall leave the premises in a broom clean condition and remove all trash and debris.

2.2.12 Cutting, Patching and Fitting. The Contractor shall do all cutting, fitting, or patching required to complete the Work or to make its several parts come together properly and fit. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the Work unless otherwise required by the Contract.

2.2.13 Submittals. Contractor shall provide all Submittals as required by the Contract in accordance with the Overall Project Schedule. Contractor shall perform no portion of the Work for which the Contract requires Submittals until Design Professional has approved the respective Submittal. Contractor shall maintain at the Site one copy of all approved Submittals.

2.2.14 Hazardous Materials. A Hazardous Material is any substance or material identified as of the date of the Agreement as hazardous under any governmental law, rule, or regulation, or otherwise subject to governmental requirements concerning handling, disposal, and/or cleanup. Except for Hazardous Materials specifically identified to be remediated by the Contract, the Contractor shall not be required to perform any work related to Hazardous Materials encountered at the Site. The Contractor is fully responsible for any Hazardous Materials brought on the Site by the Contractor or any Subcontractor. Contractor shall immediately notify Owner and Design Professional of its discovery of and the location of any Hazardous Materials at the Site that were not anticipated or contemplated as part of the Work.

2.2.15 Differing Site Conditions. If the Contractor encounters conditions at the Site that are subsurface or concealed conditions that materially differ from those expressly identified in the Contract or conditions at the Site that are materially different than those conditions anticipated or expected by a reasonably observant and prudent construction contractor, then Contractor shall promptly provide notice to the Owner and Design Professional. If Design Professional determines that such conditions differ materially from those identified in the Contract or those reasonably anticipated, and such difference shall cause an increase or decrease in the Contractor's costs or time, the Design Professional shall recommend an equitable adjustment.

2.2.16 Contract Provisions Required in All Subcontracts. Contractor agrees to bind every Subcontractor to the terms of the Contract insofar as they are applicable to its Work. Contractor shall expressly name Owner as an intended third-party beneficiary of each Subcontract.

2.3 Warranties, Inspections and Correcting the Work

2.3.1 Construction Warranty. All Work shall be free from defects and conform to the requirements of the Contract. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of good quality. Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials and Work. Such warranties are referred to herein as the Construction Warranty. In addition to the Construction Warranty, Contractor shall provide all additional warranties called for in the Construction Documents. These warranties shall be in such form as to permit direct enforcement by Owner against any Subcontractor or third party whose guaranty or warranty is called for. The calling for or the furnishing of written warranties or bonds shall in no way limit the Construction Warranty and the contractual obligations of Contractor hereunder, including but not limited to the obligation correct the Work as set forth in Section 2.3.7. The remedies stated in this Section are in addition to the remedies otherwise available to Owner, do not exclude such other remedies, and are without prejudice to any other remedies.

2.3.2 Inspection of the Work. Both Contractor and Design Professional have separate duties to inspect the Work. Inspection of the Work by Owner, Design Professional or any third party shall not diminish, relieve, or alter the responsibility of Contractor to ensure that all Work complies with the Contract. The failure of Owner, Design Professional, or other third-parties to discover or notify Contractor of the existence of Non-Compliant Work shall not relieve Contractor of its responsibility to ensure that all Work complies with the Contract, and neither Design Professional's Certificate of Material Completion or Certificate of Final Completion nor payment shall relieve Contractor of responsibility to ensure that all Work complies with the Contract.

2.3.3 Contractor's Inspection of the Work. Contractor has an indivisible, non-delegable, and nontransferable contractual obligation to Owner to make inspections of the Work at all stages to confirm at all times that all Work has been executed strictly in accordance with the Contract. Contractor shall not rely on an inspection by Owner, Design Professional, or any other third party to identify Non-Compliant Work.

2.3.4 Fire Marshal's Inspection of the Work. The State Fire Marshal may make inspections at any time. If the Work requires a Certificate of Occupancy, Contractor shall request a Fire Marshal Inspection at eighty percent (80%) completion and at one hundred percent (100%) completion and will give Notice when all items on the one hundred percent (100%) inspection report have been completed. Requests shall be in writing with a copy to Owner and Design Professional.

2.3.4.1 Eighty Percent (80%) Inspection. The Eighty Percent (80%) Inspection shall take place when the structural components, including the fire walls, vertical shafts, stairways, smoke stops, hazardous area separations, roof and ceiling assemblies, corridor and door width, and HVAC systems, are in place and open for review of the fire safety components.

2.3.4.2 One Hundred Percent (100%) Inspection. The One Hundred Percent (100%) Inspection shall take place when Contractor has completed all of the items noted on the Eighty Percent (80%) Inspection report and the building is ready for issuance of the Certificate of Occupancy.

2.3.5 Design Professional's Inspection of the Work. Design Professional shall inspect all Work for compliance with the Contract. At all times, Contractor shall permit Design Professional and its representatives to access the Work for inspection.

2.3.5.1 Notice to Design Professional Prior to Covering Work. If the Contract, laws, ordinances, or any public authority require any Work to be specially tested or inspected, Contractor shall give Design Professional timely Notice of its readiness for inspection and, if the inspection is by any authority other than Design Professional, will inform Design Professional of the date fixed for such inspection. Inspections by Design Professional shall be made promptly and, where practicable, at the source of supply.

2.3.5.2 False Starts. In the event Contractor shall have issued Notice of Readiness prematurely, its action shall be deemed to be a "false start." Contractor shall be liable for the costs and damages resulting from false starts, including but not limited to the salary, professional fees, and travel and living expenses of the persons or parties affected by false starts.

2.3.5.3 Inspection of Work Covered Without Consent of Design Professional. If any Work is covered without written approval or consent of Design Professional or contrary to any provision of the Contract, then Contractor shall uncover such Work for inspection by Design Professional. Contractor shall be liable for the costs of uncovering such Work, as well as the cost of recovering Work and the fees of Design Professional arising from the review of such uncovered Work.

2.3.6 Notice of Non-Compliant Work. The Owner or Design Professional may issue a Notice of Non-Complaint Work if it observes Non-Compliant Work, including failure to maintain the Overall Project Schedule. The Notice of Non-Compliant Work shall be in writing, dated, and addressed to Contractor with a copy to Owner or Design Professional, as applicable. The Notice of Non-Compliant Work shall include a description of the Non-Compliant Work, a citation to the provision of the Contract (or incorporated document or standard) that has been violated, and a reasonable period to correct the Non-Compliant Work (“Cure Period”). If Contractor is unsure or unaware of any information necessary to correct the Non-Compliant Work, it shall immediately request such information in writing. In the event that Owner incurs increased costs due to re-inspection of Work that was found to be Non-Compliant, Contractor shall be liable for the costs of the re-inspection, including but not limited to the salary, professional fees, and travel expenses of the Design Professional or inspection firm.

2.3.7 Duty to Promptly Correct Work. Contractor shall promptly correct any Non-Compliant Work within the Cure Period stated in the Notice of Non-Compliant Work. The duty to correct the Work shall apply whether the Non-Compliant Work is discovered before or after Material Completion. Contractor shall bear the costs of correcting such Non-Compliant Work, including, without limitation, additional testing and inspections and shall bear the expense of restoring all Work of Separate Contractors affected or destroyed by such removal or replacement. Contractor shall give prompt Notice upon completion of the correction of the Non-Compliant Work. In the absence of such Notice, it shall be and is presumed under this Contract that there has been no correction of the Non-Compliant Work.

2.3.7.1 Notice of Non-Compliant Work for Failure to Maintain Schedule. If Design Professional issues a Notice of Non-Compliant Work for failure to maintain the Overall Project Schedule, Contractor shall deliver to Design Professional and Owner a written plan explaining how Contractor intends to bring the Project back in compliance with the Overall Project Schedule within seven (7) days of the issuance of the Notice of Non-Compliant Work. Contractor's plan must provide sufficient detail to allow Design Professional and Owner to determine the proposal's feasibility.

2.3.7.2 Owner's Option to Accept Non-Compliant Work. If Design Professional and Owner deem it inexpedient to correct Non-Compliant Work, Owner may agree, in writing, to accept the Non-Compliant Work and make an equitable deduction from the Contract Sum which shall be deducted from Contractor's next payment.

2.3.7.3 Owner's Remedies for Breach of Notice of Non-Compliant Work or Failure to Prosecute the Work. If Contractor does not correct the Non-Compliant Work within the Cure Period stated in the Notice of Non-Compliant Work, Contractor shall be deemed to have breached the Notice of Non-Compliant Work. If Contractor breaches a Notice of Non-Compliant Work or fails to prosecute the Work in accordance with the Contract, Owner may, after giving five (5) days' Notice to Contractor, correct the Non-Compliant Work, prosecute the Work, or supplement the labor of Contractor or its Subcontractors and deduct the costs thereof from any payment then or thereafter due to Contractor and recover any resulting deficit from Contractor. The remedies stated in this Section are in addition to the remedies otherwise available to Owner and are without prejudice to any other remedies.

2.3.8 Correction of Non-Compliant Work After Material Completion. Contractor shall promptly remedy any Non-Compliant Work upon receipt of a Warranty Complaint received within one (1) year from the date of Material Completion, unless such Warranty Complaint is a result of a design defect or Owner abuse. Within seven (7) days of receipt of a Warranty Complaint from the Owner, Contractor shall issue a written response to the Owner stating contractor's plan to correct the Work and the time needed to correct the Work. Contractor shall promptly commence correction of the Work unless the Design Professional agrees that the Warranty Complaint is the result of a design defect or Owner abuse. Contractor and its Subcontractors shall make no visits to the Site without first giving Notice to the Owner. Warranty Complaints should be corrected within fourteen (14) days of receipt unless the Work cannot be corrected within fourteen (14) days, in which case Contractor shall notify the Owner in its initial response. If Contractor does not provide the initial response within seven (7) days or remedy the Warranty Complaint within the

time specified in its initial response, upon five (5) days' Notice, Owner may remedy the Warranty Complaint, including but not limited to any resulting damage to the Work or other property, at the expense of Contractor.

2.3.9 Warranty Complaints - Emergency Situations. If the Warranty Complaint is an emergency, this will be noted and Owner may (i) require Contractor to correct the Work immediately or (ii) if the emergency involves risk of property damage or personal injury or death, Owner may proceed at once to remedy the Warranty Complaint. If, pursuant to the aforementioned clause (i), Contractor is requested to correct the Work, it shall respond to the Warranty Complaint in emergency situations within twenty-four (24) hours. If Contractor fails to respond within such time limit, Owner may remedy the Warranty Complaint and charge the cost thereof to Contractor, including but not limited to any resulting damage to the Work or other property. If, pursuant to the aforementioned clause (ii), Owner proceeds to remedy the Warranty Complaint in an emergency situation, then Owner will charge the cost thereof to Contractor, including but not limited to any resulting damage to the Work or other property.

2.3.10 No Limitation. Nothing contained in this Section 2.3 shall be construed to establish a period of limitation with respect to Contractor's liability for defective or Non-Compliant Work under this Contract, at law, or in equity. The remedies stated in this Section 2.3 are in addition to the remedies otherwise available to Owner and are without prejudice to any other remedies.

2.4 Change Orders

2.4.1 Change Orders. The Owner, without invalidating the Contract, may order changes in the Work consisting of additions, deletions, or modifications to the Work, with the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized only by written Change Order signed by the Owner. (A sample change order form is attached hereto, however, the exact form to be used may differ and may be provided by the Design Professional or the Owner.) Without a Change Order executed by Owner, Contractor shall not make any changes in the Work or perform any work that is not a part of the Contract, nor shall Contractor receive any compensation or make any Claim therefor.

2.4.2 Change Order Sum. The Change Order Sum may be determined in one or more of the following ways: 1) by an estimate of Allowable Change Order Costs agreed upon in advance and paid as a lump sum (“Lump Sum Change Order”), 2) by Unit Prices named in the Contract or subsequently agreed upon, which Unit Prices shall include all Contractor overhead, profit, and markup (“Unit Price Change Order”), or 3) by the amount of actual Allowable Change Order Costs incurred in the performance of the Change Order Work (“Force Account Change Order”).

2.4.3 Change Order Proposals. Owner shall provide Contractor with a proposed Change Order that shall include a description of Change Order Work provided by the Design Professional. Contractor shall promptly respond to the proposed Change Order with an estimate of the Allowable Costs of the Change Order Work and the impact to the Project Schedule. The response shall include an itemized breakdown of Allowable Change Order Costs and a justification to the change in the Project Schedule. The Contractor’s justification is provided so that the Design Professional and Owner can determine the whether the proposed change in Contract Time or Contract Sum is reasonable and in compliance with the terms of the Contract.

2.4.3.1 Disagreement as to Change in Contract Sum. If Design Professional or Owner disagree with Contractor as to the amount of the proposed adjustment to the Contract Sum and such disagreement is not resolved promptly, then Owner, if it desires the Change Order Work to proceed, may direct the Change Order Work to commence under a Force Account Change Order in accordance with Section 2.4.5. In no event shall any increase in the Contract Sum for such Change Order Work exceed the increase identified in Contractor’s response under Section 2.4.3.

2.4.3.2 Disagreement as to Change in Contract Time or Other Disagreements. If Design Professional or Owner disagrees with Contractor as to matters other than adjustments to Contract Sum, including but not limited to proposed adjustments to Contract Time, and such disagreement is not resolved promptly, then Owner, if it desires the Change Order Work to proceed, may direct the Change Order Work to commence, and the dispute shall be resolved as a Design Professional’s Decision as set forth in Section 1.5.2.

2.4.4 Acceptance of Proposed Change Order. If Owner agrees with Contractor’s proposed changes to the Contract Time and Contract Sum, then Owner shall execute the Change Order. Upon Owner’s execution, the Change Order shall be binding and of full force and effect. All Change Orders shall be performed under the conditions of the original Contract except as specifically modified by the Change Order. The change in Contract Time and Contract Sum (if any) provided by the Change Order constitutes compensation in full to Contractor for the Change Order Work and accounts for all delays and impacts related thereto.

2.4.5 Force Account Change Orders. A Force Account may be used in the event (i) Contractor and Owner cannot agree on the Change Order Sum for a Lump Sum Change Order, (ii) costs associated with a Change Order cannot be reasonably determined prior to beginning the Change Order Work, (iii) Owner and Contractor have agreed to Unit Prices for the Work but cannot determine the number of Units involved in the Change Order, or (iv) Owner otherwise determines. To initiate a Force Account Change order, Owner will issue a Force Account Authorization that sets a Maximum Sum that shall be paid for the Change Order Work and authorizes the Contractor to proceed. Upon completion of the Force Account Change Order Work, a Change Order is executed that sets the Change Order Sum on the basis of the actual Allowable Change Order costs incurred, or in the case of Unit Prices, on the basis of the actual number of units.

2.4.5.1 Accounting for Allowable Change Order Costs. If Owner issues a Force Account Authorization, Contractor must provide a daily accounting of Allowable Change Order Costs incurred in accomplishing the Work. With respect to Unit Price Change Orders, Contractor must provide a daily accounting of units completed.

Owner shall be permitted, on a daily basis, to verify such records and information, and may require such additional records as are necessary to determine the Allowable Change Order Costs of such Change Order Work. Allowable Change Order Costs shall not exceed the Maximum Sum stated in the Force Account Authorization. Contractor is responsible for applying for an increase in the Maximum Sum if it believes the Allowable Costs incurred shall exceed the Maximum Sum.

2.4.5.2 Determining Final Cost of Force Account. Within fourteen (14) days after the conclusion the Change Order Work ordered by a Force Account Change Order, Contractor and Owner shall determine the total Change Order Sum. Such Change Order Sum shall be incorporated into and finalized in the Force Account Change Order.

2.4.6 Allowable Change Order Costs. Allowable Change Order Costs include the items in this Section, but only those costs that are incurred in the performance of the Change Order Work.

2.4.6.1 Allowable Subcontractor Costs. Allowable Subcontractor Change Order Costs shall include the costs of all materials and equipment used in completing the Change Order Work and the costs of all labor to physically perform the Change Order Work but shall not include any charges for small tools or other expendables.

2.4.6.2 Subcontractor Markup. Allowable Subcontractor Costs for Change Order Work include a markup of up to twenty percent (20%) on the Allowable Subcontractor Costs noted above to compensate the Subcontractor for its overhead and profit. If the Subcontractor uses a Sub-Subcontractor to perform a portion of the Change Order Work, the Sub-Subcontractor may receive a markup for its overhead and profit but the total markup for both the Subcontractor and the Sub-Subcontractor shall not exceed twenty percent (20%).

2.4.6.3 Contractor's Payment and Performance Bond and Insurance Costs. Allowable Change Order Costs include the increases in premiums for Contractor's Payment Bond and Performance Bonds and Insurance required under the terms of this Contract, but solely to the extent that such increased costs are a result of the Change Order. In no event shall Contractor's compensation for such costs exceed two percent (2%) of the Allowable Change Order Costs (excluding this Section).

2.4.6.4 Contractor's Costs for Self-Performed Work. If the Contractor performs Change Order Work with its own personnel ("Self-Performed Work), Allowable Change Order Costs shall include the costs of all materials and equipment used in the completing the Self-Performed Work and the costs of all labor to physically perform the Self-Performed Work but shall not include a Subcontractor markup unless expressly agreed to in advance by the Owner.

2.4.6.5 Contractor's Supervision Costs. Allowable Change Order Costs include increased costs of Contractor's Superintendent and field office personnel in direct supervision of the Change Order Work, but solely to the extent that such increased costs are a result of the Change Order.

2.4.6.6 Contractor's Mark-Up. Allowable Change Order Costs include a markup of up to seven and a half percent (7 ½%) on the Subcontractor's Allowable Costs to compensate the Contractor for its overhead and profit on the Change Order Work.

2.4.6.7 Allowable Costs for Unit Price Change Orders. Unit prices shall be inclusive of all Contractor's overhead and profit and no mark-up on top of the Unit prices shall be allowed.

2.5 Project Closeout

2.5.1 Material Completion. To achieve Material Completion, the Work shall be materially complete so that the Owner can use and occupy the entire Project for its intended purpose. Additionally, Contractor shall complete the following Work and submit the Final Documents listed below as prerequisites to Material Completion.

2.5.1.1 Operation and Maintenance Training and Manuals. Prior to the inspection for Material Completion, Contractor shall provide the Owner with training in the operation and maintenance of any mechanical, electrical, or other operating systems and equipment included in the Work and shall provide manufacturer's manuals for operating and maintaining systems and equipment.

2.5.1.2 Warranties and Service Agreements. Contractor shall submit all warranties and maintenance service agreements as called for in the Specifications to the Design Professional at least seven (7) days prior to the proposed date of Inspection for Material Completion.

2.5.1.3 Marked-up Construction Documents. At the inspection for Material Completion, Contractor shall provide a complete set of Marked-up Construction Documents to Design Professional, which shall reflect all changes caused by field changes, Change Orders, or observed changes by Contractor or Subcontractors for the purpose of Design Professional's issuance of Record Documents to Owner.

2.5.1.4 Initial Punchlist. Prior to the Inspection for Material Completion, Contractor shall prepare an Initial Punchlist itemizing all Minor Items and Permitted Incomplete Work and shall provide a copy of the Initial Punchlist to Design Professional and Owner. Contractor is encouraged to consult with Design Professional and Owner prior to finalizing the Initial Punchlist, in particular in arriving at consensus for Minor Items and Permitted Incomplete Work.

2.5.2 Inspections for Material Completion. Contractor shall request an Inspection for Material Completion when it has completed all Work, except for Minor Items and Permitted Incomplete Work and submitted all required documents, including Final Documents.

2.5.2.1 Cleaning Prior to Material Completion. Prior to the inspection for Material Completion, Contractor shall remove from the Site all waste and perform a thorough cleaning of the Work. Contractor shall dust all hard surfaces, mop all hard floors, vacuum all carpet, remove any stains and paint spots, clean and polish all plumbing fixtures and equipment, clean all electrical and mechanical equipment, and clean all ductwork and filters if dirty. Contractor shall also restore any existing facilities such as roads, landscaping, pavement, fencing, curbing, and the like at the Site to at least their pre-construction conditions. Contractor may leave equipment at the Site as necessary to achieve Final Completion of the Project. To achieve Material Completion, Contractor shall have fully cleaned the Site.

2.5.2.2 Notice of Readiness for Inspection for Material Completion. When Contractor determines that the Project is ready for Inspection for Material Completion, Contractor shall give Notice to Design Professional and Owner requesting Inspection for Material Completion. Such Notice shall be provided at least seven (7) days in advance of the date requested for Inspection for Material Completion. Such Notice shall include a copy of the Initial Punchlist. If Contractor requests inspection for Material Completion and it is determined by Design Professional that the Project has not reached Material Completion, referred to as a "false start," then Contractor shall be liable for the costs and damages resulting therefrom, including but not limited to the salary, professional fees, and travel and living expenses of the persons or parties affected by false starts.

2.5.2.3 Inspection, Certificate of Material Completion. Design Professional shall conduct the Inspection for Material Completion and shall confirm the Initial Punchlist by adding or deleting Minor Items or Permitted Incomplete Work as appropriate. Upon completion of the Inspection for Material Completion, if Design Professional determines the Work has reached Material Completion, Design Professional shall execute the Certificate of Material Completion and attach a first draft of a Final Punchlist, which may be handwritten or in electronic format and which shall list all Minor Items and Permitted Incomplete Work and assign amounts to be withheld from the Payment for Material Completion on account of each Minor Item and Permitted Incomplete

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

2.5.2.4 Payment for Material Completion. Upon Material Completion, Contractor shall submit a Payment Application along with a Payment Affidavit certifying completion of all Work in accordance with the Contract, except for Minor Items and Permitted Incomplete Work, and releasing all claims against the Owner of any nature arising out of the Project except any claims noted on the Payment Affidavit. If Contractor fails to provide a Payment Affidavit, Payment for Material Completion shall operate as settlement, waiver, release, discharge, and payment in full of all claims (including Claims) against Owner of any nature arising out of the Project except for the Work associated with the Minor Items and the Permitted Incomplete Work.

2.5.2.5 Effect of Failure to Achieve Material Completion. Should Material Completion not be achieved by the Material Completion Date, Contractor is in breach of the covenant of time, Liquidated Damages at the specified daily rate in Section 5 of the Contract begin to accrue and are payable on the day immediately following the Material Completion Date.

2.5.2.6 Material Completion Not a Waiver. A determination that Contractor has achieved Material Completion, the issuance of a Certificate of Material Completion, or Owner's Payment for Material Completion shall not preclude or diminish Owner's rights or remedies for Non-Compliant Work discovered after such events. All such rights and remedies set forth herein shall continue after such events.

2.5.3 Final Completion, Payment. Final Completion is the completion of all Work. When Contractor has completed all Work, it shall request an inspection for Final Completion. Design Professional shall inspect all Work and if it determines that all Work is complete, it shall execute the Certificate of Final Completion. Upon Final Completion, Contractor shall submit a Payment Application requesting the remainder of the Contract Sum. Acceptance of Payment for Final Completion by Contractor shall operate as settlement, waiver, release, discharge and payment in full of all claims against Owner of any nature arising out of the Project.

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

2.6 Payment

2.6.1 Schedule of Values. Prior to the issuance of the Proceed Order, Contractor shall submit a Schedule of Values of the Work to assist Design Professional in reviewing Payment Applications. The Schedule of Values shall allocate the Contract Sum to the portions of the Work in such detail as Owner or Design Professional require. If requested, Contractor shall provide evidence of the accuracy of the Schedule of Values. Unless objected to the Owner or Design Professional, the Schedule of Values shall be used to determine the payment due for completion of each portion of the Work.

2.6.2 Payment Applications. Contractor shall submit a Payment Application to the Owner and Design Professional by the fifth (5th) day of each month for the Work performed during the previous month on the form supplied by the Owner. The Payment Application shall itemize the total sum billed in the same format as the Schedule of Values and shall include the percentage complete for each item of Work. Contractor shall submit no more than one (1) Payment Application during each month. No payment shall become due to Contractor until a proper Payment Application is submitted.

2.6.3 Representations of Contractor. The Payment Application constitutes a representation by Contractor to Owner that (i) the quality of the Work covered by the application is in accordance with the Contract; (ii) Contractor is entitled to payment in the amount requested; (iii) all Work covered by any previously approved Payment Application, for which Contractor has been paid, is free and clear of liens, claims, security interests or encumbrances, and (iv) title to all Work covered by the Payment Application will pass to Owner no later than the time of payment.

2.6.4 Payment. The Owner shall make payment for all Work completed in the previous month, based upon the Schedule of Values and Contractor's estimate of percentage complete, as confirmed by the Design Professional, less the retainage pursuant to Section 2.6.10 and subject to Owner's right to withhold amounts in accordance with Section 2.6.7 and Owner's right to adjust for overpayments. Owner shall make payment to Contractor no later than thirty (30) days after receipt of a properly completed Payment Application.

2.6.5 Disputed Payments. Owner and Contractor agree to use their best efforts to resolve all disputes concerning the Payment Application during the said thirty (30) day payment period. If Owner disputes a portion of the Payment Application, Owner shall make payment of all undisputed amounts within the thirty (30) day payment period.

2.6.6 Late Payments and Interest. Should Owner fail to timely pay as required by Section 2.6.7, Contractor shall provide Notice to Owner in writing by certified mail. If Owner fails to pay within seven (7) days of receipt of the Notice, Contractor shall receive, in addition to the payment due, interest thereon at the rate of one-half percent (1/2%) per month. Pursuant to O.C.G.A. § 13-11-7(b), Owner and Contractor expressly agree to payment periods for Owner's Payment to Contractor and interest rates on late payments that become due to Contractor for late payment by Owner that are different than those set forth in O.C.G.A. § 13-11-4(a) and O.C.G.A. § 13-11-7(a). The payment periods and interest rates set forth herein shall control to the exclusion of any provisions set forth in the Georgia Prompt Pay Act, O.C.G.A. § 13-11-1, *et seq.*, and the provisions of said Act are waived.

2.6.7 Payments Withheld. Design Professional or Owner may withhold payment, or nullify the whole or part of any previous Payment Application, to such extent necessary to protect Owner from loss on account of any one or more of the following: (i) Non-Compliant Work; (ii) failure of Contractor to make payments due to Subcontractors; (iii) reasonable evidence that the Contract cannot be completed for the unpaid Contract Sum; (iv) damage to a Separate Contractor or to any other third party, or reasonable evidence that third parties may file claims against Owner due to acts or omissions of Contractor; (v) failure to maintain the Overall Project Schedule, or (vi) requests for or prior payment of costs that are not required to be reimbursed hereunder. When the grounds for withholding payment are remedied (if applicable), payment shall be made for amounts withheld because of them. In the case of withholding payment for failure to pay Subcontractors, Owner may agree to payment upon receipt of a satisfactory Consent of Surety.

2.6.8 Payment of Subcontractors. Contractor shall pay Subcontractors the amount due for Subcontractor's Work, less applicable retainage, within seven (7) days of receipt of payment from Owner for such Work unless the contract between Contractor and Subcontractor provides that no such payment is due (e.g. without limitation, as a result of non-performance under the Subcontract). The Owner has the right to request evidence from the Contractor that the Contractor has properly paid all Subcontractors. If the Contractor fails to provide such information within seven days

of Owner request, Owner shall have the right to contact Subcontractors to determine if they have been paid. Owner shall have no obligation to pay or see to the payment of money to a Subcontractor.

2.6.9 Payment Not Acceptance of Work. Neither payment by Owner nor any partial or entire use or occupancy of the Project shall constitute an acceptance of Work not in accordance with the Contract.

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

2.6.10.1 Freezing Retainage. After one-half (1/2) of the Contract Sum has been paid, upon submission of the next Payment Application following the payment of one-half of the Contract Sum, if the Work is on or ahead of schedule according to the Overall Project Schedule and there are no unresolved breaches of Non-Compliant Work, Contractor may request that Owner stop the collection of retainage. Upon Owner approval, the previously withheld retainage will be converted to a lump sum to be held by Owner until Material Completion and Owner will collect no additional retainage unless retainage is reinstated. Owner will reinstate collection of retainage if the Work is five percent (5%) or more behind schedule according to the Overall Project Schedule or if Contractor breaches a Notice of Non-Compliant Work. Owner will continue the collection of retainage under this Section until the breach is cured or the time is recovered and the Project is on or ahead of schedule.

2.6.10.2 Retainage Release. When Material Completion is achieved, retainage shall be paid to Contractor with the payment for Material Completion.

2.6.10.3 Subcontractor's Retainage Release. Upon request by Contractor, Owner may, in its sole discretion, permit an amount equal to the retainage associated with a Subcontractor to be separately released from the retainage held by Owner upon completion of the Subcontractor's Work. To request Subcontractor retainage release, Contractor shall submit an original certificate executed by the Contractor and Subcontractor certifying that the Subcontractor's Work is complete, releasing of all claims by the Subcontractor, and stating the amount due to the Subcontractor.

3 FORMS

**PERFORMANCE BOND
PAYMENT BOND
CHANGE ORDER TEMPLATE
CERTIFICATE OF MATERIAL COMPLETION
CERTIFICATE OF FINAL COMPLETION
PAYMENT AFFIDAVIT**

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That **(Legal Name and Address of Contractor)**, as principal (hereinafter called the "Principal"), and **(Legal Title and Address of Surety)**, as surety (hereinafter called the "Surety"), are held and firmly bound unto the **Georgia Department of Corrections** as Obligee (hereinafter called the "Owner"), in the amount of _____ DOLLARS (\$ _____), the payment of which the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written agreement with the Owner dated _____ (hereinafter the "Contract") for construction of a project known as ASMP Mechanical Upgrades Phase Two (hereinafter the "Project"), and such Contract is incorporated herein by reference;

NOW THEREFORE, the conditions of this obligation are as follows:

1. If the Principal shall completely and promptly perform each and all of the requirements of the Contract, including any warranties or guarantees required thereunder, and all modifications, amendments, changes, deletions, additions, and alterations thereto that may hereafter be made; and if the Principal and the Surety shall indemnify and hold harmless the Owner from any and all losses, liability, damages, claims judgements, liens, costs, and fees of every description, arising from the Project or under the Contract, whether imposed by law or equity, which may be caused by the failure or default of the Principal in the performance of the Contract, including all modifications, amendments, changes, deletions, additions, and alterations thereto and any warranties or guarantees required thereunder, then this obligation shall be void; otherwise this obligation shall remain in full force and effect.
2. In the event of the failure of performance of the Contract by the Principal, which shall include, but is not limited to, any breach or default of the Contract, the Surety, upon demand by the Owner, shall undertake and complete such required performance and cure any breach or default of the Contract. The Surety shall not assert any action or inaction of the Principal as justification for the Surety's failure to timely perform the obligations of this Bond.
 - a. The Surety shall commence performance of its obligations and undertakings hereunder no later than thirty (30) days after receiving notice of the Principal's failure of performance. If the Surety fails to commence performance as required herein within such period of time, or if the Surety otherwise breaches its obligations to the Owner under this Bond and the Contract, the Surety shall be liable to the Owner for Owner's actual damages, including but not limited to all costs of litigation and attorneys' fees, plus any penalties as may be provided by law.
 - b. The means, methods, or procedure by which the Surety undertakes to perform its obligations under this Bond shall be subject to the advance written approval of the Owner, such approval shall not be unreasonably withheld.
 - c. If the Surety fails or refuses to perform as provided above, or if the Owner and the Surety cannot agree as to the means, methods, or procedure of performance by the Surety, the Owner shall have the right, through itself or others, to do all or any part of the remaining work to be performed by the Principal, and without limiting its other obligations hereunder, the Surety shall pay the Owner any losses or damages resulting therefrom.
3. The Surety hereby waives notice of any and all modifications, amendments, changes, deletions, additions, or alterations to the Contract, and agrees that the obligations arising under this Bond shall not be impaired in any manner by any reason of any such modifications, amendments, changes, deletions, additions, or alterations. The obligations arising under this Bond shall not be impaired by the Owner's performance of any work on the Project.
4. The Surety shall not assign or delegate any rights or obligations under this Bond without the written consent of the Owner, such consent shall not be unreasonably withheld.
5. The Surety agrees that the Owner may make inquiries at any time of any subcontractor, laborer, materialman, or any other party concerning the status of payments for labor, materials, or services furnished to or for the Project.
6. No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Owner named herein or the legal successors of Owner.

7. For the purposes of this bond, notice shall be sent to the Surety at the following address:

Name:

Address:

City: State: Zip Code:

8. This Performance Bond shall be governed by the laws of the State of Georgia, is furnished in accordance with O.C.G.A. §§ 13-10-40, and shall be subject to increase in the penal amount of the bond pursuant to such statute and the provisions of the Contract.

SIGNED AND SEALED THIS _____ DAY OF _____, 20_____.

ATTEST (Seal)

(Name of Contractor)

Secretary (Note 1)

By: _____
President

(Seal)

(Name of Surety) (Note 2)

By: _____
(Title)
Resident Georgia Agent *

Note 1. Please apply seal of Corporation over Secretary's Signature.

Note 2. Please apply seal of Surety and arrange for countersignature by a "Resident Georgia Agent" of Surety in order to comply with surety regulations of Georgia.

(*) Attach Power of Attorney

STATUTORY PAYMENT BOND

That **(Legal Name and Address of Contractor)** as Principal (hereinafter referred to as the "Principal") and **(Legal Title and Address of Surety)** as Surety (hereinafter referred to as "Surety"), are held and firmly bound unto the **Georgia Department of Corrections** as Obligee (hereinafter referred to as "Owner") for the use and benefit of all subcontractors and all persons supplying labor, materials, machinery, or equipment to the Principal or a subcontractor for the Project (as hereinafter defined), in the amount of _____ DOLLARS (\$_____) to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written agreement with the Owner dated _____ (hereinafter the "Contract") for construction of a project known as ASMP Mechanical Upgrades Phase Two (hereinafter the "Project"), and such Contract is incorporated herein by reference;

NOW, THEREFORE, the conditions of this obligation are as follows:

1. If the Principal shall promptly pay in full every subcontractor and all persons supplying labor, materials, machinery, or equipment to the Principal or a subcontractor for the Project, then this obligation shall be void; otherwise it shall remain in full force and effect.
2. This Payment Bond is governed by the laws of the State of Georgia, is furnished in accordance with O.C.G.A. §§ 13-10-60 *et seq.*, shall be subject to increase in the penal sum of the bond pursuant to such statute and the provisions of the Contract, and is construed in accordance with applicable statutes.
3. The Surety hereby waives notice of any and all modifications, amendments, changes, deletions, additions, or alterations to the Contract, and agrees that the obligations arising under this Bond shall not be impaired in any manner by any reason of any such modifications, amendments, changes, deletions, additions, or alterations.
4. Every subcontractor or person who has not been paid in full for supplying labor, materials, machinery, or equipment to the Principal or a subcontractor for the Project before the expiration of a period of ninety (90) days after the day on which the last of the labor was done or performed by such person, or the material or machinery or equipment was furnished or supplied by such person for which claim is made, shall have the right to bring an action on this Payment Bond for the amount, or the balance thereof, unpaid at the time of the commencement of such action and to prosecute such action to final execution and judgment for the sum or sums due such person, subject to the requirements of O.C.G.A. §§ 13-10-63.
5. The Contractor and Surety agree that the Owner may make inquiries at any time of any subcontractor, laborer, materialman, or any other party concerning the status of payments for labor, materials, machinery, or equipment furnished to or for the Project.
6. For the purposes of this bond, notice shall be sent to the Surety at the following address:

Name:

Address:

City:

State:

Zip Code:

SIGNED AND SEALED THIS _____ DAY OF _____, 20____.

ATTEST

(Name of Contractor)

Secretary (Note 1)

By) _____ (Seal)
President

(Seal)

(Name of Surety) (Note 2)

By _____ (Seal)
(Title)
Resident Georgia Agent *

Note 1. Please apply seal of Corporation over Secretary's Signature. Otherwise "(Seal)" shall constitute such seal.

Note 2. Please apply seal of Surety. Otherwise "(Seal)" shall constitute such seal. Arrange for countersignature by a "Resident Georgia Agent" of Surety in order to comply with surety regulations of Georgia.

(*) Attach Power of Attorney

CHANGE ORDER

Owner:	
Project Name:	
Date:	
Change Order #:	

This Change Order is executed to change the terms of the Contract for the above listed Project. Owner and Contractor agree as follows:

1. The Construction Professional shall perform the following Work:

The following documents are attached to this Change Order to further describe the scope of the change in the Work that is authorized:
2. The Contractor shall be allowed _____ additional calendar days to reach Material Completion because of this Change Order. The new Material Completion Date is _____.
3. The Contract Sum shall be changed by _____ on account of this Change Order. The Construction Professional affirms that the quantities and pricing submitted are accurate and do not exceed actual requirements and that that all prices are fair and equitable and do not exceed current costs for like services or materials.
4. The change in Contract Time and Contract Sum (if any) provided by this Change Order constitutes compensation in full to Contractor for the Change Order Work and accounts for all delays and impacts related thereto.
5. **Proceed Order:** The Construction Professional is authorized to proceed with the Change Order Work as of _____.

RECOMMENDED FOR OWNER'S ACCEPTANCE

Design Professional:

By _____

Name: _____

ACCEPTED AND AGREED:

Owner:	Contractor:
By: _____	By: _____
Name: _____	Name: _____

CERTIFICATE OF MATERIAL COMPLETION

Project Number and Name: GDC-22-AUGU-MP-001 ASMP Mechanical Upgrades Phase Two

Contractor:

Design Professional: PFA Engineering, Inc

The Design Professional issues this Certificate of Material Completion of the Project and certifies as follows. Any exceptions shall be identified and explained in Paragraph 8 below:

1. The Design Professional, having conducted inspections of the Project, has determined that all Work required by the Contract Documents has been completed in accordance with the Contract Documents with the exception of items shown on the attached draft of the Final Punch List.
2. The attached draft of the Final Punch List specifies items that constitute either a Minor Item or Permitted Incomplete Work. Within five days of the execution of this Certificate of Material Completion, a Final Punchlist shall be issued which shall include the amounts to be withheld for each Minor Item and Permitted Incomplete Work and a required completion date for each.
3. There are no outstanding Notices of Non-Compliant Work which are not included on the Final Punch List.
4. All tests and inspections required by the Contract Documents have been performed and were reviewed by a registered architect or registered engineer of the Design Professional.
5. No Work has been certified for payment that was covered prior to consent of the Design Professional.
6. The State Fire Marshal has issued a Certificate (or Temporary Certificate) of Occupancy if required for this Project.
7. There are no pending Change Orders resulting in credits due to the Owner.
8. Exceptions (State Paragraph reference and explanation): _____

This Certificate is executed by the Design Professional this _____ day of _____, 20__.

PFA Engineering, Inc.

By: _____

(License Number and State)

Printed Name: _____

Title: _____

CERTIFICATE OF FINAL COMPLETION

Project Number and Name: GDC-22-AUGU-MP-001 ASMP Mechanical Upgrades Phase Two

Contractor:

Design Professional: PFA Engineering, Inc.

The Design Professional issues this Certificate of Final Completion of the Project and certifies as follows.

1. The Design Professional, having conducted observations and evaluations of the Project, has determined that all Work required by the Contract Documents has been completed in accordance with the Contract Documents.
2. There are no outstanding Notices of Non-Compliant Work.
3. All tests and inspections required by the Contract Documents have been performed and were reviewed by a registered architect or registered engineer of the Design Professional.
4. No Work has been certified for payment that was covered prior to consent of the Design Professional.
5. The State Fire Marshal has issued a Certificate of Occupancy (if required for the Project).
6. There are no pending Change Orders resulting in credits due to the Owner.

This Certificate is executed by the Design Professional this day of .

PFA Engineering, Inc.

By: _____

(License Number and State)

Printed Name:

Title:

PAYMENT AFFIDAVIT

Project Number and Name: GDC-22-AUGU-MP-001 ASMP Mechanical Upgrades Phase Two

Contractor:

Design Professional: PFA Engineering, Inc.

**STATE OF GEORGIA;
COUNTY OF**

KNOW ALL MEN BY THESE PRESENTS:

Pursuant to the Contract between Contractor and the Owner for the Project noted above, the Contractor certifies as follows:

1. All Work required under the Contract has been performed in accordance with the terms thereof except as listed on attached Schedule A. *Check if Schedule A is attached*
2. Contractor has paid for all Work covered by previous Payment Applications, paid all Subcontractors for Work covered by previous Payment Applications, and no Subcontractors have made claims for past due payment except as listed on attached Schedule B. *Check if Schedule B is attached*
3. The Contractor has no outstanding claims against the Owner of any character, including disputed claims, arising out of the performance of the Contract except as listed on attached Schedule C. *Check if Schedule C is attached*
4. To the best of its knowledge and belief there are no unsatisfied claims for damages resulting from injury or death to any employees, Subcontractors, or the public at large arising out of the performance of the Contract, or any suits or claims for any other damage of any kind, nature, or description except as listed on attached Schedule D. *Check if Schedule D is attached*
5. There has been no exertion or attempted exertion of any influence by any employee, officer, or agent of the Owner, or any person connected with the State Government of Georgia, on the Contractor in the purchase of materials, equipment, or other items involved in construction, manufacture, or employment of labor under the aforesaid Agreement.

The undersigned makes this affidavit for the purpose of receiving payment for Material Completion, a Retainage Release, or in the case of Final Payment, for full settlement of all claims against the Owner arising under or by virtue of the Construction Agreement except as stated above. Acceptance of such payment is acknowledged as a release of the Owner from any and all claims arising under or by virtue of the Agreement except as stated above.

This Affidavit is executed by the Contractor this (Day) day of (Month), (Year).
(Insert Name of Construction Firm)

By: _____, (Name and Title of Signatory)

**SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE**

_____ DAY OF _____, 20__

Notary Public

[NOTARY SEAL]

My Commission Expires: _____

4 CONTRACT SUPPLEMENTARY GENERAL REQUIREMENTS

Section 4 contains revisions, which hereby modify, delete from, and add to the provisions of Sections 1, 2 & 3,

4.01. Site Location

The contractor will perform all work required herein at the following site location:

AUGUSTA STATE MEDICAL PRISON
3001 Gordon Hwy,
Grovetown, GA 30813

4.02 A pre-construction conference will be scheduled after the receipt and approval of the items listed below. All items are due not less than 5 days prior to the pre-construction conference. The proceed order may be issued at the conference.

- a. Executed construction contract
- b. Payment and performance bonds
- c. Proof of mandatory insurance
- d. Contractor / Subcontractor affidavits
- e. Project safety plan
- f. List of intended subcontractors
- g. Preliminary construction schedule
- h. Schedule of values

4.03. A copy of the approved safety plan along with the AGC's Manual of Accident Prevention in Construction and/or OSHA Standards for Construction (OSHA29 CFR) shall be on-site during construction.

4.04 The attached GDC Change Order Form will be used for all contract modifications in accordance with Section 2.4, attached; **(Section 4 – Attachment #1)**.

Change order proposals must include a detailed quantity estimate broken out by labor hours, material, equipment and mark-ups.

4.05 GDC Facility Security Provisions

During the construction period, the following mandatory provisions will be enforced for the security of the facility and the safety of construction personnel:

- a. The Contractor will submit names and identification, via the GDC Criminal/Driver History Consent Form, **(Section 4 – Attachment #2)**, of all personnel who will be within the facility security perimeter fence. A security background check will be performed. Submission of the consent form is to be a minimum of 72 hours prior to anticipated arrival for access. The facility will provide temporary passes to the contractor, subcontractors, vendors, and miscellaneous personnel who are acceptable to the owner. The failure of any employee to be granted access to the facility as a result of being determined to be a security risk will not be grounds for the Contractor to request an extension of time.
- b. A facility lockdown for security reasons shall not be grounds for consideration for additional compensation for delay. These circumstances are beyond the owner's control and may occur during the course of the work. The department will make every effort to minimize the impact on the contractor's operation. The contractor must understand that security is the number one priority at all times.
- c. All work shall be coordinated with the Facility's Designated Representative (FDR). The following work schedule limitations shall apply, **Monday – Thursday, 7:30 a.m. – 5:30 p.m. U.N.O.** The contractor should assume no work will be performed on State holidays unless permission is given by the FDR. Any deviation from the scheduled work hours and holidays must be approved by the FDR in writing no less than 24 hours before the requested time. A list of all 2021 state holidays is attached; **(Section 4– Attachment #3)**.
- d. All personnel and vehicles entering onto Georgia Department of Corrections' property are subject to being searched at any time. Periodic unscheduled searches may be expected. Contractor should anticipate delays in entering and exiting the facility. These delays can vary depending on traffic at the entrance gate.
- e. It is the contractor's responsibility to keep tools stored and accounted for on a daily basis as required. Inventory sheets must be completed for each visit. Tools are to be inventoried going into and coming out of

the facility or secured storage. If any tools are approved to be secured overnight on-site, they too must be inventoried daily.

- f. No motorized equipment, hot tools, excess or unused material shall be left unsecured inside the fence overnight without the consent of the Facility Designated Representative. All equipment, tools and material stored in the designated laydown areas outside the fence shall be secured by the contractor at their risk. Keys to equipment and vehicles shall be removed from vehicles/equipment when not in use. All vehicles must be locked.
- g. Contraband will not be permitted on Georgia Department of Corrections facility property. Contraband includes but is not limited to cell phones, drugs, intoxicating liquors, tobacco, weapons of any kind.
- h. No personal cell phones will be permitted within the facility's security fence. A company cell phone must be approved by the facility designated representative and checked in and out with each visit.
- i. No contact or trafficking of any sort between construction personnel and inmates is permitted.
- j. A Correctional Officer (CO) will escort all personnel performing work within the facility security fence. One CO will be assigned to this project. If an additional officer is requested by the contractor, so that the contractor may perform work in more than one area simultaneously, it must be approved by the Facility Designated Representative. The availability of additional COs will be another determining factor.

4.06. Energy Efficiency and Sustainable Construction Standards for State Buildings
Comply with provisions for Georgia-based Materials and Products.

- a. The project shall utilize Georgia Products such that not less than 10 percent of all building materials used in the project are harvested, extracted, or manufactured in the State of Georgia where such products are commercially available.
- b. Due to the nature of this project, it may be challenging for the contractor to locate a minimum of 10% building materials from the State of Georgia. The contractor will need to advise Georgia Department of Corrections once this is known.

4.07 Replace "State Fire Marshall" with "GDC Agency Fire Marshall" for all references in contract including but not limited to Section 2.3.4.

4.08 Due to the nature of the work involved in this contract and the lead-time required for the submittal process, fabrication, shipment and receipt of material and/or equipment necessary to begin continuous work on the site, Section 1.4.1, commencement period of 10 days to begin physical work on the site may be waived. The time period for work to begin on the site will be determined by the delivery of said material/equipment. The delay in commencement of work will have no effect on the contract duration, which will begin with the issuance of the notice to proceed.

4.09 Georgia 811 Utility Protection Center does not operate within the boundary of any perimeter fence line on Georgia Department of Corrections facility property. The contractor shall coordinate with Georgia 811 to confirm the actual point of termination of their location services for all utilities. It is the contractor's responsibility to locate and protect all existing utilities from damage during construction. The contractor shall determine means and methods to locate and protect all existing utilities and safely perform the work. The contractor shall be solely responsible for all costs associated with engaging professional locator services, protecting all utilities during construction, and for any damages to utilities resulting from the work.

SECTION 4 ATTACHMENT 1

GDC CONSTRUCTION CHANGE ORDER

SECTION SUPERVISOR: _____	APPROVAL _____	DISAPPROVAL _____
Name: _____		Date of Approval or Disapproval: _____

Facility/Unit (Name/Address) _____	Date: _____
	GSFIC Project Number: _____
	GDC Project Number: _____

To Construction Professional (Name and Address): _____

Project Name: _____	CHANGE ORDER # _____
	Design Professional # _____
	Construction Contract Date: _____

The Construction Contract is changed as follows:

The original (Contract Sum) (Guaranteed Maximum Price) is: _____

The net change by previously authorized Change Orders: _____

The current (Contract Sum) (Guaranteed Maximum Price) prior to this Change Order is: _____

The (Contract Sum) (Guaranteed Maximum Price) will be (increased) (decreased) (unchanged) by this Change Order in the amount of: _____

The new (Contract Sum) (Guaranteed Maximum Price) including this Change Order will be: _____

The Construction Contract Time will be (increased) (decreased) (unchanged) by: _____ **days**

The date of Construction Contract Completion as of the date of this Change Order therefore is: _____

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

Design Professional (Firm Name) _____	Construction Professional (Firm Name) _____	Project Manager _____
Address _____	Address _____	Address _____
City/State _____	City/State _____	City/State _____
By (Signature) _____	By (Signature) _____	By (Signature) _____
(Typed Name) _____	(Typed Name) _____	(Typed Name) _____
Date _____	Date _____	Date _____

GEORGIA DEPARTMENT OF CORRECTIONS

CORRECTIONS HUMAN RESOURCES

MANAGEMENT

P.O. BOX 1529

300 PATROL RD.

FORSYTH, GEORGIA 31029

PHONE 478-992-5211



**Brian P.
Kemp**



**Timothy C.
Ward**

August 18, 2020

To: GDC Employees

From: Betsy Thomas, Human Resources Director Re:

2021 State Holidays

Governor Brian P. Kemp has designated the following dates as state holidays for 2021:

New Year's Day	Friday, January 1
Martin Luther King, Jr.'s Birthday	Monday, January 18
State Holiday	January 19 – will be observed on Friday, November 26
Washington's Birthday	February 15 – will be observed on Thursday, December 23
State Holiday	April 26 – will be observed on Good Friday, April 2
Memorial Day	Monday, May 31
Independence Day	July 4 th – will be observed on Monday, July 5
Labor Day	Monday, September 6
Columbus Day	Monday, October 11
Veterans Day	Thursday, November 11
Thanksgiving Day	Thursday, November 25
Christmas Day	December 25 – will be observed on Friday, December 24