



CONSTRUCTION CONTRACTOR GENERAL TERMS AND CONDITIONS

These General Requirements shall be applicable to Task Order Contracts as issued by the Georgia Building Authority (GBA). The provisions cited below shall govern. In the event of any conflict with any other provisions of the Contract Documents (unless notice to the contrary shall have been issued by the Owner) the contract language shall prevail. The Supplementary General Requirements supersede the General Requirements and the Contract supersedes the Supplementary and General Requirements. A Design Professional assigned to the work has no authority to amend the General Requirements, orally or in writing, either expressly or by implication.

(1) Legal Compliance.

The Contractor shall comply with all laws, rules, regulations, ordinances, and orders of any government agency having jurisdiction in the performance of the work and shall ensure the compliance of his subcontractors. Without limiting the generality of the foregoing, the following laws are specifically referenced solely in emphasis to what is typically required:

- *The Drug-Free Workplace Act, O.C.G.A. § 50-24-1, et. seq.*
- *Preference for Georgia Supplies, materials, equipment, and agricultural products, O.C.G.A. §§ 50-5-60 through 61.*
- *Preference for Georgia forest products, O.C.G.A. § 50-5-63.*
- *Preference to local sellers of Georgia products, O.C.G.A. § 50-5-62.*
- *Standards and Requirements for Construction, Alterations, etc., O.C.G.A. § 8-2-1 et. seq.*
- *Control of Soil Erosion and Sedimentation, O.C.G.A. § 12-7-1, et. seq.*
- *Regulation of Fire and other Hazards, O.C.G.A. § 25-2-1 et. seq.*
- *Regulation of Blasting Operations, O.C.G.A. § 25-2-1 et. seq. and § 25-9-1 et. seq.*
- *Providing Safe workplace, O.C.G.A. § 34-2-10 and § 34-7-20.*
- *Georgia Facility Protection Act, (Underground Gas Pipe Law), O.C.G.A. § 25-9-1 et. seq.*
- *High Voltage Safety Act, O.C.G.A. § 46-3-30 et. seq.*
- *Access and Use by Physically Handicapped Persons, O.C.G.A. § 30-3-1 et. seq.*
- *Small and Minority Business Enterprises, O.C.G.A. § 50-5-120 et. seq. and § 50-5-130 et. seq.*
- *Trading with the State or State Officials, O.C.G.A. §§ 45-10-20 to 45-10-71*
- *Title VII of the Civil Rights Act, 42 U. S. C. § 200a through 2000h-6.*
- *Age Discrimination in Employment Act, 29 U. S. C. § 621 et. seq.; 42 U. S. C. § 6101 et. seq.*
- *Americans with Disabilities Act, 42 U. S. C. § 12101 et. seq.*
- *Federal Occupational Safety and Health Act, 29 U. S. C. § 651 et. seq.*
- *Federal Emergency Planning and Community Right-to-Know Act, 42 U. S. C. § 11001 et. seq.*
- *Georgia Open Records Act, O.C.G.A. § 50-18-70 et. seq.*
- *Georgia Blasting Standards Act, O.C.G.A. § 25-8-1 et. seq. and Blasting, Excavating Nearby Underground Gas Pipes and Utilities, § 25-9-1 et. seq.*
- *Scaffolding and Staging Statute, O.C.G.A. § 34-1-1 et. seq.*
- *Department of Labor Rules and Regulations, O.C.G.A. § 34-2-6 et. seq.*
- *Hazardous Chemical Protection and Right to Know Act, O.C.G.A. § 45-22-2 et. seq.*

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- *Retainage on Public Works Contracts, O.C.G.A. § 13-10-80 et. seq.*
- *Compliance with “federal work authorization programs” and federal Immigration Reform and control Act of 1986 by Georgia Public Employers, contractors and subcontractors, O.C.G.A. § 13-10-90 et. seq.*

(2) Third Party Beneficiaries

Contractor acknowledges, stipulates and agrees that the Owner is an authority of the executive branch of the government of the State of Georgia performing an essential public and governmental function by means of the Contract. Failure of Contractor to comply with this Contract may cause general and special or consequential damages to the Owner or to officers, agencies, commissions, departments, instrumentalities or other entities of the State of Georgia, which will occupy the completed work or which provide governmental services or supplies to them. By way of illustration and not limitation, breach or repudiation of the Contract may cause the need to crowd other premises, to extend occupancies of other premises or to occupy unsatisfactory premises. Contractor shall be liable for damages under this Contract not only to Owner but also to, and as third party beneficiaries of its Contract, the State of Georgia, or to any officer, agency, commission, department, instrumentality or entity of the State of Georgia, which is to occupy the work or which performs a governmental function for the same and whose costs or burden is increased by a breach in the Contract. This Contract contemplates general and special or consequential damages not only to Owner but also to such third party beneficiaries (“State beneficiaries”). Liability to third party beneficiaries shall be without regard to whether Owner has breached any duty of its own to third party beneficiaries, and neither Contractor nor its surety shall have any right of subrogation against Owner or the State or other third party beneficiaries.

(3) Liquidated Damages

Time being of the essence of this contract, and a material consideration thereof, it is mutually agreed by the parties hereto in case of the Contractor’s failure to complete the construction within the time specified the Owner will be damaged thereby. The Contractor shall commence performance of its activities on the site under this Contract as specified by the commencement date designated in the Notice to Proceed order as issued by the Authority. The Contractor shall complete construction not later than the Material Completion Date shown in the Contract, except as adjusted by change order. The Owner and Contractor hereby agree that the amount of such damages shall be the daily rate specified in the contract, beginning upon the contractually required Material Completion Date and ending on the date that the certificate of material completion is issued. The parties agree that the specified Liquidated Damages are not established as a penalty but are calculated and agreed upon in advance as a fair and equitable amount reasonably estimated in advance to cover losses to be incurred by the Owner for such delay or interruption.

(4) Immigration Reform Compliance

The Contractor hereby certifies its compliance with the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603 and the Georgia Security and Immigration Compliance Act OCGA 13-10-90 et seq. Contractor certifies that Contractor has registered at <https://www.vis-dhs.com/EmployerRegistration> to verify information of all newly hired employees in order to comply with the Immigration Reform and

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Control Act of 1986 (IRCA), D.L. 99-603 and the Georgia Security and Immigration Compliance Act. Contractor further certifies that it shall execute any affidavits required by the rules and regulations issued by the Georgia Department of Labor set forth at Rule 300-10-1-.01 et seq. Contractor warrants that it has included a similar provision in all written agreements with any subcontractors engaged to perform services under this Contract.

(5) Definitions

Definitions applicable to the resulting contract are as shown below but not solely limited.

- *Applicable Law.* The law of Georgia shall govern contracts.
- *Article Not Plenary.* This article is not entire, plenary, or exhaustive of all terms used in the General Requirements, which require definition. There are definitions of other terms under articles to which the terms are related.
- *Certificate for Material Completion –* The notice from the Design Professional to the Owner certifying Contractor's achievement of Material Completion and providing for the Owner's authorization to take possession of the Project.
- *Change Order Form.* The change order form is the instrument by which adjustments in the contract sum are effected.
- *Contract.* The written document that is the evidence of the agreement reached between the Owner and the Contractor.
- *Contract Documents.* The Contract Documents include the executed Contract, the Bidding Documents, Bid Response, General Requirements (including Forms and Exhibits), Supplementary General Requirements (if any), Drawings, Specifications, Addenda and all fully executed Change Orders, Contract Amendments and mutually accepted modifications.
- *Contractor.* The person or entity who executes the Contract and thereby assumes responsibility for the proper completion of the activities described in the Contract Documents.
- *Cross-reference and Citations of Articles and Paragraphs of the General Requirements.* Cross-references and citations of articles and paragraphs of the General Requirements are for the convenience of the Contractor, Design Professional and the Owner and are not intended to be plenary or exhaustive nor are they to be considered in interpreting the Contract Documents or any part of the Contract Documents.
- *Days.* All references to a number of days shall mean consecutive calendar days unless otherwise noted.
- *Design Professional.* The architect or engineer or architectural or engineering firm selected by the Owner (1) for the design and preparation of Contract Documents governing the construction of a Project, or (2) for construction contract administration under the Contract Documents, or (3) for both, all such services and the scope thereof to be set forth in the Design Professional Contract. The Design Professional is not an employee of the Owner but is engaged or retained by it for performing design and/or construction administration services for the project. The term "Design Professional" includes architects, engineers, surveyors, designers, and other consultants retained by the Design Professional. In the absence of a Project Design Professional, specifically retained

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by the Owner to perform design services for this project, the term *Design Professional* appearing in these documents shall mean Owner or Owner's Representative.

- *Grounds for Issuance of Notice of Declaration of Default.* It shall be a sufficient ground for the issuance of a notice of declaration of default that the Contractor has been unfaithful or delinquent in the performance of the contract or any part of it in any respect. Without limitation of the foregoing and without subtracting from any right or defense of the Owner under other provisions of the Contract Documents, the Contractor acknowledges and agrees that it is ipso facto ground for issuance of a notice of declaration of default under the performance bond if the Contractor shall have neglected or failed for any reason to remedy a breach of a notice of non-complaint work within thirty (30) days after the Owner shall have given written notice of said breach to the Contractor and the surety on the performance bond with written demand of the Owner for curing of the delinquency. The Design Professional does not have authority to declare the Contractor in default.
- *Install, Deliver, Furnish, Supply, Provide and Other Such Words.* Such words mean the work in question shall be put in place by the Contractor ready for use unless expressly provided to the contrary.
- *Meaning of Words and Phrases.* Unless the context or the Contract Documents taken as a whole indicate to the contrary, words used in the Contract Documents that have usual and common meanings shall be given their usual and common meanings and words having technical or trade meanings shall be given their customary meaning in the subject business, trade or profession.
- *Notice of Non-Complaint Work.* A notice of non-complaint work shall be in writing, shall be dated, shall be signed by the Design Professional, shall be addressed to the Contractor with a copy to the Owner, and shall contain three elements as follows:
 - *FIRST ELEMENT: Description of work:*
 - which has been omitted; or
 - which is unexecuted as of the date of the notice of non-compliant work, the time for its incorporation into the work under the construction progress schedule having expired; or
 - which has not been executed in accordance with the methods and materials designated in the Contract Documents.
 - *SECOND ELEMENT: Citation of the provision or provisions of the Contract Documents that has or have been violated.*
 - *THIRD ELEMENT: Fixing of a reasonable space of time within which the Contractor shall have made good the deficiency, which said space of time, shall not be deemed to be an extension of contract time for filing the Notice of Readiness for Final Inspection nor shall it be deemed to be authorization for amendment to the construction progress schedule.*

A notice of non-compliant work may be issued for failure of the Contractor to supply enough workmen or enough materials or proper materials.

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- *Notices.* Written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended or if delivered at or sent by registered mail to the last business address known to him who gives the notice.
- *Owner.* The State of Georgia, by and through the Authority, identified as such in the Contract with whom the Contractor has entered into the contract and for whom the work is to be completed.
- *Parties.* The Owner, the Contractor and the Design Professional are those mentioned as such in the contract. They are treated throughout the Contract Documents as if each were of the singular number and masculine gender.
- *Proceed Order.* The proceed order is a written notice from the Owner pursuant to which the Contractor shall commence physical work on the site. A proceed order is a condition precedent to the execution of any work on the site by the Contractor.
- *Shop Drawings.* Shop drawings are drawings, schedules, data, catalogue cuts, manufacturers' published recommendations, charts, bulletins, brochures, illustrations, circulars, roughing drawings or formulae distributed by contractors, subcontractors, manufacturers, materialmen, or suppliers for use in installing work.
- *Specifications.* The term "Specifications" shall include all written matter in the bound Project Manual or on the drawings and any addenda or modifications thereto.
- *Subcontractor.* The term subcontractor as employed herein includes only those having direct contract with the Contractor. It includes one who furnishes materials worked to a special design according to the plans and specifications of this work but does not include one who merely furnished materials not so worked.
- *Supplier.* A manufacturer, fabricator, distributor, supplier, or vendor of goods or equipment in connection with the Work, or any other party having a Contract or Purchase Order with the Contractor or with a subcontractor to furnish materials or equipment to be incorporated in the Work by the Contractor or a subcontractor.
- *Time Limits.* All time limits stated in the Contract Documents or shown on the construction progress schedule are of the essence of the contract.
- *Work.* The term "work" of the Contractor or subcontractor includes labor, materials, or both.
- *Work Order.* A work order is a written notice from the Owner issued separately to the Contractor for each subcontractor. A work order is a condition precedent to the execution of any work on the site by a subcontractor.

(6) *Forms and Specimens*

The forms and specimens attached as exhibits are incorporated by reference herein and shall be executed in substantial conformance for proper completion of the Contract.

(7) *Pre-construction Meeting*

After award of contract, a Pre-construction meeting shall be held between the Owner, the Contractor and the Design Professional to review the project and set up the approximate work sequence schedule. Within ten (10) days after this meeting, Contractor shall submit to the Design Professional for approval

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five (5) typed copies of the work sequence schedule, showing proposed dates of beginning, completion milestones, and completing work through issuance of the Design Professional's Certificate of Material Completion. The Contractor shall submit the project safety plan to the Design Professional for review a minimum of five (5) days prior to the Pre-construction conference. Notwithstanding this review, Contractor retains full, complete and total responsibility for all job related safety.

(8) Copies of Notices to Owner

Wherever the General Requirements provide that a copy of any notice, request, or demand filed with the Design Professional by the Contractor shall be furnished to the Owner, such notice, request or demand shall not become effective until the Owner shall have received the Owner's copy. No notice in writing, orally to the Design Professional, or to the Owner's Representative is notice to the Owner unless copy of the aforesaid notice in writing shall have been properly served upon the Owner at the address shown in the Contract.

(9) Contractor's Warranty as to Performance

The Contractor warrants that he is familiar with the codes applicable to the work and that he has the skill, knowledge, competence, organization, and plant to execute the work promptly and efficiently in compliance with the requirements of the Contract Documents. The Contractor, having the obligation to keep a competent superintendent on the work during its progress, to employ only skilled mechanics, and to enforce strict discipline and good order among his employees, the Contractor, himself, is responsible for seeing that the work is installed in accordance with the Contract Documents. The Contractor warrants to the Owner that all materials and equipment incorporated in the Work will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements may be considered defective.

(10) Mutual Responsibility of Contractors

Should the Contractor cause damage to any separate Contractor on the work the Contractor agrees, upon due notice, to settle with such Contractor by agreement if he will so settle. If such separate Contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor who shall defend such proceedings at his own expense, and if any judgment against the Owner shall arise therefrom, the Contractor shall pay or satisfy it and pay all costs incurred by the Owner.

(11) Shop Drawings

The Contractor shall review, approve and submit to the Design Professional all Shop Drawings, Product Data and Samples required by the Contract Documents for approval. The Work shall be in accordance with approved submittals.

(12) Safety Program

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Five (5) days prior to the preconstruction meeting, the Contractor shall prepare and submit to the Owner a specific safety program for the Work. The Contractor shall establish and require all subcontractors to establish reasonable safety programs. No imposition of responsibility on the Contractor for safety under this Contract shall relieve any subcontractor of its responsibility for safety of persons or property on or near the Project Site. The Contractor shall include in his plan the name(s) of the person(s) in charge of Safety.

(13) Samples

The Contractor shall furnish for approval all samples as directed. The work shall be in accordance with approved samples.

(14) Materials, Appliances, and Employees

- *Payment. Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation, and other facilities necessary for the proper execution and completion of the work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.*
- *Quality of Materials and Workmanship. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of the quality required by the specifications. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials and work. The burden of proof is on the Contractor.*
- *Quality and Discipline of Employees. The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the work any unfit person or anyone not skilled in the work assigned to him.*

(15) Design Professional

- *Supervision. The Design Professional shall have general supervision and direction of the work except in respect to safety as stated under Item (13) above and except as further qualified by the General Requirements. He is the agent of the Owner only when in special instances he is authorized in writing by the Owner so to act, and in such instances he shall, upon request, show the Contractor written authority. He has authority to stop the work whenever such stoppage may be necessary to ensure the proper execution of the contract.*
- *Interpreter and Impartial Judge. As the Design Professional is, in the first instance, the interpreter of the conditions of the contract and the judge of its performance, he shall side neither with the Owner nor with the Contractor but shall use his powers under the contract to enforce its faithful performance by both.*

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(16) *Design Professional's Decisions*

- *Promptness. The Design Professional shall make decisions with reasonable promptness after presentation of evidence on (1) any claim of the Owner or Contractor, (2) a demand of the Owner or Contractor for a decision on any matter relating to the execution or progress of the work, or (3) a demand of the Contractor or Owner for interpretation of or additional instructions with respect to the Contract Documents.*
- *On Artistic Effect. The Design Professional's decisions in matters relating to artistic effect shall be final if within the terms of the Contract Documents.*

(17) *Testing Services*

Laboratories for testing services shall be selected by, engaged by, and responsible to the Design Professional. This article does not apply to verification of design mix on concrete.

(18) *Inspection of Existing Facilities Prior to Commencing Work*

The Contractor shall give a notice in writing to the Design Professional, prior to commencing work for the purpose of arranging for a joint inspection by (1) the Design Professional, (2) the Contractor and (3) the authorized representative of the Owner, during the course of which inspection the three parties to the joint inspection shall prepare a schedule identifying and showing the location of any damage to the existing work which is ascertainable by inspection. The schedule shall be prepared in four counterpart originals each of which shall be dated and signed on behalf of each part to the joint inspection. An executed and dated counterpart original shall be filed with: (a) the Design Professional, (b) the Contractor and (c) the authorized representative of the Owner.

It is agreed that the preparation of the schedule is for the benefit of the Contractor and is intended to enable him 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. Subsequently to the signing of the above-mentioned schedule the Contractor shall be responsible for repairing any damage except as noted.

(19) *Protection of Work and Property*

- *Duty to Protect Property. The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect all other property from damage, injury, or loss arising in connection with the work regardless of who may be the Owner of said property. He shall make good any such damage, injury, or loss except such as may be directly the result of errors in the Contract Documents or such as shall be caused directly by agents or employees of the Owner.*

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- *Safety Precautions. The Contractor shall comply with the rules and regulations of OSHA and/or the Department of Labor (O.C.G.A. section 34-2-6), and, where not inconsistent with the foregoing, the "Manual of Accident Prevention in Construction" issued by the Associated General Contractors of America, Inc., for safety and prevention of accidents, and shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work arising out of and in the course of employment on work under the contract. The Contractor alone shall be responsible for the safety, efficiency, and adequacy of his plant, appliances, and methods, and for any damage that may result from their improper construction, maintenance, or operations. He shall erect and properly maintain at all times as required by the conditions and progress of the work proper safeguards for the protection of workmen and the public and shall post danger warnings against any hazards created by the construction operations. He shall designate a responsible member of his organization on the work whose duty shall be the prevention of accidents. In the absence of notice to the contrary, filed with the Design Professional in writing with copy to the Owner, this person shall be the superintendent of the Contractor.*
- *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 remuneration claimed by the Contractor on account of emergency work shall be determined in accordance with allowances permitted on force account under Case (c) of E-49 of the General Requirements*
- *Fire Prevention. Contractor shall take adequate and reasonable precautions to protect work against damage by fire and smoke. For example, without limitation, Contractor shall:*
 - *Provide fire extinguishers in readily accessible locations.*
 - *Periodically inspect fire extinguishers, remove discharged extinguishers immediately and replace with new or recharged extinguishers.*
 - *Keep one fire extinguisher within five (5) feet of any welding or open flame operations.*
 - *Remove oil-soaked and paint-soaked materials, including paper and rags, from building(s) daily, and more frequently as necessary, to eliminate danger of fire.*
 - *Not permit workmen to smoke inside building(s) or during operations involving combustible adhesives, solvents, mastics, or other fire hazard materials.*
- *Rain Water, Surface Water, and Back-up. The Contractor shall protect all work, including but not limited to excavations and trenches, from rainwater, surface water, and back up of drains and sewers. The Contractor shall furnish all labor, pumps, shoring, enclosures, and equipment necessary to protect and to keep the work free of water.*
- *Dust Control. Dust-proof enclosures or partitions for protection wherever dusty or dirty work is performed and dampening of debris to avoid dusting when removed shall be provided and included as a cost of the work.*

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(20) Notices

Any notice, demand, consent, approval, change order, or other material communication required or permitted to be given under this Contract shall be in writing and signed by an officer or duly authorized representative of the Contractor, and shall be addressed as shown in paragraph 7 of the Contract. Prior to any shut-down of any system (electrical, mechanical, etc.), Contractor shall supply not less than five (5) working days' notice to the Design Professional with a copy to the Owner. No shutdown of any system shall occur until the Contractor has received permission from the Owner in writing.

(21) Working Hours

The Contractor shall perform all work, make all deliveries and have access to work areas between 7:00 A.M. and 6:00 P.M. Monday through Friday and, upon written permission of the Owner, may make deliveries and have access to work areas at any hour of any day, but shall bear without any contribution from the Owner, any extra expense and responsibility for doing so, including, without limitation, its own overtime expense. Contractor's promise to perform the work under the contract within the maximum time stated is not dependent on the availability of the working area for hours other than identified hereinabove. As necessary, weekend hours will be allowed upon review and approval of the Owner.

(22) Building Occupancy

Contractor recognizes and agrees that portions of the building(s) are occupied by State employees performing essential tasks necessary to the efficient operation of State government. Consequently, Contractor agrees that he shall perform his work in such a manner as to provide the least possible disruption to the occupants of the building. Accordingly, the Contractor agrees to the following stipulations, but without limitation:

- 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.*
- The Contractor's employee's may (if approved in writing by the Owner) use toilets designated by the Owner in the building(s). Temporary toilets will not be allowed on the site. The Contractor shall be responsible for maintaining the toilet or toilets in a clean, sanitary condition. If, in the opinion of the Owner, the Contractor fails to keep the designated toilet or toilets in a clean and sanitary condition, the Owner shall direct the Contractor to maintain a full-time person in the toilet or toilets at no additional cost to the Owner to ensure that the toilet or toilets are maintained in a clean and sanitary condition.*
- The Owner will not provide parking space for the Contractor or Contractor's employees, unless otherwise agreed to in writing by the Owner, except for vehicles, which are loading, or unloading*

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goods, equipment, supplies and materials in the loading area. Contractor shall not block any loading dock area or permit its employees to park in this area.

- No project or advertising signs of any description will be allowed. Contractor shall provide directional and warning signs at protective barricades to assure safe passage of pedestrians in and near areas of work.*
- The Contractor shall generally be prohibited from entering areas of the building(s) except where work is in progress. Work and access shall cause as little disruption to building occupants as possible. The Contractor shall give a minimum of five (5) working days advance notice and shall receive permission from the Owner for building access other than during normal business hours.*
- Contractor shall be responsible for the proper attire and actions of all workmen at all times. Any improper attire or action by any person is cause for immediate dismissal of the offending person from the site and project.*
- Contractor shall remove an employee (or any person working on behalf of the Contractor) upon notice that such person does not meet the requirements of the Contract or upon notice the Owner does not want such person (with or without cause) working on the Owner's premises.*

(23) Indoor Air Quality

The building(s) will be in use and occupied during construction. 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.

(24) Hazardous Materials

Hazardous Materials are 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 Documents or Change Order, 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 any party, other than the Owner, who has a contractual relationship with the Contractor to perform Work under the Contract Documents. If the Contractor knows of the presence of hazardous materials in any form existing on or delivered to the Site, the Contractor shall immediately notify the Design Professional and the Owner as to the quantity and nature of the hazardous material.

(25) Utilities

Except for the cost of connection, the Owner shall furnish without cost to the Contractor all water and electricity as presently available at the site required to do the work. 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.

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(26) *Royalties and Patents*

The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall hold the Owner harmless from loss on account thereof.

(27) *Surveys, Permits and Regulations*

- *General. The Owner shall furnish all surveys unless otherwise specified. Permits and licenses of a temporary nature necessary for the prosecution of the work shall be obtained and paid for by the Contractor. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be obtained and paid for by the Owner unless otherwise specified. The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work. If the Contractor observes that the drawings or specifications are at variance therewith, he shall promptly notify the Owner in writing, and any necessary changes shall be adjusted as provided in the contract for changes in the work. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules or regulations without such notice to the Owner, he shall bear all costs arising therefrom.*

- *Applicable Codes. The latest edition of the codes listed below with all amendments as of the date of the opening of bids shall govern the installation of all work and is adopted and incorporated into the Contract Documents and made a part thereof by reference, Provided, however: That the drawings and specifications shall be adhered to in all cases where they call for quality of materials, quality of workmanship, or quality of construction which is equal to or in excess of the quality required by the above stated codes and Provided also: That there may be no variances from the drawings and specifications except to the extent that the said variances shall be necessary in order to comply with the above stated codes. It shall be the responsibility of the Contractor to familiarize himself with the requirements of the stated codes. If there are any express requirements in the drawings or specifications which are at variance to the above stated codes, all changes in the work necessary to eliminate the said requirements and make the work conform to the above stated codes shall be adjusted as provided in the contract for changes in the work.*
 - *International Building Code, with Georgia State Amendments*
 - *International Mechanical Code, with Georgia State Amendments*
 - *International Fuel Gas Code, with Georgia State Amendments*
 - *International Plumbing Code, with Georgia State Amendments*
 - *International Electrical Code, with Georgia State Amendments*
 - *International Energy Conservation Code, with Georgia State Amendments*

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(28) *Assignment*

The Contractor shall not assign the contract or sublet it as a whole nor shall the Contractor assign any moneys due or to become due to him hereunder. Contractors may subcontract portions of the Work, normally performed by subcontractors.

(29) *Separate Contracts*

The Owner reserves the right to perform work related to the Project with its own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar conditions of the Contract. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly regulate, schedule, connect, and coordinate his work with theirs.

(30) *Use of Premise*

The Contractor shall confine his plant, his apparatus, the staging and storage of materials, the operations of his forces, and the work to limits indicated by law, ordinances, permits, or the Contract Documents and shall not unreasonably encumber the premises with his materials. The Contractor shall not load or permit any part of the work to be loaded with weight that will endanger its safety. The Contractor shall enforce the Design Professional's instructions regarding signs, advertisements, fires and smoking.

(31) *Bonds*

- *Performance Bond and Payment Bond. The Contractor shall furnish both a performance bond and a payment bond and said bonds shall be provided on the forms as set forth in Exhibits to the bid document.*
- *Required Qualifications for Surety. The Contract provides that the surety and insurance companies must be acceptable to the Owner. Only those sureties listed in the Department of Treasury's Listing of Approved Sureties (Department Circular 570) are acceptable to the Owner. All bonds at the time of issuance must be issued by a company authorized by the Insurance Commissioner to transact the business of a surety in the State of Georgia, and shall have a Best Policyholders Rating of "A-" or better and with a financial size rating of Class V or larger.*
- *Penal Amount of Bonds, State Law. The Contractor acknowledges and agrees that, pursuant to O.C.G.A. §§13-10-2, 13-10-20, 13-10-40 and 13-10-60, the performance bond and the payment bond must be in a penal amount equal to at least 100% of the Contract Sum. Accordingly, the Contractor warrants and agrees that, for any Change Order increasing the Contract Sum by five percent or more or when the total cost of the work has increased by five percent or more, it shall obtain a written amendment to the payment bond and the performance bond increasing the penal amounts of both bonds to 100% of the Contract Sum, effective as of the date of the Change Order. The premium increase, if any, may be properly included in the cost of the Change Order. The Design Professional*

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shall approve no payment for the work provided by the Change Order until the Contractor has provided the written amendment to the Owner.

(32) Indemnification, Insurance and Hazards

- *Responsibility. The Contractor shall be responsible to the Owner from the time of the signing the agreement or from the beginning of the first work, whichever shall be earlier, for all injury or damage of any kind resulting from any negligent act or omission or breach, failure or other default regarding the work by the Contractor, or any of its subcontractors, its agents, employees or others working at the direction of the Contractor or on its behalf, regardless of who may be the owner of the property.*
- *Indemnification Agreement. Contractor hereby agrees to indemnify and hold harmless the Owner, the State of Georgia and its departments, agencies and instrumentalities and all of their respective officers, members, employees and directors (hereinafter collectively referred to as the "Indemnitees") from and against any and all claims, demands, liabilities, losses, costs or expenses, including attorneys' fees, due to liability to a third party or parties, for any loss due to bodily injury (including death), personal injury, and property damage arising out of or resulting from the performance of this contract or any act or omission on the part of the Contractor, its agents, employees or others working at the direction of Contractor or on its behalf, or due to any breach of this contract by the Contractor, or due to the application or violation of any pertinent Federal, State or local law, rule or regulation. This indemnification extends to the successors and assigns of the Contractor. This indemnification obligation survives the termination of the contract and the dissolution or, to the extent allowed by law, the bankruptcy of the Contractor. If and to the extent such damage or loss (including costs and expenses) as covered by this indemnification is paid by the State Tort Claims Trust Fund, the State Authority Liability Trust Fund, the State Employee Broad Form Liability Fund, the State Insurance and Hazard Reserve Fund, and other self-insured funds (all such funds hereinafter collectively referred to as the "Funds") established and maintained by the State of Georgia Department of Administrative Services Risk Management Division (hereinafter "DOAS") the Contractor agrees to reimburse the Funds for such monies paid out by the Funds.*

This indemnification applies where the Indemnitees are partially responsible for the situation giving rise to the claim, provided however, that this indemnification does not apply to the extent of the sole negligence of the Indemnities. This indemnification does not extend beyond the scope of this contract and the work undertaken thereunder. Nor does this indemnification extend to claims for losses or injuries or damages incurred directly by the Indemnitees due to breach or default by the Indemnitees under the terms and conditions of this contract.

GBA and DOAS/Risk Management will endeavor to notify affected insurers of claims made against the State, which fall within this indemnity. In the event of litigation, the Attorney General

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will endeavor to keep the Contractor and its general liability insurer as named on the insurance certificate informed regarding the claims and settlement. [See below.]

(33) Insurance Requirements

- *Insurance Certificates. The Contractor shall, prior to the commencement of work, procure the insurance coverage identified below at the Contractor's own expense and shall furnish the Owner an insurance certificate listing the Owner as the certificate holder. The insurance certificate must minimally provide the following:*
 - *Name and address of authorized agent*
 - *Name and address of insured*
 - *Name of insurance company or companies*
 - *Description of policies*
 - *Policy Number(s)*
 - *Policy Period(s)*
 - *Limits of liability*
 - *Name and address of Owner as certificate holder*
 - *Project Name and Number*
 - *Signature of authorized agent*
 - *Telephone number of authorized agent*
 - *Mandatory thirty-day notice of cancellation / non-renewal. (See below.)*
 - *Evidence of insurance coverage shall be provided on a form acceptable to the Owner*

- *Policy Provisions. Each of the insurance coverages required below (i) shall be issued by a company licensed by the Insurance Commissioner to transact the business of insurance in the State of Georgia for the applicable line of insurance, and (ii) shall be an insurer (or, for qualified self-insureds or group self-insureds, a specific excess insurer providing statutory limits) with a Best Policyholders Rating of "A-" or better and with a financial size rating of Class V or larger. Each such policy shall contain the following provisions:*
 - *The insurance company agrees that the policy shall not be canceled, changed, allowed to lapse or allowed to expire until thirty (30) days after the Owner has received written notice thereof as evidenced by return receipt of registered letter or until such time as other insurance coverage providing protection equal to protection called for in this contract shall have been received, accepted and acknowledged by the Owner. Such notice shall be valid only as to the project as shall have been designated by Project Number and Name in said notice.*
 - *The policy shall not be subject to invalidation as to any insured by reason of any act or omission of another insured or any of its officers, employees, agents or other representatives ("Separation of Insureds").*

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- *Each Insurer is hereby notified that the statutory requirement that the Attorney General of Georgia shall represent and defend the Indemnities remains in full force and effect and is not waived by issuance of any policy of insurance. In the event of litigation, any settlement on behalf of the indemnities must be expressly approved by the Attorney General. The Contractor and its insurance carrier may retain, but are not obligated to retain, counsel to assist with the defense of the Indemnitees, in which case there will be mutual cooperation between the Attorney general and such counsel.*
 - *The maximum deductible, except for worker's compensation qualified self-insurers or group self-insurers, in any policy shall not exceed \$100,000.00.*
- *Insurance Coverage. The Contractor also agrees to purchase and have the authorized agent state on the insurance certificate that the following types of insurance coverage, not inconsistent with the policies and requirements of O.C.G.A. § 50-21-37, have been purchased by the Contractor. The minimum required coverage and liability limits are as follows:*
- *Workers' Compensation Insurance. The Contractor agrees to provide Workers' Compensation coverage in accordance with the statutory limits as established by the General Assembly of the State of Georgia. A group insurer must submit a certificate of authority from the Insurance Commissioner approving the group insurance plan. A self-insurer must submit a certificate from the Georgia Board of Worker's Compensation stating the Contractor qualifies to pay its own worker's compensation claims. The Contractor shall require all subcontractors performing work under this contract to obtain an insurance certificate showing proof of Workers' Compensation Coverage and shall submit a certificate on the letterhead of the Contractor in the following language prior to the commencement of work:*
 - *"This is to certify that all subcontractors performing work on this project are covered by their own workers' compensation insurance or are covered by the Contractor's worker's compensation insurance."*
- *Employers' Liability Insurance. The Contractor shall also maintain Employer's Liability Insurance Coverage with limits of at least:*
 - *Bodily Injury by Accident – \$1,000,000 each accident; and*
 - *Bodily Injury by Disease – \$1,000,000 each employee.*
- *The Contractor shall require all subcontractors performing work under this contract to obtain an insurance certificate showing proof of Employers Liability Insurance Coverage and shall submit a certificate on the letterhead of the Contractor in the following language prior to the commencement of work:*

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“This is to certify that all subcontractors performing work on this project are covered by their own Employers Liability Insurance Coverage or are covered by the Contractor’s Employers Liability Insurance Coverage.”

- *Commercial General Liability Insurance. The Contractor shall provide Commercial General Liability Insurance (2004 ISO Occurrence Form or equivalent) which shall include, but need not be limited to, coverage for bodily injury and property damage arising from premises and operations liability, products and completed operations liability, blasting and explosion, collapse of structures, underground damage, personal injury liability and contractual liability. The Commercial General Liability Insurance shall provide at minimum the following limits:*

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

- *Additional Requirements for Commercial General Liability Insurance:*
The policy shall include an additional insured endorsement naming the officers, members, and employees of the Owner and the State of Georgia as additional Insureds. The coverage extended to the additional insureds for any claims not covered by the Georgia Tort Claims Act shall be no broader than the coverage extended to the Contractor and is not expanded to cover claims and losses that are not insurable under the Contractor’s policy. The policy or policies must be on an “occurrence” basis. The policy must include separate aggregate limits per project.
- *Commercial Business Automobile Liability Insurance. The Contractor shall provide Commercial Business Automobile Liability Insurance which shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned or hired automobile. The Commercial Business Automobile Liability Insurance Policy shall provide not less than \$1,000,000 Combined Single Limits for each occurrence. Additional Requirements for Commercial Business Automobile Liability Insurance:*
 - *The policy shall name as additional Insureds the officers, members, and employees of the Owner and the State of Georgia.*
 - *The coverage extended to the additional insureds for any claims not covered by the Georgia Tort Claims Act shall be no broader than the coverage extended to the Contractor and is not expanded to cover claims and losses that are not insurable under the Contractor’s policy.*
- *Commercial Umbrella Liability Insurance. The Contractor shall provide a Commercial Umbrella Liability Insurance to provide excess coverage above the Commercial General Liability, Commercial Business Automobile Liability and the Workers’ Compensation and Employers’ Liability to satisfy the*

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minimum limits set forth herein. The minimum amount of Umbrella limits required above the coverages and minimum limits state in 33.c.3 (a), (b), (c) and (d) shall be:

- *Minimum Combined Primary Liability and Excess Umbrella Limits of:
\$3,000,000 per Occurrence
\$4,000,000 Aggregate*

- *Additional Requirements for Commercial Umbrella Liability Insurance:*
 - *The policy shall name as additional Insureds the officers, members, and employees of the Owner and the State of Georgia.*
 - *The coverage extended to the additional insureds for any claims not covered by the Georgia Tort Claims Act shall be no broader than the coverage extended to the Contractor and is not expanded to cover claims and losses that are not insurable under the Contractor's policy.*
 - *The policy must be on an "occurrence" basis.*

- *Builders Risk Insurance. Contractor shall provide a Builder's Risk Policy to be made payable to the Owner and Contractor, as their interests may appear. The policy amount should be equal to 100% of the contract sum, written on an all risk basis or its equivalent. All deductibles shall be the sole responsibility of the Contractor, and in no event shall the amount of any deductible exceed \$10,000.00. The policy shall be indorsed as follows:*
 - *"The following may occur without diminishing, changing, altering or otherwise affecting the coverage and protection afforded the insured under this policy:"*
 - *Furniture and equipment may be delivered to the insured premises and installed in place ready for use; and*
 - *Partial or complete occupancy by Owner; and*
 - *Performance of work in connection with construction operations insured by the Owner, by agents or lessees or other contractors of the Owner, or by contractors of the lessee of the Owner.*
 - *In the event that the contract is for renovation, addition or modification of an existing structure and Builders Risk Insurance is not available, the Owner will accept an Installation Floater Insurance Policy with the above endorsements [E-33.c.3 (f)] 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.*

- *Disposition of Insurance Documents. Prior to commencing work, one certificate of insurance with all endorsements attached must be deposited with Owner for each insurance policy required.*

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- *Termination of Obligation to Insure.* Unless otherwise expressly provided to the contrary, the obligation to insure as provided herein shall not terminate until the Design Professional shall have executed the Certificate of Material Completion.
- *Failure of Insurers.* The Contractor is responsible for any delay resulting from the failure of his insurance carriers to furnish proof of proper coverage in the prescribed form.

(34) Identification, Correlation, and Intent of Documents

The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. The Contract Documents consist of the Contract between the Owner and Contractor with these General Requirements, Supplementary and other Conditions, the Drawings, the Specifications, all Addenda issued prior to the execution of this Agreement, and all Modifications issued by the Owner after execution of the Contract such as Change Orders, and written interpretations. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. Work not covered in the Contract Documents will not be required unless it is necessary to produce the intended results.

(35) Complete, Definite, and Clear Instructions and Schedules of Drawings.

- *Refinement of Documents.* The Contractor shall do no work without complete, definite, and clear drawings and specifications. In the event the Contract Documents are not complete, definite, and clear the Contractor shall make demand upon the Design Professional in writing for additional instructions and shall furnish the Owner a copy of the aforesaid demand. With reasonable promptness, the Design Professional shall furnish complete, definite, and clear instructions in writing, or by means of drawings, or in writing and by means of drawings. Such additional instructions, if given orally, shall be confirmed in writing or by drawings or both within a reasonable space of time. Any such additional instructions shall be consistent with the Contract Documents, true developments thereof, and reasonably inferable therefrom. The work shall be executed in conformity with the aforesaid instructions. The Design Professional shall furnish the Owner a copy of all additional instructions issued to the Contractor.
- *Schedules.* The Contractor and the Design Professional shall jointly prepare a schedule, subject to change from time to time in accordance with the progress of the work, fixing the dates at which the various detail drawings will be required, and the Contractor shall furnish them in accordance with that schedule.

(36) Contract Documents at the Site

The Contractor shall keep at the site one copy of the Contract Documents in good order with all addenda and change orders noted thereon and available to the Owner, Design Professional and their representative(s).

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(37) Ownership of Drawings and Models

All drawings, specifications, and copies thereof furnished by the Design Professional are the property of the Owner. They are not to be used on other work, and with the exception of one set, are to be returned to the Design Professional on his request at the completion of the work. All models are the property of the Owner.

(38) Specification Arrangement

The specifications are separated into numbered and titled divisions for convenience of reference. Neither the Owner nor the Design Professional assumes any responsibility for defining the limits of any subcontracts on account of the arrangement of the specifications. Notwithstanding the appearance of such language in the various divisions of the specifications as, "The Plumbing Contractor", "The Electrical Contractor", "The Roofing Contractor", etc., the Contractor is responsible to the Owner for the entire contract and the execution of all of the work referred to in the Contract Documents. No partial sets of bidding documents shall be issued by the Design Professional.

(39) Conflicts

The following principles shall govern the settlement of disputes which may arise over conflicts in the Contract Documents: (a) as between figures given on drawings and the scaled measurements, the figures shall govern; (b) as between large-scale drawings and small-scale drawings, the larger scale shall govern; (c) as between drawings and specifications, the requirements of the specifications shall govern; and (d) as between the contract and the specifications, the requirements of the contract shall govern. Conflicts noted shall be reported to the Design Professional.

(40) Effect of Addenda, Bulletins, and Change Orders

No special implication, interpretation, construction, connotation, denotation, import, or meaning shall be assigned to any provision of the Contract Documents because of changes created by the issuance of any (a) addendum, (b) bulletin, or (c) change order other than the precise meaning that the contract documents would have had if the provision thus created had read originally as it reads subsequently to the addendum, bulletin, or change order by which it was created.

(41) Manufacturer's Recommendations

In the event the contract shall require that given work or materials shall be installed in accordance with the manufacturer's recommendations or requirements, the Contractor shall obtain for his use at the site in executing the work copies of the bulletin, circular, catalogue, or other publication of the manufacturer bearing the title, number, edition, date, etc., designated in the contract.

(42) Superintendence and Supervision by Contractor

- *Superintendent of Contractor. The Contractor shall keep at the worksite during work progress and until the Certificate of Material Completion has been executed by the Design Professional, a competent superintendent and any necessary assistants, all satisfactory to the Design Professional and Owner. The superintendent shall not be changed except with the consent of the*

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Design Professional and Owner unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ. The superintendent shall represent the Contractor in his absence, and all directions given to the superintendent shall be as binding as if given to the Contractor.

- *Replacement of Superintendent. If the Contractor terminates the Project Superintendent or, if the Contractor, for any reason, engages a Project Superintendent different from the one originally assigned to the Project, the Contractor must ensure that the replacement Project Superintendent has equivalent qualifications and experience as the originally identified Project Superintendent. Furthermore, the Contractor must obtain the Owner's prior written approval before engaging a permanent replacement Project Superintendent.*
- *Supervision by Contractor. The Contractor shall supervise and direct the Work, using his best skill and attention and he shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.*

(43) Commencement, Prosecution and Completion

The Contractor will be required (a) to commence work under this contract within ten (10) days after date of written notice from the Owner to proceed, (b) to prosecute the work with faithfulness and energy (c) to install the various parts of the work with equal steps shown on the construction progress schedule and at the same rate shown on the construction progress schedule to be furnished pursuant to Item (48) below and (d) to complete the work within the time stipulated in the bid form as adjusted by any extensions of time provided. Commencement of work shall mean actual physical work on the site. In the event the Contractor shall be delinquent in respect to compliance with the time limits established in the construction progress schedule, he shall, within seven days after receipt of written demand of the Owner, commence working not less than a twelve hour day and no less than six days a week until such time as he shall have brought the amount of work in place into compliance with the construction progress schedule. Fulfillment of this requirement as to overtime work (hereinafter referred to as "recovery of lost time required of the Contractor for his breach of covenant as to time") shall not relieve the Contractor from liability for breach of the covenant as to time. For account of recovery of lost time required of the Contractor for his breach of covenant as to time the Contractor shall be entitled to no claim against the Owner for any payment, injury or damages.

(44) Measurements and Dimensions

Before ordering material or doing work which is dependent upon coordination with building conditions, the Contractor shall verify all dimensions, elevations, grades, and pitch by taking measurements at the building and shall be responsible for the correctness of same. No consideration will be given to any claim based on differences between the actual dimensions and those indicated on the drawings. Any discrepancies between the drawings and/or the specifications and the existing conditions shall be referred to the Design Professional for additional instructions before any work affected thereby is given.

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(45) Cutting, Patching and Fitting

The Contractor shall do all cutting, fitting, or patching of his work that may be required to make its several parts come together properly and fit.

(46) Space Conditions

All pipes passing through floors, walls, and ceilings shall be installed with sufficient space between them to permit installation of pipe insulation and floor, wall, and ceiling plates without cutting of insulation or plates. The Contractor shall locate all equipment that must be serviced, operated, or maintained in fully accessible positions.

(47) Cleaning Up

The Contractor shall at all times keep the premises 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. The Contractor shall provide such mats, drop cloths, etc., as shall be necessary to protect the surrounding areas from soil or damage. Any damage to existing work shall be repaired or replaced in accordance with E-20 of the General Requirements. At the completion of the work he shall remove all his rubbish from and about the building(s) and all his tools, scaffolding, and surplus materials and shall leave his work "broom-clean" or its equivalent, unless more exactly specified. In case of dispute the Owner may remove the rubbish and charge the cost to the Contractor as the Design Professional shall determine to be just.

(48) Progress Reports

Within such reasonable space of time as the Owner shall designate in writing, the Contractor shall submit to the Owner such schedule of quantities and costs, construction progress schedules, payrolls, bills, vouchers, correct copies of all subcontracts, statements, reports, correct copies of all agreements, correspondence, and written transactions with the surety on the performance bond which have any relevance to the work, estimates, records, and other data as the Owner may request concerning work performed or to be performed under this contract. When requested by the Owner, the Contractor shall give the Owner access to accounts relating to the foregoing. The above reports shall include but are not limited to (a) written notice of dates by which specified work will have been completed, (b) written notice of dates by which non-compliant work shall have been made good, (c) written notice that non-compliant work has been made good, (d) written notice as to the date or dates by which work which has not been performed with equal steps and at the same rate required by the construction progress schedule shall have been brought into conformity with the construction progress schedule, (e) date by which any undisputed claim of a subcontractor, Supplier, or laborer shall have been paid, (f) written advice regarding the nature and amount of any disputed claim of a subcontractor, Supplier, or laborer, and (g) information regarding work performed upon demand of the Owner pursuant to a Change Order. Prior to submitting the first periodical estimate, the Contractor shall have furnished to the Owner and the Design Professional a construction progress schedule (based on work in place only) in accordance with the style and format of a specimen to be furnished by the Owner.

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(49) Changes in the Work

- *Owner's Right to Make Changes.* The Owner, without invalidating the Contract, may order Changes in the Work consisting of additions, deletions, or modifications, the Contract Sum and the Contract Time being adjusted accordingly. The Contractor hereby expressly agrees that the Contractor shall have no right to a claim for damages or extended overhead because of changes made by the Owner. Such work is hereinafter designated "change" or "changes." All such changes shall be performed under the conditions of the original contract except that any claim for extension of time caused thereby shall be adjusted at the time of signing of the change order form. All such changes in the Work shall be authorized only by written Change Order signed by the Owner. (A sample change order form is provided in Section G; however, the exact form to be used may differ and may be provided by the Design Professional or the Owner.)

The change order form shall be accompanied by a breakdown in the form prescribed in a specimen that the Owner will supply to any bidder upon request. The Design Professional shall certify to the amount of the adjustment. The Contractor and the Owner shall sign the change order form. The breakdown is only for the purpose of enabling the Design Professional and the Owner to make a judgment on the dollar amount of the adjustment in the contract sum. In the event any condition, term, qualification, limitation, exception, exemption, modification, or proviso shall appear in a breakdown, it shall be invalid unless expressly recited in the change order form under Paragraph 3, "Description of Change."

- *Cost to Owner for Change.* The cost or credit to the Owner from a change in the Work shall be determined in one or more of the following ways:
 - *By estimate and acceptance of a lump sum.*
 - *By Unit Prices named in the Contract or subsequently agreed upon; Unit Prices are NET and include all compensation due the Contractor.*
 - *By force account, which is defined as expenditures allowed under this Article plus a percentage of percentages as stated hereinafter [see paragraph (f) below].*
- *Changes Forbidden without Consent of Owner.* Neither the Design Professional nor the Contractor shall make any change whatsoever in the work without authorization or order of the Owner in writing except in emergency. The Contract Sum and the Contract Time may be changed only by written Change Order.
- *Existing Conditions.* By executing the Contract, the Contractor represents that he has visited the work site and familiarized himself with the local conditions under which the Work is to be performed. The Owner does not undertake to represent or warrant site or local conditions.

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- *Cost to Owner, Allowances for Contractor and Allowable Expenditures.* In cases shown in item (c) immediately above, the “allowance for overhead and profit” combined, included in the total cost to the Owner, shall be based upon the following schedule:
 - *For the Contractor forces, not to exceed 20% of his “net additional allowable expenditures”, if any, for changes.*
 - *For a subcontractor an allowance for work which he performs with his own forces, not to exceed 20% of his “net additional allowable expenditures”, if any, for changes. A subcontractor shall receive no allowance for overhead and profit on work not performed by his own forces.*
 - *For the Contractor an allowance for work performed by his subcontractors, not to exceed 7 1/2% of the amount, if any, due the subcontractor for changes.*

The above percentages shall be applied to the “net allowable expenditures” if any, as limited and defined herein. If the net difference between “allowable expenditures” and savings results in a decrease in expenditures, the amount of credit allowed the Owner shall be the net decrease without and credit for profit and overhead. “Net additional allowable expenditures” as used herein shall mean the difference between all “allowable expenditures” and savings. The term “allowable expenditures” is limited to and defined as items of labor or materials, the use of heavy construction equipment and all such items of cost as insurance premiums, social security and old age and unemployment insurance, and (in cases where there is an extension of time) pro rata expenditures for time of foreman employed in the direct superintendence of productive labor in execution of changes. All expenditures not included in the term “allowable expenditures” as limited and defined in this article shall be considered as overhead, including but not limited to insurance other than that which is mentioned in this article, bond premiums, supervision, travel (meals, transportation and lodging), superintendence (except pro rata time of foremen as referred to herein), timekeepers, clerks, watchmen, hand tools, small tools, incidental job burdens and office expense. Any other provisions in the Contract Documents to the contrary notwithstanding, only demonstrable, direct, out-of-pocket expenditures for the changes plus percentages as set forth hereinabove shall be allowable for changes. The Contractor shall provide to the Owner, upon request, any and all necessary information the Owner may require in order to verify any and all costs associated with “Changes in the Work.”

- *Breakdown of Expenditures, Cases (1) and (3).* To accompany all change orders, the Contractor shall furnish a breakdown of expenditures for labor and materials by units and quantities in the form prescribed by the Owner, and the breakdown shall be accompanied by the following declaration.

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

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not exceed the actual costs to the Contractor; and that the quantities shown do not exceed actual requirements.”

For all force account changes the Contractor shall promptly and in no event later than thirty (30) days after receipt of written demand therefore pursuant submit to the Design Professional a complete, accurate, and final breakdown and account together with vouchers, showing all expenditures and percentages allowable under Case (3). For all unit price changes the Contractor shall promptly and in no event later than thirty (30) days after receipt of written demand therefore submit to the Design Professional an accurate account of the quantity of work performed under Case (2). In any case, the Design Professional shall certify to the amount [including under Case (1) and Case (3) the allowance prescribed in the contract for overhead and profit] due the Contractor. The Contractor shall obtain and furnish as backup to the Contractor’s breakdown a separate breakdown for each subcontractor’s charges prepared by each subcontractor on the letterhead of the subcontractor and properly signed by the subcontractor.

- *Time of Submission of Claims [“Statement of Claim”]. Budgeting and cash flow being of material importance to the Owner, no claim of the Contractor on account of any change or on account of any alleged negligence of the Design Professional or Owner whether said claim shall be accrued or prospective, shall be valid unless a “statement of claim” in full accompanied by vouchers and other supporting data shall have been filed with the Owner by the Contractor not later than thirty (30) days after receipt of written request thereof by the Contractor from the Owner, time being of the essence. The “statement of claim” shall contain a concise and clear recital of the ground or grounds on the basis of which the claim is asserted, including a designation of the provision or provisions of the contract documents on which the claim is based. The statement of claim shall indicate the dollar amount of the claim.*

(50) Claims

- *Extra Cost. If the Contractor maintains that any instructions by drawings or otherwise involve extra cost to the Owner under this Contract, he shall give the Owner and the Design Professional written notice thereof within a reasonable time after the receipt of such instructions, and in any event before proceeding to execute any change except in emergency endangering life or property. The allowances to the Contractor shall then be as provided under Item 49 above. No claim for extra cost shall be valid unless so made.*
- *Damages. If either party to this Contract should suffer damage in any manner because of any wrongful act of neglect of the other party or of anyone employed by the other party, then he shall be reimbursed by the other party for such damage. No claim of the Contractor for damages shall be valid unless written notice thereof shall have been received by the Owner by registered mail within fifteen (15) days after occurrence of the event on which the claim is based. The “statement of claim” shall contain a concise and clear recital of the ground or grounds on the basis of which the claim is asserted, including a designation of the provision or provisions of the*

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Contract Documents on which the claim is based. The statement of claim shall indicate the dollar amount of the claim.

- *Protests. All reference to arbitration is deleted from the Contract Documents. Decisions of the Design Professional shall be rendered in all cases where provided for under the General Requirements of the Contract, but no decision of the Design Professional shall deprive the Owner or the Contractor of any form of redress which may be available under the laws of the State of Georgia to contracting parties. Any decision of the Design Professional shall be final and binding on the Contractor unless the Contractor shall have given written notice of protest to the Owner by registered mail within ten days of the receipt of the decision.*

(51) *Delays and Extensions of Time*

- *Grounds. If the Contractor is delayed at any time in the progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control, then the contract time shall be extended by Change Order for such reasonable time as the Design Professional may determine. The Contractor expressly agrees that the Contractor's sole remedy for such delay shall be an extension of contract time and that the Contractor shall make no demand for damages or extended overhead.*
- *Filing of Claim. No such extension shall be made for delay occurring more than ten (10) days before claim thereof is made in writing to the Design Professional with copy to the Owner. In the case of a continuing cause of delay, only one claim is necessary, but no claim for a continuing delay shall be valid unless the Contractor, within ten days from the cessation of the delay, shall have given notice in writing to the Design Professional, with copy to the Owner, as to the amount of additional time claimed.*
- *Delay in Furnishing Drawings. If no schedule or agreement stating the dates upon which drawings or approval of shop drawings shall be furnished is made, then no claim for delay shall be allowed on account of failure of the Design Professional to furnish drawings or approval of shop drawings until two weeks after demand thereof and not then unless such claim be reasonable.*
- *No Damages for Delay. In the event of any delay, not the fault of the Contractor, the Contractor shall be entitled to an extension of time for completion only, and shall not be entitled to any additional payment on account of such delay. Without limiting the foregoing, the Contractor shall not be entitled to payment or compensation of any kind from the Owner for direct, indirect or impact damages, including but not limited to costs of acceleration arising because of hindrance or delay from any cause whatsoever, whether such hindrances or delays be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however,*

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that this provision shall not preclude recovery by the Contractor of damages for hindrances or delays due solely to fraud or bad faith on the part of the Owner or his agents.

(52) *Inspection of Work*

- *Access to Work. The Design Professional and his representatives shall at all times have access to the work wherever it is in preparation or progress, and the Contractor shall provide proper facilities for such access and for inspection.*
- *Notice to Design Professional from Contractor Prior to Covering Work. If the specifications, the Design Professional's instructions (either in the specifications or issued later in writing), laws, ordinances or any public authority require any work to be specially tested or approved, the Contractor shall give the Design Professional timely notice in writing of its readiness for inspection, and if the inspection is by any authority other than the Design Professional, of the date fixed for such inspection. Inspections by the Design Professional shall be made promptly and where practicable at the source of supply. If any work should be covered without approval or consent of the Design Professional, it must, if required by the Design Professional, be uncovered for examination at the Contractor's expense.*
- *Re-examination or Re-testing of Work Covered pursuant to Consent of Design Professional. Re-examination or re-testing of questioned work covered pursuant to consent of the Design Professional may be ordered by the Design Professional, and if so ordered the work must be uncovered by the Contractor. If such work were found in accordance with the Contract Documents, the Owner shall pay the cost of re-examination and replacement or of re-testing. If such work were found not in accordance with the Contract Documents the Contractor shall pay such cost unless he shall show that the defect in the work was caused by another Contractor, and in that event, the Owner shall pay such cost. Re-examination or re-testing under the terms of this Article applies only to work which has been covered with consent of the Design Professional. Work covered without consent of the Design Professional must be uncovered for examination.*
- *Inspection Does Not Relieve Contractor. Under the Contract Documents the Contractor has assumed the responsibility of furnishing all services, labor and materials for the entire work in accordance with such documents. No provisions of this article nor any inspection of the work by the Owner, representatives of the Owner, the Using Agency, Contract Compliance Specialist (if applicable), engineers employed by the Design Professional, representatives of the Design Professional, or the Design Professional shall in any way diminish, relieve, or alter said responsibility and undertaking of the Contractor; nor shall the omission of any of the foregoing to discover or to bring to the attention of the Contractor the existence of any work or materials injured or done not in accordance with said Contract Documents in any way diminish, relieve, or alter such obligation of the Contractor nor shall the aforesaid omission diminish or alter the rights or remedies of the Owner as set forth in the Contract Documents. The Contract Compliance Specialist owes no duty to the Contractor.*

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- *False Start.* In the event notice of readiness pursuant to 52(b), above shall have been issued prematurely by the Contractor, his action shall be deemed to be a “false start”, and the Contractor shall be liable for the damage resulting from the aforesaid false start, including but not limited to the salary, professional fees, and travel and living expenses of the person or parties inconvenienced by the aforesaid false start.

(53) Correction of Work

- *The Contractor shall promptly correct any Work rejected by the Design Professional as defective or as failing to conform to the Contract Documents whether observed before or after Completion and whether or not fabricated, installed or completed, and shall correct any Work found to be defective or nonconforming within a period of one year from the Date of Completion of the Contract or within such longer period of time as may be prescribed by law or the terms of any applicable special warranty required by the Contract Documents. The provisions of this Article apply to Work done by subcontractors as well as to Work done by direct employees of the Contractor.*
- *Remedy of the Owner for Breach of Notice of Non-Compliant Work.* If the Contractor does not make good a deficiency within a reasonable space of time fixed in a notice of non-compliant work, the Owner may:
 - *Remove the non-compliant work and store it at the expense of the Contractor. If the Contractor does not pay the expenses of such removal and storing within ten days after receipt of written demand of the Owner, the Owner may upon three days’ notice in writing to the Contractor, sell such materials at private sale or at auction and shall account for the net proceeds thereof after deducting all proper costs incurred by the Owner; and*
 - *Supply omitted work, perform unexecuted work, replace and re-execute work not done in accordance with the methods and materials designated in the Contract Documents and deduct the cost thereof from any payment then or thereafter due the Contractor, Provided that the Design Professional shall approve the amount charged to the Contractor.*

The remedies stated in this article are in addition to the remedies otherwise available to the Owner, do not exclude such other remedies, and are without prejudice to any other remedies. Time limits stated in notices of non-compliant work are of the essence of the contract.

(54) Deductions for Uncorrected Work

If the Design Professional and Owner deem it inexpedient to correct work injured or done not in accordance with the contract, an equitable deduction from the contract price shall be made therefore; but there is no duty on the part of the Owner to accept any work injured or done not in accordance

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with the methods and materials designated in the Contract Documents, nor does the Contractor have the right to demand that there shall be acceptance of work injured or done not in accordance with the methods and materials designated in the Contract Documents.

(55) Fire Marshal Inspections.

- *General. The State Fire Marshal may make inspections at any time. It shall be the responsibility of the Contractor to request inspections at 80% completion and for 100% inspection and Certificate of Occupancy. Requests shall be in writing with a copy to the Owner and Engineer. (Confirm lead-time for inspection.)*
- *Jurisdiction. The facilities are under the jurisdiction of State Official Code of Georgia annotated §25-2-13 (O.C.G.A.)*
- *Inspections Defined: The basic definitions for 80% and 100% inspections are as follows:*
 - *80% Field Review—The structural components are in place and open for review of the fire safety components. NOTE: Structural components include the following: firewalls, vertical shafts, stairways, smoke stops, hazardous area separation, roof and ceiling assemblies, corridor and door width, and HVAC system.*
 - *100% Completion—The building(s) is/are ready to occupy and qualifies for a Certificate of Occupancy.*
- *Certificate of Occupancy. The Contractor's obligation under the Contract is to install the Work in accordance with the Contract Documents, obtain the Certificate of Occupancy from the State Fire Marshal or his deputy, and forward it to the Design Professional as a part of the final close out procedures. The Design Professional's obligation is to design the Work to comply with the applicable codes and to qualify for a Certificate of Occupancy.*

(56) Subcontractors, Materialmen, Suppliers and Employees

- *Subcontractor. A subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work required at the site.*
- *Submission of List. Unless otherwise required by the Contract Documents, the Contractor, as soon as practicable after the award of the Contract, shall furnish to the Owner in writing the names of subcontractors for each of the principal portions of the Work. The Contractor shall not employ any subcontractor to whom the Owner may have a reasonable objection. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection. The contract requires each subcontractor, to the extent of the Work to be performed by the subcontractor, (1) to be bound to*

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the Contractor by the terms of the Contract Documents, and to assume toward the Contractor, all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner, and (2) allow to the subcontractor the benefit of all rights, remedies and redress afforded to the Contractor by these Contract Documents.

- *Warranty of Contractor. The Contractor warrants that the subcontractors selected by him are reputable, skilled, reliable, competent, qualified in the trade or field in which they are to perform on the project, and thoroughly familiar with applicable codes.*
- *Certification On Account Of. The Design Professional shall, on request furnish to any subcontractor, wherever practicable, evidence of the amounts certified on his account.*
- *Contractor Responsible for Acts and Omissions of Subcontractors, Materialmen, Suppliers and Employees. The Contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors, materialmen, suppliers, and employees and of persons either directly or indirectly employed by them as he is for the acts and omissions of persons directly employed by him.*
- *No Contract Between Owner and Any Subcontractor, Materialmen, Supplier or Employee. Nothing contained in the Contract Documents shall create any contractual relation between the Owner and any subcontractor or between the Owner and any materialmen, supplier, or employee of the Contractor or his subcontractors.*

(57) *Relationship of Contractor and Subcontractors*

- *Obligations of Each. The Contractor agrees to bind every subcontractor and every subcontractor agrees to be bound by the terms of the contract documents insofar as they are applicable to his work.*
- *Owner Not Obligated to Any Subcontractor. There is no obligation on the part of the Owner to pay to or to see to the payment of any sums to any subcontractor, supplier, laborer, employee, or claimant as defined in the payment bond.*
- *Incorporation of Terms in Subcontracts. The Contractor agrees that failure on his part to incorporate in all subcontracts an express provision in accordance with this section shall be deemed to be and is a breach of an essential covenant.*

(58) *Application for Payments*

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- *Periodic Estimates and Receipts.* The Contractor shall submit to the Design Professional in accordance with a form to be supplied by the Owner, an application [sometimes herein designated “periodic estimate”] for each payment, and, if requested by the Owner or Design Professional, receipts or other vouchers, showing his payments for materials and labor, including payments to subcontractors as requested.
- *Initial Breakdown and Periodic Payments.* If payments are made on valuation of work done, such application shall be submitted at least ten days before each payment falls due, and the Contractor shall, before the first application, submit to the Design Professional a schedule of values of the various parts of the work, including quantities, aggregating the total sum of the contract, on a form to be furnished by the Owner with a complete breakdown of the contract price so arranged and so itemized as to meet the approval of the Design Professional and, if requested, supported by such evidence as to its correctness as the Design Professional may direct. The schedule designated herein the “initial breakdown”, when approved by the Design Professional shall be used as a basis for certificates of payment, unless it is found to be in error. In applying for payments, the Contractor shall submit a statement based upon this schedule on a periodic estimate form to be supplied by the Owner, and, if requested by the Design Professional or Owner, itemized in such form and supported by such evidence as the Design Professional or Owner may direct showing the Contractor’s right to the payment claimed on the periodical estimate.
- *Materials Storage.* If payments are made on account of materials delivered and suitably stored at the site but not incorporated in the work, they shall, if required by the Owner or the Design Professional, be conditional upon submission by the Contractor of bills of sale or such other procedure as will establish the Owner’s title to such material or otherwise adequately protect the Owner’s interest. The Contractor is responsible for the existence, protection, and, if necessary, replacement of materials until execution of the Certificate of Material Completion of the Design Professional. The Owner shall not pay for any materials stored off site.

Should the Owner provide limited storage space in the work area, Contractor assumes full, complete and non-delegable responsibility for the security of the equipment so stored and for determining that the material stored in this area will not overload the floor system. Any damage to the structure as a result of the Contractor overloading the floor shall be repaired by the Contractor at no cost to the Owner.

- *Progress Payments, Retainage and Conversion to Lump Sum.* The Owner shall make progress payments on account of the contract as follows: On or about the 15th day of each month 90 per cent of the value, based on the contract prices, of labor and materials incorporated in the work and of materials suitably stored at the site thereof up to the 1st day of that month, as estimated by the Design Professional, less the aggregate of previous payments, until one-half of the

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contract sum is due. At any time after one-half of the contract sum, including change orders, becomes due and the work is:

- o on or ahead of the construction progress schedule;*
- o there are no breaches of notices of non-complaint work;*
- o there is no delinquency in the filing of the final breakdown and accounting, together with vouchers, on force account work as referred to in Article 49 of the General Requirements; and*
- o there are no unsatisfactory performance evaluations,*

If the Contractor requests and the Owner and Design Professional approve, the sum being withheld as retainage will be converted to a lump sum and held by the Owner until final completion.

No further retainage will be withheld by the Owner from payments to the Contractor unless the following deficiencies occur: the percentage of work complete falls behind the percentage required by the construction progress schedule by as much as 15 per cent; the Contractor fails to cure a notice of non-compliant work; there are [further or additional] unsatisfactory performance evaluations; the Contractor becomes delinquent in regard to the filing of the final breakdown and accounting, together with vouchers, on force account work as referred to in Article 49 of the General Requirements. In such event or events, the Owner shall reinstate the 10 per cent retainage on all periodical estimates due to be paid while one or more of the events continues to exist. The Contractor will be given written notice of the reinstatement of the retainage.

If the Contractor recovers all lost time and puts the work back on schedule; remedies all breaches of notices of non-compliant work; corrects the deficiencies which caused the unsatisfactory performance evaluations, and supplies a proper breakdown and accounting on force account work, then the sums withheld while either or all of the events existed will be converted to an additional lump sum and held by the Owner until final completion, and no further retainage will be withheld unless any of the deficiencies recur, in which event or events the Owner shall reinstate the 10 per cent retainage on all subsequent periodical estimates.

At the discretion of the Owner, the retainage of each subcontractor may be released separately as he completes his work. An application for release of a subcontractor's retainage shall bear the original certificate of the subcontractor, the Contractor, and the Design Professional that the subcontractor's work has been fully performed and that the sum for which payment is requested is due by the Contractor to the subcontractor. Checks releasing a subcontractor's retainage shall be made payable to the Contractor, the Contractor's surety, and the subcontractor and shall be mailed to the Contractor's surety. This article does not create any contractual relationship between the Owner and the subcontractor or any duty of the Owner to any subcontractor. All warranties shall run from the date of the Certificate of Material Completion of the Design Professional unless otherwise expressly provided in the contract. Payments pursuant to this

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article shall in no way diminish, change, alter or affect the rights of the Owner under the Contract Documents.

(59) Certificate of Payments

- *Issuance.* If the Contractor has made application for payment, the Design Professional shall not later than the date when each payment falls due issue to the Contractor a certificate for such amount as he decides to be properly due or state in writing his reasons for withholding a certificate.
- *Effect.* No certificate issued, nor payment made to the Contractor, nor partial or entire use or occupancy of the work by the Owner, shall be an acceptance of any work or materials not in accordance with the Contract Documents. The making of the final payment shall constitute a waiver of all claims by the Owner other than those arising from unsettled liens, from faulty work appearing after final payment, or from requirements of the specifications or drawings. Acceptance of the final payment shall operate as and shall be a release to the Owner from all claims of any kind or character under the contract except for such specific amount or amounts as may have been withheld to cover the fair value of any incomplete work which has been certified by the Design Professional as incomplete through no fault on the part of the Contractor.
- *Date and Rate of Payment.* Progress payments will be made by the Owner to the Contractor in accordance with Article 58 above. Final payment will be made in accordance with Article 5 of the Contract. The date and rate of payment are subject to Article 60. Sums retained pursuant to the present article are and remain the property of the Owner until such time as the Contractor shall have become entitled to receive payment of such retainage by furnishing the remainder of the quid pro quo under the contract and complying in full with the terms of the contract.

(60) Payments Withheld

The Design Professional may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any certificate to such extent as may be necessary to protect the Owner from loss on account of:

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

When the above grounds are removed, payment shall be made for amounts withheld because of them. At the option of the Owner adherence to the construction progress schedule shall be a

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condition precedent to the right of the contractor to demand payment of a periodical estimate. No omission on the part of the Owner to exercise the aforesaid option shall be construed to be a waiver of breach of the construction progress schedule or acquiescence therein, and the Owner may exercise its option from time to time and as often as may be expedient.

(61) *Liens*

Neither the final payment nor any part of the retained percentage shall become due until the Contractor, if required, shall deliver to the Owner a complete release of all liens or claims arising out of this contract, or receipts in full in place thereof and, if required in either case, an affidavit that so far as he has knowledge or information the releases and receipts include all labor and materials for which a lien or claim could be filed; but the Contractor may, if any subcontractor or claimant refuses to furnish a release or receipt in full, furnish a bond satisfactory to the Owner to indemnify the Owner against any lien or claim. If any lien or claim remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien or claim, including all costs and a reasonable attorney's fee.

(62) *The Owner's Right to Do Work*

If the Contractor should neglect to prosecute the work properly or fail to perform any provision of this contract, the Owner, after three days' written notice to the Contractor may without prejudice to any other remedy he may have (including without limitation remedies against the Contractor's surety), make good the deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor, provided, however, that the Design Professional shall approve the amount charged to the Contractor.

(63) *Defective Work*

If the Contractor fails to correct defective Work or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner, by written order, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

(64) *Owner's Right to Terminate Contract*

- *Termination for Cause. If the Contractor defaults or persistently fails or neglects to carry out the Work in accordance with Contract Documents or fails to perform any provisions of the Contract, the Owner may, after seven (7) days written notice to the Contractor and without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor or, at its option that sufficient cause exists to justify such action, may terminate the Contract and take possession of the site and of all*

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materials, equipment, tools and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method it may deem expedient, and if the unpaid balance of the Contract Sum exceeds the expense of finishing the Work, such excess shall be paid to the Contractor, but if such expense exceeds such unpaid balance, the Contractor shall pay the difference to the Owner.

- *Termination for Convenience. The Owner may at any time, and for any reason or without any reason or cause, terminate this Contract by written notice to the Contractor specifying the termination date, without cause and irrespective of whether or not Contractor is in default of any of its obligations hereunder. The effective date of termination shall not be earlier than seven days from the date of confirmed receipt of the written notice. If the Owner terminates the Contract the Contractor shall: (i) stop the Services or the Work (as applicable); (ii) place no further orders or Subcontracts for materials, labor, services or equipment; and (iii) terminate all material and equipment orders and Subcontracts to the extent terminable (unless otherwise directed by Owner in writing) and advise Owner of all materials, equipment and other items which cannot be canceled or which are already delivered and allow Owner to participate in the salvage or disposition thereof. Contractor shall, as soon as practical after receiving notice of termination, submit to Owner an Application for Payment for all services performed through the date of receipt of the notice of termination, for which payment has not been previously made pursuant to the terms of this Contract.*

(65) *Contractor's Right to Stop Work or Terminate Contract*

If the Owner fails to make payment for a period of fifteen (15) days after receipt of proper pay request, the Contractor may, upon seven (7) additional days written notice to the Owner, terminate the Contract and recover from the Owner payment for all Work executed.

(66) *Notice of Readiness for Final Inspection*

When the Contractor is ready for a final inspection, he shall give notice to the Design Professional and a copy to the Owner in the following words:

"The work on the contract for the [show name of improvement or project as it appears in the contract] having been fully completed except as stipulated herein below, it is requested that a final inspection be made promptly by the Design Professional in accordance with Article 5 of the contract. The following work is incomplete through no fault of the Contractor [list any work which the Contractor regards as a proper exception under Subparagraph (d) of Article 5 of the contract] "

No final inspection shall be made until such time as the Design Professional has received a letter in the exact form indicated above and a copy thereof has been received by the Owner. In the event the Contractor shall have issued the "Notice of Readiness for Final Inspection" prematurely [hereinafter referred to as "false start"] he shall be liable for the damage resulting from the aforesaid false start including but not limited to the salaries, professional fees, and travel and living expenses of the persons or parties inconvenienced by the aforesaid false start. The Contractor agrees that he may

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not defend or excuse any deviation from the Contract Documents on the ground (a) that the deviation was not brought to his attention by another person or party or other persons or parties or (b) that a subcontractor is or subcontractors are at fault.

(67) *Operation and Maintenance Data and Instructions*

Prior to Material Completion, the Contractor shall furnish, in three ring binders, advance copies of proper written instructions to the Owner concerning operation and maintenance of all mechanical, electrical and other operating systems and equipment. The Contractor shall provide training in the operation and maintenance of all mechanical, electrical and other operating systems and equipment in the presence of the Design Professional and the Owner and shall give notice in writing to the Design Professional and Owner at least fifteen days prior to the date on which it proposes for the training.

(68) *Keys*

Keys with tags attached indicating number and/or description of door or room each key is intended to fit attached to each key shall be delivered to the Owner. Contractor shall prepare and furnish with the keys an itemized key schedule in quintuplicate listing the door or room number and/or description, serial number of key, and number of keys being delivered for each door or lock.

(69) *Marked-up Construction Documents*

Prior to demand for payment of retainage, the Contractor shall provide a complete set of Marked-up Construction Documents to the Design Professional, which set shall reflect all changes caused by addenda, field changes, Change Orders, or observed changes by the Contractor or subcontractor(s) for the purpose of the Design Professional's issuance of Record Documents to the Owner.

(70) *Affidavits*

Before receiving any portion of the retainage, the Contractor will be required to furnish a non-influence affidavit in form acceptable to the GBA.

(71) *Material Completion*

Material Completion is when the Work or designated portion thereof is complete in accordance with the Contract Documents so that the Owner can occupy and utilize the Work for its intended use. All final documents (certificates, warranties, guarantees, manuals, instructions, documents required by the Contract Documents) as required are due at Material Completion. Material Completion shall also require complete operation of all applicable building systems included in the Work, including but not limited to, mechanical, electrical, plumbing, fire protection, fire alarm, telecom, data, security, elevators, life safety and accessibility. The Work shall be complete except for Minor Items or Permitted Incomplete Work.

- *Minor Item Defined. A Minor Item is a portion or element of the Work: that can be totally complete within thirty (30) days; that can be completed while the Owner occupies the Work without impeding or interfering with either the Owner's use and occupation of the Work or the*

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Contractor's ability to complete the Minor Item; and that will not interfere with the complete use and enjoyment of the project by the Owner.

- *Permitted Incomplete Work Defined. Permitted Incomplete Work is work that is incomplete through no fault of the Contractor, as determined by the Owner, including, but not limited to, HVAC seasonal test and balance, seasonal landscaping or maintenance, incomplete work due to failure of separate contractors to complete work, and the like.*

(72) *Effect of Achieving Material Completion*

Upon the date when Material Completion is achieved, the following matters are conclusively determined:

- *The Owner may immediately occupy and secure the Work without restriction.*
- *All warranties begin to run from the date Material Completion is achieved.*
- *The Owner is responsible for all insurance for the Project.*
- *The Liquidated Damages daily rate is reduced to zero.*

The Contractor may request payment of the remaining contract balance, including retainage, less amounts credited by the Owner or incurred as liquidated damages, and less amounts withheld for the punch-list by reason of Minor Items or Permitted Incomplete Work.

(73) *Certificates of Manufacturers for Major Components*

For elevators, moving walks, dumbwaiters, escalators, lifts, major components of air conditioning systems (i.e., cooling towers, compressors, condensers, absorption units, chiller units, fan coil units, air handling units, boilers, base mounted pumps, and temperature controls); major components of heating systems (i.e., boilers, base mounted pumps, air handling units, unit ventilators, fan coil units, temperature controls, and boiler chemical feed systems); major components of plumbing systems (i.e., boilers, base mounted pumps, sewage pumps and water treatment systems) and incinerator systems; start-up, testing, and placing into operation shall be performed by the field representative(s) of the manufacturer(s), and certificate(s) of the manufacturer(s) shall be filed with the Owner on the letterhead(s) of the manufacturer(s) in which the manufacturer(s) certifies or certify that "the equipment has been installed in strict compliance with the recommendations of the manufacturer(s) and is operating properly." The manufacturer shall list in the certificate the item or items furnished to the job and the date, name, or other positive means of identifying any supplementary documents containing the recommendations of the manufacturer, with a copy of each of the supplementary documents attached to the certificate.

(74) *Warranty and Guaranty*

The Contractor warrants and guarantees that all work executed under the Contract Documents shall be free from defects of materials or workmanship for a period of one year from the date of

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Completion. All written guarantees or warranties as called for in the specifications shall specify the term and contact information for enforcement and shall be in such form as to permit direct enforcement by the Owner against any Trade Contractor, subcontractor, materialmen, or manufacturer related to the guarantee. The effective date of all warranties and guarantees shall be the date of the Certificate of Material Completion. Warranties, guarantees, and manufacturer's certificates shall be provided to the Owner in a three ring binder(s) with a summary list of contents.

(75) Correction of Work after Final Payment

Neither the Certificate of Material Completion, nor any decision of the Design Professional, payment, nor any provision in the contract shall relieve the Contractor of responsibility for faulty materials, faulty workmanship, or omission of contract work, and he shall remedy any defects or supply any omissions resulting therefrom and pay for any damage to other work resulting therefrom. The Owner shall give notice of observed defects or omissions with reasonable promptness. The Contractor shall within the space of time designated in the notice of non-compliant work and without expense to the Owner, correct, remedy, replace, re-execute, supply omitted work, or remove from the premises all non-compliant work noted by the Design Professional. The Contractor shall give prompt notice in writing to the Design Professional, with copy to the Owner, upon completion of the supplying of any omitted work or the correction of any non-compliant work. In the absence of said notice, it shall be and is presumed under this contract that there has been no correction of the non-compliant work or supplying of omitted work. If the Contractor does not remove, make good the deficiency, correct, or remedy faulty work, or supply any omitted work within the space of time designated in notice of non-compliant work without expense to the Owner, the Owner, after ten days' notice in writing to the Contractor, may remove the work, correct the work, remedy the work or supply omitted work at the expense of the Contractor. In case of emergency involving health, safety of property, or safety of life the Owner may proceed at once. Correction of defective work executed under the plans and specifications or supplying of omitted work whether or not covered by warranty of a subcontractor or materialmen, remains the primary, direct responsibility of the Contractor. The foregoing obligation of the Contractor shall remain in effect until the same shall have been extinguished by operation of the statute of limitations. As additional security for the fulfillment of such obligation, but in no way limiting the same, the Contractor warrants and guarantees that all work executed under the plans and specifications shall be free from defects of materials or workmanship for a period of one year from the date of the Certificate of Material Completion of the Design Professional, and that for not less than one year from the date of the Certificate of Material Completion of the Design Professional, or for such greater space of time as may have been designated in the specifications, products of manufacturers shall be free from defects of materials and workmanship. Whenever written guaranties or warranties are called for, the Contractor shall furnish the aforesaid for such period of time as may be stipulated. The aforesaid instruments shall be in such form as to permit direct enforcement by the Owner against any subcontractor, materialmen, or manufacturer whose guaranty or warranty is called for, and the Contractor agrees that:

- *The Contractor is jointly and severally liable with such subcontractors, materialmen, or manufacturers.*

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- *The said subcontractors, materialmen, or manufacturers are agents of the Contractor for purposes of performance under this article, and the Contractor, as principal, ratifies the warranties or guaranties of his aforesaid agents by the filing of the aforesaid instruments with the Owner. The Contractor as principal is liable for the acts or omissions of his agents.*
- *Service of notice on the Contractor that there has been breach of any warranty or guaranty will be sufficient to invoke the terms of the instrument, Provided that the Owner shall have furnished the Contractor with a copy of notice served on the subcontractor, materialmen, or manufacturer.*
- *The Contractor will bind his subcontractor, materialmen, and manufacturers to the terms of this article.*
- *The calling for or the furnishing of written warranties shall in no way limit the contractual obligation of the Contractor as set forth hereinabove. The remedies stated in this article are in addition to the remedies otherwise available to the Owner, do not exclude such other remedies, and are without prejudice to any other remedies.*

(76) *Notification to Owner when Contractor Visits Site after Final Inspection*

When the Contractor's representative visits the job site after the final inspection to perform specific work such as maintenance service, seasonal balance, or to correct a deficiency, the Contractor shall notify the Owner not less than 48 hours prior to the date on which they will visit the site, except under an emergency condition.

The Contractor shall visit the designated office of the Owner to notify the Owner that the Contractor is on the site prior to visit, thereby enabling the Owner representative to accompany the Contractor, should they so desire while the Contractor is on the project site.

A copy of the notification shall be provided to the Design Professional with the intent of the site visit. After the Contractor has completed the site visit, he shall give a written report to the Design Professional within five (5) days of the actions taken and any incomplete work yet to be performed.

(77) *Final Completion*

Completion is the completion of all Work, including completion of all Minor Items and Permitted Incomplete Work as defined in Article 71. The Design Professional's Certificate of Final Completion shall evidence completion. Completion shall be obtained not later than thirty (30) days after the last stated completion dates of any Minor Items or Permitted Incomplete Work. The Design Professional's Certificate of Final Completion shall not be issued until all Work is complete.

(78) *Payment for Final Completion*

All amounts withheld from Payment for Material Completion and not credited to the Owner are payable upon receipt of final pay request from the Contractor. Final Payment shall be due 10 days after receipt by the Owner of the application for payment upon achievement and certification of Final Completion.

CONSTRUCTION CONTRACTOR GENERAL TERMS AND CONDITIONS

(79) Parking

The Owner will not provide parking space for the Contractor or Contractor's employees, unless otherwise agreed to in writing by the Owner. Normal parking for vehicles loading or unloading goods, equipment, supplies and materials in the loading area will be provided in designated areas. Contractors shall not block any loading dock area or permit its employees to park in the designated loading areas. Contractors may park at a GBA the daily parking facility for \$5 per day per vehicle or a monthly parking pass may be obtained in the amount of \$40 per month per vehicle.

(80) Coordination Of Work

Contractor recognizes and agrees that portions of the building may be occupied by State employees performing essential tasks necessary for the efficient operation of State government. Consequently, Contractor agrees that he shall perform his work in such a manner as to provide the least possible disruption to the occupants of the building. The Contractor shall provide the GBA Project Manager work scheduling requests well in advance of the work to be performed. Contractors shall contact the Project Manager or his representative upon entering or leaving the facility or work site.

(81) First Aid

In the event of injuries requiring assistance, our security department shall be immediately notified for assistance. While working in the building, security can be reached by dialing 404-656-3281. Security can also be reached by our internal radio system available from most GBA staff.

(82) Smoke Free Building

All Owner buildings are smoke free buildings. Smoking is not allowed in the buildings but is permissible in designated areas outside the buildings.

END