

Standard Form of Agreement between
The University of Georgia Athletic Association, Inc. and Design-Builder

This agreement ("Agreement") is entered by and between:

"UGAA": **University of Georgia Athletic Association, Inc.**
Butts-Mehre Heritage Hall
1 Selig Circle
Athens, Georgia 30603

and "Design-Builder": _____ (*Design-Builder's legal name*)
_____ (*street address*)
_____ (*street address*)
_____, Georgia _____

Design-Builder's state contractor license number:

Classification of license: _____

Qualifying agent Name: _____ & No. _____

Design-Builder's Federal Employer Tax Identification
No. _____

involving a project as: _____ (*insert name of Project*) generally
described as _____ *brief general description of*
the Project contemplated) ("Project") as that Project may
be more specifically described in Construction
Documents, and pertaining to...

property located at or near: _____ ("the Property") (*insert specific*
location of Project) on land owned by the Board of
Regents of the University System of Georgia ("Board
of Regents") in or near _____, Georgia

involving lead "Design Professional": _____ (*lead Design Professional's legal name*)
_____ (*street address*)
_____ (*street address*)
_____, Georgia _____

_____ (*Design Professional of Record's name*)
Design Professional of Record's Georgia professional
license No. _____
Design Professional's Federal Employer Tax
Identification No. _____

involving _____ "Design Professional":	_____ (lead Design Professional's legal name) _____ (street address) _____ (street address) _____, Georgia _____ _____ (Design Professional of Record's name) Design Professional of Record's Georgia professional license No. _____ Design Professional's Federal Employer Tax Identification No. _____
Effective Date of Agreement:	The date of the signature of the UGAA representative below in execution of this Agreement.
Contractual Date of Substantial Completion:	The _____ day of _____, 20____.
Contractual Date of Design-related Basic Services Completion:	The _____ day of _____, 20____.
Design-Builder Preconstruction Fee:	\$ _____.
Design-Builder Preconstruction Overhead Costs:	\$ _____.
Design-Builder Construction Fee:	\$ _____.
Design-Builder Construction Overhead Costs:	\$ _____.
Stated Cost Limitation:	\$ _____.

For good and valuable consideration, the sufficiency and receipt of which is acknowledged by UGAA and Design-Builder ("the Parties"), THE PARTIES AGREE AS FOLLOWS:

ARTICLE I - BASIC TERMS

A. Work and Professional Services.

1. **The Work.** Design-Builder shall provide all labor, materials, and equipment; administration, supervision, construction management, construction administration, scheduling, and related services (collectively, "Services"); coordination and construction of the work indicated in the Construction Documents, trades, and subcontractors; safety and security measures; earthwork; environmental protection measures; shipping; temporary facilities; temporary and permanent utility services and connections; shop drawings and other submittals; obtaining governmental inspections; insurance and bonds; certifications; Closeout Materials; and all other work, Services, and measures needed for complete construction (or renovation, as the case may be) of those structure(s) and/or site improvements indicated in the UGAA-approved Contract Documents listed in **Supplement A1** (as **Supplement A1** is amended upon execution of Component Change Orders, the GMP Change Order, and subsequent Change Orders (where applicable)), as well any other work, accessories, materials, etc. reasonably inferable therefrom, in order to construct a complete Project that is fit for use as intended

by UGAA (collectively, the “Work” or “Scope of Work”), as that Work may be modified from time-to-time by Change Orders executed in accordance with Article VIII.

2. **Professional Design Services.** Design-Builder shall provide all professional design services needed to fully and completely design, describe, and document the Work indicated in this Agreement (“Design Services” or “Basic Design Services”) as those Design Services are further detailed in Article XVI, in **Supplement A**, and elsewhere in this Agreement – and as they may be modified from time-to-time by Change Order executed in accordance with Article VIII.
 - a. Design-Builder shall be fully responsible to UGAA for Design Professional’s performance, including without limitation, its preparation of clear Construction Documents indicating Work that is constructible, capable of being built during the Contract Time, and capable of being built in a cost-effective manner. Nothing in this Agreement or any Subcontract related to it shall be construed to relieve Design-Builder of these obligations; and Design-Builder is liable for any breach of Design Professional’s duties as set forth herein and under Law.
 - b. Design-Builder may provide Design Services using in-house personnel employed by Design-Builder in those cases where: (a) Design Services are personally supervised and directed by the individual Design Professional of Record (“DPR”); (b) the DPR also owns controlling (*i.e.*, majority) interest in Design-Builder’s business organization and has the authority to freely and fully exercise his or her professional judgment in all matters relating to this Project; and (c) state laws and regulations governing the discipline practiced by Design Professional permit the lawful provision of Design Professional’s Design Services as required herein. All rights of approval given UGAA herein shall apply as well to UGAA’s right to accept or reject Design-Builder’s in-house provision of Design Services. All obligations imposed upon Design-Builder with respect to those Design Services remain applicable without regard as to whether the Design Services are provided in-house or under the auspices of a Subcontractor.
 - c. **Certain Excluded Design Services.** Those Services noted with double asterisk (“**”) are to be excluded from Services required herein, and as the scope of Services may be further modified as indicated in **Supplement A**.
 - d. **Phased performance of Design-related Services.** UGAA may elect to limit the scope of Professional Design Services to those indicated in this subparagraph. Design-Builder shall, nonetheless, provide pricing for all Design Costs (to be indicated in **Supplement N**) and Design Professional Construction Administration Costs (to be indicated in **Supplement O**). DPR shall provide the following initial scope of Design-related Services, as these services are further described in Article XVI, in **Supplement A**, and elsewhere herein: (*Select those to be provided initially*):
 - i. ☒ Design Professional shall provide **Investigation and Programming Services**, as further described in ¶ XVI(B)(1).
 - ii. ☒ Design Professional shall provide **Conceptual and Preliminary Design Phase Services**, as further described in ¶ XVI(B)(2).

- iii. ☒ Design Professional shall provide **Schematic Design Phase Services**, as further described in ¶ XVI(B)(3).
 - iv. ☒ Design Professional shall provide **Design Development Phase Services through 50% completion of Design Development Services**, as further described in ¶ XVI(B)(4).
 - v. ☒ Design Professional shall provide **Design Development Phase Services through 100% completion of Design Development Services**, as further described in ¶ XVI(B)(4).
 - vi. ☒ Design Professional shall provide **Construction Documents Phase Services through 50% completion of Construction Documents**, as further described in ¶ XVI(B)(5) and elsewhere herein.
 - vii. ☒ Design Professional shall provide **Construction Documents Phase Services through 100% completion of FOR CONSTRUCTION Construction Documents**, as further described in ¶ XVI(B)(5) and elsewhere herein.
 - viii. ☒ Design Professional shall perform professional **Construction Administration Phase Services** ("CA Services"), as described in ¶ III(A)(7).
 - ix. ☒ Design Professional shall perform **Preconstruction Services**, as described in ¶ XVI(B)(6).
 - x. ☒ Provide such other design Services as are indicated in **Supplement A**
- e. **Subsequent Design-related Services.** Design-related Services subsequent to those indicated in the immediately preceding ¶ I(A)(2)(d) and/or Professional Construction Administration Phase Services shall be provided upon execution of a Change Order.

B. **Contract Time.** The "**Design Period**" is the period between the Effective Date of this Agreement and the Contractual Date of Design-related Basic Services Completion for those Services selected in ¶ I(A)(2)(d) (as indicated in the information preceding Article I, and as that date may be modified by duly executed Change Order). The "**Contract Time**" is the period between the Effective Date of this Agreement and the Contractual Date of Substantial Completion (as indicated in the information preceding Article I), as that date may be modified by duly executed Change Order. The Work and provision of Design Services shall begin within three days after the Effective Date of this Agreement ☐ or UGAA's issuance (by e-mail or otherwise) of a written Notice to Proceed ☐ (*select one*).

C. **Substantial Completion.** The **Contractual Date of Substantial Completion** (as indicated in the information preceding Article I) is the date on which Design-Builder is contractually required to achieve the following: (1) documents are issued by the State Fire Marshal (or University of Georgia ("UGA") Fire Safety Division officials or other delegates of the State Fire Marshal) authorizing occupancy; (2) final approvals are issued by the county health department and other governmental authorities having jurisdiction over the Project; (3) Design-Builder's Payment and Performance Bond surety ("Surety") has delivered to UGAA the Surety's written Consent to Release of Retainage and Final Payment to Design-Builder ("Consent of Surety");

and (4) the Project is, in the good faith opinion of UGAA, complete and useable in the manner intended by UGAA, with the only Work remaining being Punchlist Work (as that term is defined in ¶ II(C)(1)). The **Realized Date of Substantial Completion** is the date on which Design-Builder, in fact, actually achieves, in the good faith judgment of UGAA, all of items (1) through (4) listed above in this paragraph.

- D. **Stated Cost Limitation; Guaranteed Maximum Price (“GMP”).** Until execution of the GMP Change Order, the term “**Stated Cost Limitation**” shall be deemed to mean and refer to the maximum amount that may be paid to Design-Builder by UGAA as complete compensation for Design-Builder’s full and timely performance of the Work and obligations set forth herein, including overhead and profit (exclusive of furnishings, Design-Builder Preconstruction Fee, and Design-Builder Preconstruction Overhead Costs). Upon execution of the GMP Change Order, the GMP becomes the maximum amount (exclusive of Design-Builder Preconstruction Fee and Design-Builder Preconstruction Overhead Costs) that may be paid to Design-Builder by UGAA as complete compensation for Design-Builder’s full and timely performance of the Work and Design Services and obligations set forth herein, which amount includes: (1) the Cost of the Work; (2) a Design-Builder Contingency Account (in an amount approved by UGAA’s designated representative), which the ADR will establish as a part of the Cost of the Work, as indicated in ¶ V(B)(2)(a)); (3) Design-Builder Construction Fee; and (4) Design-Builder Construction Overhead Costs – as those terms are defined in ¶ II(C)(2) – with the Stated Cost Limitation being adjusted accordingly. Thereafter, the GMP established by GMP Change Order can be modified only by subsequent Change Orders, duly executed in accordance with Article VIII. Except for those Design-Builder Preconstruction Fees and Design-Builder Preconstruction Overhead Costs that are earned, substantiated, and otherwise justified herein, in no case shall Design-Builder be entitled to payment of amounts in excess of the GMP minus any unallocated Design-Builder Contingency Account amount.
- E. **Consideration.** The Parties agree that the GMP includes One Hundred Dollars (\$100.00) in separate consideration paid to Design-Builder (as part of UGAA’s initial payment) to obtain its acceptance of indemnity, insurance, forum-selection and venue, certifications, financial disclosures, warranties, duty to discharge liens, intellectual property, survival provisions, and any other special obligations or duties imposed herein for which separate consideration is or may be appropriate.
- F. **Specific party-related information.** The following persons are authorized to represent their respective Parties in accordance with Article XVII:
1. **Design-Builder’s designated representative (“DBR”).** The DBR is the authorized person signing this Agreement below for the Design-Builder, unless another person is designated as follows: .
 2. **UGAA’s designated representative (“ADR”).** Communications sent to UGAA shall be sent (in the format and by the means required herein) in care of the following initially designated ADR (or a successor duly appointed in writing by UGAA):

University of Georgia Athletic Association, Inc.
in care of: [REDACTED], Project Manager Athletics
University of Georgia
Offices of University Architects for Facilities Planning
1180 East Broad Street
Athens, Georgia 30602
(706) 542-3605

- G. **Agreed minimum damages for late completion.** Design-Builder acknowledges that UGAA will suffer damages as a result of late completion of the Work, the amount of which damages is difficult to estimate in advance. Therefore, not as a penalty, nor as a liquidated amount, but as partial compensation for the minimum delay-related damages that the Parties acknowledge that UGAA will suffer if Design-Builder fails to complete the Work within the Contract Time, UGAA may (at its own election) unilaterally reduce the GMP by (or, in the alternative, receive immediate payment from Design-Builder in) the following amounts: \$[REDACTED] per day for the first [REDACTED] days beyond the Contractual Date of Substantial Completion that the Work is not substantially complete; thereafter increasing to \$[REDACTED] per day for the next [REDACTED] days beyond the Contractual Date of Substantial Completion that the Work is not substantially complete; and, thereafter, by \$[REDACTED] per day beyond the Contractual Date of Substantial Completion that the Work is not substantially complete. The purpose of this clause is not to limit UGAA's recovery of actual direct and/or indirect or consequential damages, but rather to establish a process for unilateral deductive Change Orders to be issued by UGAA in advance of its ultimate determination of its actual delay-related damages incurred due to untimely performance by Design-Builder. UGAA expressly reserves its right to recover from Design-Builder all other damages incurred as a result of late completion of the Work.
- H. **CPM Scheduling required.** Design-Builder shall provide Critical Path Method ("CPM") Scheduling, as defined in ¶ VI(E), with all schedule-related documents indicating, among other things, the scheduling of performance of the Design Services and Work on the Critical Path.
- I. **Preconstruction Services.** Design-Builder shall provide Preconstruction Services, as set forth in ¶ III(K), ¶ XVI(B)(6), and elsewhere herein. Construction-phase Services, if any, will only be provided after UGAA's issuance of a written Notice to Proceed with Construction-phase Services as indicated in ¶ III(L)(1)(a).
- J. **Dedicated key Project management.** Services performed by Design-Builder and Design Professional are personal in nature. Design-Builder shall take all steps necessary to assure that, once approved by UGAA, Design-Builder's Superintendent, Design-Builder's Project Manager, the Design Professional of Record, and DP Project Manager remain assigned in their respective key capacities to this Project from execution of this Agreement until Final Completion of the Work – except where a replacement is requested by the ADR. If any of those key personnel leave the employment of Design-Builder (or Design Professional, as the case may be), a replacement must be provided with the foregoing commitment to this Project, which replacement must be approved in advance by the ADR (which approval can be withheld for any reason). In no case shall replacement of personnel result in an increase in overhead costs and wage rates paid for the affected personnel by UGAA beyond those set forth in **Supplement N** and **Supplement O**, as the case may be.
1. **Design-Builder.** Design-Builder's Superintendent must be assigned full-time to the Project site from commencement of the Work until its Final Completion. Design-Builder's Project Manager must be dedicated to the Project full-time [REDACTED] as needed [REDACTED]

(select one) until the Realized Date of Substantial Completion. Design-Builder's Project Manager must be present on-site as needed until Final Completion.

2. **Design Professional of Record** ("DPR"). Unless otherwise agreed in writing by UGAA, the DPR is the person designated as such in the information preceding Article I.
 - a. DPR is the licensed professional under whose direct and thorough supervision and control the Design Services are provided and whose professional seal and signature shall appear on all FOR CONSTRUCTION Construction Documents and other certifications of Design Professional.
 - b. DPR must be an officer, member, owner, or shareholder of Design Professional's organization – and shall not be changed without the written authorization of UGAA.
 - c. In the absence of the ADR's written advance consent to the contrary, all Design Services shall be managed and directed by the DPR (or under his or her direct supervision and responsible control) or by the DP Project Manager, who must be a statutory full-time employee of Design Professional and who reports directly and weekly, or more often as the Project demands, to the DPR.

K. **Project meetings.**

1. **Mandatory preconstruction meeting.** A final preconstruction meeting will be held at the Project site, at a time announced by the ADR, to be attended by DBR, Design-Builder's Superintendent, its Project Manager, DPR, DP Project Manager, designated representatives from each major Subcontractor, supplier, and others invited by the ADR, and representatives of affected utilities and UGAA's Testing Consultants (to be invited by Design-Builder). If the Project involves a Land Disturbance Activities permit and/or an NPDES permit, UGA Environmental Safety Division shall be invited to the meeting by Design-Builder. Agenda for the meeting shall include, among other things, key personnel and responsibilities, review of Project Schedule, Project site logistics, Contract Documents, contract administration, and UGAA policies and procedures. At least five days before that meeting, Design-Builder must submit to the ADR the original and one complete copy (in both printed and digital form) of each of the following documents:
 - a. Proposed Baseline Project Schedule, with back-up data, in accordance with Article VI;
 - b. Proposed Schedule of Values, with back-up data, in accordance with Article V;
 - c. Documents demonstrating governmental approval of Design-Builder and Design Professional to transact business in Georgia, as well as those pertaining to state sales and use tax certificates, business licenses, professional service and contractor licenses, franchise tax registrations and applications, and any required state and local tax bonds;
 - d. Completed Notice of Commencement (in the form substantially similar to the one supplied in **Supplement K**), to be filed and posted by Design-Builder in accordance with the requirements stated in ¶ III(J)(5);
 - e. Design-Builder's manual of site-specific safety procedures (including emergency medical, fire, and law enforcement numbers), together with a statement

identifying the Design-Builder's officer who is chiefly responsible for safety training of workers on the Project;

- f. Design-Builder's proposed Waste Management Plan as required under ¶ XV(P); *and*
- g. Twenty-four-hour / seven-day contact information of Design-Builder's Superintendent and other responsible representatives who can be called in the event of an emergency or other incident on the Project site (with that information being updated by Design-Builder during the course of the Work – and shared by Design-Builder with UGA Police Department).

- 2. **Periodic Project meetings.** Meetings shall be held at the Project site at weekly and bi-weekly intervals, as determined during the course of the Project by the ADR – and at such other times as deemed necessary by the ADR.

L. **Payment and Performance Bonds.** Design-Builder shall provide Payment and Performance Bonds ("Bonds") in accordance with ¶ III(L)(1)(e) and Article XIII as follows (*select one*):

- 1. ☐ Provide Bonds upon execution of this Agreement, with an initial penal sum of each Bond equal to the Stated Cost Limitation as indicated in the information preceding Art. I (updated concurrent with execution of a GMP Change Order and subsequent Change Orders); *or*
- 2. ☐ Provide Bonds at or before execution of Component Change Orders with the penal sum of each Bond in place at any given time to be not less than the total of approved Component Change Order Sums to-date (updated concurrent with execution of a GMP Change Order and subsequent Change Orders); *or*
- 3. ☐ Provide Bonds at or before execution of the GMP Change Order with the initial penal sum of each Bond equal to the GMP; *or*
- 4. ☐ Design-Builder not required to provide Payment Bond and Performance Bond.

M. **Affidavits, Lien Waivers, and Release Upon Final Payment.** In addition to Design-Builder Waiver and Release Upon Final Payment (in the form supplied as **Supplement G**), Design Professional Waiver and Release Upon Final Payment (in the form supplied as **Supplement G1**); and Design-Builder Final Affidavit (in the form supplied as **Supplement H**), Design-Builder shall also supply Subcontractor Waivers and Releases upon Final Payment (in form supplied as **Supplement I**) for each Subcontractor who performed Work or Services with a value exceeding \$ **999.99** and whose Waivers and Releases are required under ¶ V(H)(4).

N. **Post-GMP Interim Payment Applications.** On or before the **twenty-fifth** day of each month, Design-Builder shall deliver drafts of its proposed Interim Payment Applications (American Institute of Architects ("AIA") form G702 and G703) (consecutively numbered) to the ADR and Design Professional in accordance with ¶ V(B)(3) for the period ending on the twenty-fifth day of the subject month. The following must also be supplied with each such proposed Application (and with the final submitted versions as well, which must be certified by the DPR or DP Project Manager): (*Select those that are applicable, and complete the information requested.*)

- 1. ☒ **Design-Builder Interim Waiver and Release Upon Payment** executed in the form provided as **Supplement D** and **Design Professional Interim Waiver and Release Upon Payment** executed in the form provided as **Supplement D1**.

2. ☒ **Design-Builder Interim Affidavit**, completed, sworn, and submitted under oath in the form provided as **Supplement E**;
3. ☒ **Updated master list of unpaid Subcontractors and suppliers**. List of each Subcontractor (of any tier) who has not been paid from funds received by Design-Builder for the Subcontractor's Work or Services, the amount unpaid to each, and the reason for nonpayment;
4. ☒ **Subcontractors' Interim Waiver and Release Upon Payment**, for each Subcontractor (except Design Professional), supplier, or vendor for whose Work or Services payment is applied for in amounts exceeding \$**999.99**, in the form supplied in **Supplement F** are required: *(check one)*
 - ☐ With each Interim Payment Application; *or*
 - ☐ At such intervals or whenever requested by the ADR;
5. ☐ **Progress Photos**, supplied in accordance with ¶ I(P);
6. ☐ **Updated logs** of Submittals, Proposed Change Orders ("PCO's"), executed Change Orders, Requests for Information ("RFI's"), Instructions to Change ("ITC's"), and auxiliary clarification sketches ("ASK's"), updated to reflect the current status of Submittals, PCO's and Change Orders, RFI's, ITC's, and ASK's received, rejected, approved, revised, reviewed, issued, and/or pending for or during subject period;
7. ☐ **Progress Reports** as further described in ¶ VI(H), at intervals stated in ¶ I(Q);
8. ☐ **Substantive support and back-up information for Payment Applications**. When requested by the ADR, provide the following: legible copies of all invoices, bills, delivery tickets, time and payroll records for all persons or entities who provided labor, materials, equipment, rental equipment, *etc.*, to the Project along with proof of payment of each, and other documents as may be requested by the ADR for determination of Project progress and costs ("back-up");
9. ☐ **Proof of ongoing licensure and insurance coverage at renewal dates**. Thirty to sixty days before applicable renewal dates, provide proof of Design-Builder's and Subcontractors' possession and renewal of applicable licenses, certificates, and authorities required to perform the Work, and required insurance coverage;
10. ☐ **Bond amendments**. In accordance with ¶ III(L)(1)(e) and Article XIII;
11. ☐ **Then-current approved Project Schedule**;
12. ☐ **Daily Reports**, when requested by the ADR, for each day within the period covered by the Payment Application;
13. ☐ **Progress and Completion Schedule**, describing and graphically detailing historic and future Milestone Dates missed and met, as well as other progress of the Work;
14. ☐ **Summary Schedule Comparison**, upon ADR request and as described in Article VI, comparing the Project Schedule with updated Progress and Completion Schedule;

15. ☐ **Weather information and back-up.** Copies of weather-related notices to the ADR, PCO's (if any), and other back-up information pertaining to Adverse Weather Days (in accordance with ¶¶ III(J)(8), VI(D)(3), and VIII(C)(8)(c)) during the subject period (and, if requested, for previous periods); *and*
16. ☐ **Design-Builder Contingency Account.** A statement of account, indicating: (a) the unallocated amount remaining in the Design-Builder Contingency Account; (b) proposed reallocations requested by Design-Builder from that account (and the basis therefor); and (c) details of all reallocations previously applied from the Design-Builder Contingency Account.
17. ☒ **Other information requested by the ADR in support of the amounts claimed in the Payment Application.** Payment Applications submitted before construction begins (*e.g.*, those covering Design Services) need not include foregoing items 5, 6, 7, 10, or 12 through 16, even if otherwise indicated.
18. **Condition precedent.** Design-Builder's provision of the foregoing and any other information required in accordance with this ¶ I(N) is a condition precedent to UGAA's obligation to pay.
19. **No limitation on the ADR's right to obtain Project information.** Nothing in this Agreement shall prevent the ADR from requesting and obtaining copies of any other Project-related documents or information, including but not limited to those elements selected above at any time and at any interval during the course of the Project.
20. **Special documentation required for last Payment Application submitted before construction begins:** In addition to the other information required hereunder with respect to Payment Applications, the last Payment Application submitted before construction begins shall be accompanied by additional copies of the filed Notice of Commencement, all land disturbance permits, National Pollution Discharge Elimination System ("NPDES") permits, building permits, health department permits, and any other governmentally issued permits needed to perform the Work and/or that must be posted on-site, Payment and Performance Bonds, insurance certificates and policies (if not already provided to the ADR by Design-Builder), and any other information requested by the ADR.
21. **Copies.** Design-Builder shall submit 0 print copies and an electronic copy of *draft* Payment Applications (approved in writing by the DPR or DP Project Manager) to the ADR. Once approved by the ADR, Design-Builder shall submit four original printed copies of its Design Professional-certified Payment Applications to the ADR (and one electronic copy of same).

O. **Geotechnical Report.** (Select which one of the following applies, and supply the needed information.)

- ☐ A Geotechnical Report has been prepared by _____ (*insert*), and dated _____, 201_____, which report is incorporated in this Agreement by reference and is either attached to it or has been made available in its entirety to Design-Builder.
- ☐ No Geotechnical Report is incorporated herein.

P. **Photos.**

1. **Baseline photos:** Before the mandatory preconstruction meeting and before commencing the Work, Design-Builder shall take digital, date-stamped photographs

and video of all existing conditions on the Project site and within affected structures – submitting a digital copy to the ADR at that meeting. This documentation will form the basis of the existing conditions and Design-Builder will be responsible, at Design-Builder's cost, for repair of any or all damages to existing facilities and structures arising out of or relating to Design-Builder's performance of the Work. Compensation for all such documentation and repair shall be deemed to be part of the Design-Builder Construction Overhead Cost within the GMP.

2. **Progress Photos:** Digital, date-stamped progress photos ("Progress Photos") shall be taken by Design-Builder, showing Work as it is installed, Work and conditions related to PCO's and Change Orders, and Work-related site and weather conditions. Representative Progress Photos must be submitted with each Payment Application if required pursuant to ¶ I(N)(5). A complete set of Progress Photos must be provided to the ADR as part of Closeout Materials (see ¶¶ III(M)(8)(b) and III(Q)(6)(e)) and at any other time upon ADR request.

Q. **Progress Reports.** Design-Builder shall submit to the ADR narrative Progress Reports on a bi-weekly ☐ monthly ☒ (select one) basis, as further described in ¶ VI(H). Those reports submitted near the end of the calendar month shall be submitted concurrently with Design-Builder's Interim Payment Application for the subject period.

R. **Temporary Facilities.** In addition to those Temporary Facilities listed in ¶ III(M)(9), Design-Builder shall, as part of the Design-Builder Construction Overhead Costs within the GMP and at the outset of construction, provide the following on-site: *(Select those that apply.)*

1. ☒ Complete Conformed Set of Construction Documents (indicating Scope of Work reflecting all executed addenda and Change Orders), as-built Drawings and Specifications, and Daily Reports – to which shall be attached relevant ASK's as they are received;
2. ☒ An office that is secure, weather-tight, heated, air conditioned, and supplied with a photocopier, Internet access, fax machine, and an operational telephone with 9-1-1 emergency calling capability;
3. ☒ Sanitary toilet facilities, regularly maintained in a clean and sanitary condition meeting all local and state health standards throughout their use;
4. ☒ A secure metal braided fence, with windscreen, at the perimeter of the Work Area to prevent unauthorized intrusion into any area in which Work is being performed or hazards exist related to the Work; or as otherwise indicated in the Contract Documents, posting intermittently on the fence no trespassing signs and other signs noting potentially dangerous conditions within;
5. ☒ Project sign: rigidly and independently supported, four foot by eight foot in size, black and white or full color (as the ADR may require), and in accordance with graphic design and information to be provided by UGAA, with a proof design supplied by Design-Builder to the ADR for approval;
6. ☒ Up-dated logs of shop drawings and other Submittals and Resubmittals, RFI's, PCO's and Change Orders, ITC's, Progress Reports, ASK's, etc.;

7. [x] Project directory that lists, for Design-Builder and for each Subcontractor, the name, trade, and person-in-charge – and that person’s regular and after-hours telephone number(s); *and*
8. [x] Other Temporary Facilities: as indicated herein and as listed in **Supplement O**. In addition to the foregoing, Design-Builder shall provide: [REDACTED].

S. **Project delivery method; coordination of Contract Documents; special indemnity.**

1. UGAA intends to construct the Project under a Design-Build method of Project delivery, as is indicated herein. Design Professional must, at all times, cooperate with Design-Builder in its performance of Preconstruction Services and in its construction of the Work. Design Professional must, through such cooperation, design a Project that can be efficiently and economically constructed within the Stated Cost Limitation, and ultimately, within the GMP.
2. As part of the Basic Design Services, Design-Builder must engage a Design Professional to provide the Design Services, perform the tasks and duties assigned to Design Professional herein, and coordinate its provision of Design Services with those of the Design-Builder thereunder.
3. Design Professional must coordinate and conform Construction Documents and other Contract Documents it prepares with the requirements of this Agreement. In addition to any other indemnities provided hereunder, any Subcontract with a Design Professional must include that Design Professional’s agreement to indemnify, defend, and hold harmless UGAA and UGAA Indemnitees as indicated in ¶ XI(B) (and to indemnify and hold harmless the State Indemnitees as indicated in ¶ XI(B)) for all costs, damages, claims, demands, losses, fees (including attorneys’ fees) that arise out of or relate to Design Professional’s failure to coordinate and conform Construction Documents to this Agreement.

T. **Self-insured insurance retention.** Except for qualified self-insurers, approved as such in advance by UGAA, self-insured retention (where otherwise permitted herein) in any policy of insurance shall not exceed \$ **One Hundred Thousand Dollars (\$100,000.00)**.

U. **Full and lawful performance.** Design-Builder hereby agrees to fully perform in accordance with the terms, duties, obligations, responsibilities, and conditions established in this Agreement and with all applicable Laws (as that term is defined in ¶ II(C)), and to perform the Work and to prepare designs, drawings, specifications, and other Deliverables (as that term is defined in ¶ III(E)) that comply with those Laws and with the Standards of Care set forth herein.

V. **Permitting Services.** As part of the Services, Design-Builder shall assist UGAA in the process of applying for building, land disturbance, health department, and other governmental permits on the overall Project (“UGAA Permits”); and shall, before commencement of Work on-site, obtain such permits from the issuing agency of government – with any UGAA Permit fees incurred by Design-Builder being reimbursed by UGAA as part of Cost of the Work without further markup. Permits for Subcontract Work shall be obtained and paid for by Subcontractors as part of their respective Subcontract Prices.

- W. **Existing Hazardous Materials Report.** (Select which one of the following applies, and supply the needed information.)
- ☐ A Hazardous Materials Report has been prepared by _____ (insert), and dated _____, 201_____, which report is incorporated in this Agreement by reference and is either attached to it – or has been made available in its entirety to Design-Builder.
- ☐ No Hazardous Materials Report is incorporated herein.
- X. **Certified improvements survey.** Design-Builder is ☐ is not ☐ (select one) required to perform a site situation survey in accordance with ¶ III(J)(4).
- Y. **Separate bid packages.** This Agreement anticipates that construction will ☒ will not ☐ (select one) involve staged or phased construction with multiple, separate bid packages.
- Z. **Sustainability objectives.** The Work and all Design Services shall be performed taking into account and satisfying sustainability and energy efficiency of the constructed product: (Select which one of the following options apply and supply certification standard and level, if any apply.)
1. ☐ Whether or not actual application is anticipated at the outset, Design-Builder agrees to provide Design Services and to perform the Work so as further sustainability certification of the Project by _____ *insert name of organization or standard* at the insert level;
 2. ☐ No particular third-party sustainability standard is established as an objective for this Project.
- AA. **Existing facilities.** In all cases, and in addition to all other obligations set forth herein with regard to existing facilities, Design-Builder shall schedule, plan, and coordinate the Services and the Work indicated in the Contract Documents so as to not interfere with operation and safety of existing facilities and other construction projects in or near the Project. (Select which one of the following generally applies to the Work to performed in accordance with the Contract Documents.)
1. ☐ The Work generally involves primarily new construction, and the only existing facilities impacted by it are impacted by site improvements; or
 2. ☐ The Work primarily involves the addition to, or renovation of, one or more existing building structures, which must remain continually operational during the performance of the Work; or
 3. ☐ The Work primarily involves the addition to, or renovation of, one or more existing building structures, which need not remain continually operational during the performance of the Work; or
 4. ☐ The Work does not primarily involve construction or modification of a building, but does involve site improvements or installation of discrete systems or equipment;
 5. ☐ The Work primarily involves new building construction and related site improvements; or
 6. ☐ _____ (insert).

ARTICLE II – GENERAL TERMS AND CONDITIONS

- A. **Entire agreement.** This Agreement contains the Parties’ entire understanding with respect to the Work and the Project. It replaces and extinguishes any and all earlier representations, statements, negotiations, proposals, or agreements by the Parties regarding the Work and the Project.
- B. **Arms-length transaction.** Design-Builder enters this Agreement on the basis of its own investigation and information. In doing so, it does not rely on any statements or representations by UGAA or others. Because it is the product of arms-length bargaining by sophisticated Parties with substantial bargaining power, each of which either had the advice of an attorney or had the opportunity to obtain such advice, and because both Parties influenced its final terms, this Agreement shall not be construed against either Party on the basis of authorship, drafting, or origin - and the doctrine of *contra proferentem* shall not apply to its interpretation, construction, or enforcement.
- C. **Terminology.** The following terms shall bear the following meanings:
1. **Generally.**
 - a. The term “**and/or**” shall be applied to mean “either or both” - such that “A and/or B” is interpreted as: (1) “A,” (2) “B,” or (3) “both A and B.”
 - b. Unless otherwise clearly indicated in context, the term “**approved**” shall mean “approved by UGAA.”
 - c. “**ASK’s**” are auxiliary clarification sketches supplied by the ADR or Design Professional, as the case may be.
 - d. References herein to “**attorneys’ fees**” shall be deemed to include fees charged by attorneys, fees charged by experts, expert witness fees, court costs, court reporter fees, and other litigation and dispute-related costs.
 - e. A “**certification**” (when required herein of Design-Builder, Design Professional, Subconsultant, or a Subcontractor) shall mean a written statement, the truth of which is sworn under oath before a notary. To “**certify**” is to attest before a notary in writing the truth of the subject of the certification from personal investigation and/or knowledge, or, in the case of licensed design professional certifying a design, drawing, or document, to apply the professional’s seal and signature implicitly attesting to the same or to the professional oversight applied to the document certified (as the case may be).
 - f. The term “**Contract Documents**” shall initially mean and be deemed to refer to this Design-Builder Agreement, **Supplements A through U** attached and incorporated hereto, and other documents expressly incorporated herein, including those listed in **Supplement A1** as attached hereto – and further described in ¶ II(Q). Upon UGAA’s execution of Component Change Orders, the GMP Change Order, and subsequent Change Orders, the detailed working drawings and specifications prepared by Design Professional that indicate the Scope of Work to be constructed pursuant to those Change Orders (collectively, “**Construction Documents**”) shall be deemed to be Contract Documents – once they are listed in an amended **Supplement A1** to be incorporated in those respective Change Orders in amended form.

- g. Unless otherwise stated, the term “**day**” shall mean “calendar day.”
- h. The term “**Design Professional**” shall mean and be deemed to refer to the lead Project Design Professional as identified in the information preceding Article I (who may be architect(s), engineer(s), or other licensed professionals as the case may be).
- i. Unless otherwise provided in context, an “**express**” term is one that is literally stated or directly and specifically written in this Agreement or in an incorporated document.
- j. “**FOR CONSTRUCTION Construction Documents**” are Construction Documents that are expressly designated by Design Professional as being “FOR CONSTRUCTION” and bear the Design Professional’s signature and professional seal (or those of its licensed Subconsultants with respect to their portions of the Work depicted). Only FOR CONSTRUCTION Construction Documents are to be used for construction of the Work.
- k. The term “**herein**” shall mean “in this Agreement or Supplements to it.” The term “**hereunder**” shall mean “under this Agreement.” Supplements referred to are those attached to this Agreement, labeled as Supplements A through U inclusive, all of which are incorporated as if set forth fully herein. **Cross-references** to paragraphs, articles, and Supplements refer to paragraphs, articles, and Supplements in or to this Agreement. Reference to **articles, paragraphs, or subparagraphs** herein shall be deemed to include references to lower-tier paragraphs and/or subparagraphs that follow them.
- l. The term “**ITC**” shall mean Instructions to Change, as that is described in ¶ VIII(B).
- m. The term “**Laws**” shall mean and refer to all applicable federal, state, and local statutes, codes, regulations, ordinances, orders, and rules of governing authorities having jurisdiction over the Design Services, the Work, the Project, the Property, the Design-Builder, UGAA, UGA, or the Board of Regents.
- n. The terms “**Noncompliant Work**” or “**Defective Work**” shall mean Work that includes defects of workmanship or material or that does not otherwise conform to, or comply with, the requirements of Contract Documents (or, in the judgment of state or local building and fire officials, applicable codes or other Laws, as the case may be). Design Services that do not comply with the requirements set forth herein or under Law shall be deemed to be defective.
- o. The term “**Statutory Overnight Delivery**” means next business day delivery by a carrier statutorily regulated by government that provides technology to electronically track transit, delivery, and receipt of packages, including, but not limited to: United Parcel Service or Federal Express Corp., which delivery must comport with the requirements set forth in OCGA § 9-10-12(b).
- p. The term “**PCO**” shall mean Proposed Change Order, as that is described in ¶ VIII(B).
- q. The term “**Project Information**” shall mean and be deemed to refer to all Project-related text, designs, drawings, specifications, Construction Documents, shop

drawings, RFI's, PCO's, architectural works, building designs, reports, forms, models, computer files, instruments of service, surveys, or other documents and expression created or provided by or to Design-Builder and/or Design Professional during the course of performance of the Work and the Project.

- r. Unless otherwise stated in context, the terms "**provide**," "**supply**," "**furnish**," and any other term setting forth herein a duty, obligation, or task (but not expressly imposing that duty, obligation, or task on another person or entity) shall be deemed to indicate an obligation of the Design-Builder to provide or supply the object of the term.
- s. The terms "**Punchlist**" or "**Punchlist Work**" shall mean and be deemed to refer to a list of Work compiled at the time of the Realized Date of Substantial Completion that is composed of incomplete or otherwise Defective Work that is of a such a minor nature and magnitude that it can, with respect to each item, be completed without disruption of UGAA's ongoing operations or use of the subject structure and/or site and that it can be completed within thirty days of the Realized Date of Substantial Completion. Incomplete or Defective Work that is more-than-minor in nature or magnitude (*i.e.*, which does not satisfy this definition) cannot be deemed mere Punchlist Work – and its existence will, at the election of UGAA, preclude realization of "**Substantial Completion**."
- t. The term "**RFI**" shall mean a request for information, as described in ¶ VIII(A).
- u. References herein to approvals and inspections of **the State Fire Marshal** shall be deemed to mean those of **UGA Fire Safety Division**, where the State Fire Marshal has so delegated authority.
- v. The term "**Subconsultant**" shall mean and deemed to refer to persons or entities engaged by Design Professional (or by Design Professional's agents, employees, or Subconsultants of any tier) to perform portions of the Design Services on Design Professional's behalf.
- w. The term "**Subcontractors**" shall mean and be deemed to refer to persons or entities engaged by Design-Builder (or by Design-Builder's agents, employees, or Subcontractors of any tier) to perform portions of the Work on Design-Builder's behalf, including but not limited to suppliers, fabricators, vendors, DPD's, *etc.* For purposes of this Agreement, Design Professional shall be deemed to be a Subcontractor of Design-Builder, and Design Professional's Subconsultants shall be deemed lower-tier Subcontractors to Design-Builder.

2. **Design-Builder-specific terms.**

- a. **Design-Builder Preconstruction Fee.** The amount indicated in the information preceding Article I for "Design-Builder Preconstruction Fee" is the maximum amount to which Design-Builder may be entitled (as gross profit and overhead) for performance of Preconstruction Services on the Project - payment of which Design-Builder Preconstruction Fee is strictly limited proportionately at any given time to the percentage of Design-Builder's completion of the Preconstruction Services. Design-Builder Preconstruction Fee ceases to accrue upon UGAA's execution of a GMP Change Order by UGAA.

- b. **Design-Builder Preconstruction Overhead Costs.** The amount indicated in the information preceding Article I for “Design-Builder Preconstruction Overhead Costs” is the maximum amount to which Design-Builder may be entitled (exclusive of Design-Builder Preconstruction Fee) for labor, salaries, wages, and other costs and expenses incurred by Design-Builder in the complete performance of all administration, management, scheduling, supervision, inspection, program analysis, planning, utilities investigations, site investigations, cost estimating, Design Services, permitting assistance, and other Preconstruction Services required hereunder (“Preconstruction Services”), allowable Design-Builder Preconstruction Overhead Costs being only those listed in **Supplement N** (and as further limited therein) – payment of which Design-Builder Preconstruction Overhead Costs (except those incurred in performance of Design Services) is further limited proportionately at any given time to the percentage of Design-Builder’s completion of the Preconstruction Services. Design-Builder Preconstruction Overhead Costs (except those Design Costs incurred in performance of Design Services) cease to accrue upon UGAA’s execution of a GMP Change Order. “**Design Costs**,” as limited as a line-item in **Supplement N**, shall be the maximum amount that UGAA will be obligated to pay to Design-Builder for full and timely performance of Basic Design Services, including all fees and expenses of Design Professional and Subconsultants of Design Professional (and excluding only Design Professional Construction Administration Costs, which are addressed in ¶ II(C)(2)(e) below).
- c. **Cost of the Work** is the total amount of allowable costs to be paid to Design-Builder for the complete performance of the Work, including Subcontract Costs and all Design-Builder expenses incurred by Design-Builder with respect to Self-performed Work. Costs to be included in Cost of the Work are as set forth in ¶ V(B)(2)(a). Cost of the Work *excludes* Design-Builder’s Construction Fee and Design-Builder’s Construction Overhead Costs as listed and limited herein and in **Supplement O**.
- d. **Design-Builder Construction Fee.** The amount indicated in the information preceding Article I for “Design-Builder Construction Fee” is the maximum amount to which Design-Builder may be entitled as gross profit on the Project (exclusive of Design-Builder Preconstruction Fee, Design-Builder Preconstruction Overhead Costs, Cost of the Work, and Design-Builder Construction Overhead Costs) – payment of which Design-Builder Construction Fee is strictly limited proportionately at any given time to the percentage of Design-Builder’s actual progress in completion of the Work. The amount stated in the information preceding Article I for the Design-Builder Construction Fee may, in the discretion of the ADR, be adjusted for inclusion in the GMP Change Order where material changes in Scope of Work, Cost of the Work, or Contract Time are evident to the ADR at the time of execution of the GMP Change Order.
- e. **Design-Builder Construction Overhead Costs.** The amount indicated in the information preceding Article I for Design-Builder Construction Overhead Costs is the maximum amount that Design-Builder will be entitled (exclusive of Design-Builder Construction Fee) for reimbursement for all temporary facilities, Project Administration, Construction Administration Services of Design

Professional, and other General Conditions and Design-Builder Construction Overhead Costs as indicated in ¶ V(B)(2)(b) and in **Supplement O** (and as further limited therein). The amount stated in the information preceding Article I for the Design-Builder Construction Overhead Costs may, in the discretion of the ADR, be adjusted for inclusion in the GMP Change Order where material changes in Scope of Work, Cost of the Work, or Contract Time are evident to the ADR at the time of execution of the GMP Change Order. Design Professional Construction Administration Costs, as limited as a line-item in **Supplement O**, shall be deemed to be the maximum amount that UGAA will be obligated to pay to Design-Builder for all fees and expenses incurred Design Professional and Subconsultants of Design Professional in providing professional Construction Administration Phase Services.

- f. **Design-Builder Contingency Account.** Amount set aside by the ADR at the time of the GMP Change Order (and/or upon ADR approval where appropriate at the time of execution of Component Change Orders) for potential reallocation to Cost of the Work as set forth in ¶ V(B)(4)(d).
- g. **Subcontract Costs** are the total amount (exclusive of Design Costs and Design Professional Construction Administration Costs) to be paid without further mark-up to Design-Builder as part of the Cost of the Work for Subcontractors' performance of their respective portions of the Work or Services, which Subcontract Costs shall include all labor, materials, equipment, administration, supervision, Subcontract-specific permits, inspections, Subcontractor overhead and profit, and all other Subcontract-specific costs or expenses incurred in performance of the Subcontractor's respective Scope of Work.
- h. **GMP Change Order** is the Change Order establishing the GMP and authorizing Design-Builder to commence construction of the Work as indicated in the Contract Documents. The GMP Change Order shall be executed in a form issued by the ADR which will be substantially similar to that supplied as **Supplement B1**. Unless otherwise expressly stated in the GMP Change Order, all prior Component Change Orders (and their related Component Change Order Documents, as amended) are merged into the GMP Change Order. Preconstruction Services conclude upon UGAA's execution of the GMP Change Order.
- i. **Component.** A Component is an element (or assembly of elements) of the Work for which Design Professional is requested by UGAA to prepare or segregate Construction Documents as a discrete package to permit advance procurement and commencement of construction of the Work described in Component Construction Documents for that element or assembly.
- j. **Component Change Orders** are those authorizing the Design-Builder to proceed to construct a given Component pursuant to specific Component Construction Documents. Component Change Orders shall be executed in a form issued by the ADR, which will be substantially similar to that supplied as **Supplement B**.
- k. **Component Construction Documents** are a subset of Contract Documents issued by the Design Professional describing the Scope of Work to be performed specific to a Component Change Order. In addition to other requirements for

Construction Documents set forth herein, Component Construction Documents shall: (i) indicate the Work to be performed; (ii) be sufficient for Design-Builder to price the Work; (iii) meet all regulatory, statutory, building official, State Fire Marshal, and UGA Fire Safety Division officials requirements; and (iv) be sufficiently detailed to preclude the necessity of rework as the Construction Documents for the Project as a whole proceed to 100% completion.

- l. **GMP Construction Documents** are the Construction Documents issued by the Design Professional indicating the Scope of Work to be performed pursuant to the GMP Change Order – as listed or indexed as part of **Supplement A1** (as **Supplement A1** is amended to reflect the GMP Change Order and subsequent Change Orders (where applicable)). Upon execution of the GMP Change Order, general references herein to “Construction Documents” shall be deemed to refer GMP Construction Documents as indicated in the GMP Change Order (and those incorporated in duly executed Change Orders thereafter).
 - m. **Application of Design-Builder Agreement terms and conditions.** All terms and conditions of this Agreement shall apply to Preconstruction Services, Component Change Order Work, and GMP Change Order Work.
 - n. **Self-performed Work** is Work that is performed by Design-Builder’s own forces (with advance written approval of the ADR), the cost of which is determined and limited by ¶ III(J)(10) and as otherwise set forth herein. Each element of Self-performed Work shall be listed as a line-item in the original Schedule of Values and in those subsequently approved and incorporated in Payment Applications.
- D. **Headings and titles.** Headings and titles used herein are provided primarily for practical graphic reference, and shall not be construed to conflict with, or limit, the specific language in the text that they precede.
- E. **Capitalized terms.** Terms that are capitalized when capitalization is not required under commonly accepted grammatical rules shall be deemed special terms, the meanings of which are to be drawn from their context within this Agreement.
- F. **Supplements.** “Supplements” referred to are those attached to this Agreement, labeled as **Supplements A through U** inclusive. Unless otherwise limited herein, Supplements shall be deemed to be incorporated by reference in their entirety as if set forth fully herein. Forms included in Supplements may be modified by UGAA as necessary during the course of the Work and the Project to reflect Project-specific information or circumstances, or changes in the Law, consent to which modification is hereby given by Design-Builder.
- G. **Law governing.** This Agreement shall be construed in accordance with the Laws of the State of Georgia and with any preempting, superior, or otherwise applicable federal Law.
- H. **Agreement binding.** This Agreement is binding upon Design-Builder and upon its officers, directors, shareholders, members, owners, managers, employees, partners, limited partners, agents, insurers, sureties, successors in interest, and any parent and subsidiary corporations and other related entities and persons.
- I. **No nonparty rights against UGAA.** Nothing in this Agreement shall be deemed to create a right or cause of action in favor of any nonparty (including without limitation Subcontractors of any tier) against UGAA, UGA, or the Board of Regents; nor shall any other person or entity be

deemed to be an intended third-party beneficiary of this Agreement – except that UGA and the Board of Regents are intended third-party beneficiaries of this Agreement, and UGAA, UGA, and the Board of Regents shall be deemed intended third-party beneficiaries of all Project-related Subcontracts of any tier. Nothing herein shall operate as a restriction or limit on the relationships between UGAA and either UGA or the Board of Regents.

- J. **Independent contractor.** Design-Builder is engaged as an independent contractor. Design-Builder is not a joint venturer, partner, employee, agent, or member of or with UGAA, UGA, or the Board of Regents. Design-Builder has no authority to enter into any contract in the name of UGAA, UGA, or the Board of Regents or to bind any of them in any way not expressly provided herein.
- K. **Design Professional not an agent of UGAA.** Design Professional is not an agent of UGAA, UGA, or the Board of Regents; and Design Professional is not authorized to bind any of them or to modify the terms of this Agreement in any way not expressly provided herein.
- L. **No waiver or estoppel.** By declining or failing to exercise or assert any right, remedy, or claim it has or may have in one instance, UGAA does not waive its right to subsequently (and without further notice) exercise that right, remedy, or claim in other, even similar or related, instances. No act or failure to act by UGAA or any of its officers, members, employees, agents, other representatives, or affiliated entities shall serve to modify this Agreement, show acquiescence to Design-Builder's nonperformance or other breach, waive UGAA's rights under it or arising from its breach, or estop UGAA from enforcing its terms. If the Work begins or continues in the absence of Design-Builder's complete compliance with all requirements of this Agreement, the Board of Regents, UGA, and UGAA each reserve their respective rights to subsequently (and without further notice) enforce those requirements, waiving none of them. No delay or abeyance by UGAA, UGA, or the Board of Regents in enforcement of the terms herein or in obtaining relief to which they may be entitled shall relieve Design-Builder of any indemnity, insurance, or other contractual obligation established herein or by Law.
- M. **Judicial reformation.** If a court construing this Agreement as to *these* Parties on *this* Project rules that one or more of its terms are unenforceable, the unenforceable term shall be deemed stricken, and the remaining terms construed to give effect to each of them and to the remaining Agreement as a whole.
- N. **Conditions precedent.** The term "condition precedent" shall mean a condition, occurrence, or event stated that must occur or be satisfied before UGAA is obligated to pay or act otherwise.
- O. **Assignment; name change.** This Agreement is personal in nature. Neither this Agreement nor Design-Builder's obligations established in it may be assigned by Design-Builder to any other person or entity. UGAA may freely assign this Agreement and/or its obligations and interest hereunder in any lawful way. Design-Builder shall notify UGAA in writing of any name change within five days of the change.
- P. **Survival.** In addition to others noted herein, Design-Builder's obligations that survive termination of this Agreement (and/or the completion of the Work) include those that relate to: payments to Subcontractors; correction of Defective Work; payments and repayments to UGAA; assignment of Subcontracts to UGAA; audits, financial reporting, record keeping, and accounting; safety; stabilization of the Work; warranties; certifications; indemnities; insurance; Payment and Performance Bonds; dispute resolution; duty to discharge liens; confidentiality; intellectual property; procurement, posting, and transmittal of notices, demands, and claims;

Hazardous Material; environmental protection; payment of taxes; labor and employment obligations; and any other obligations and duties of the Design-Builder, the survival of which are needed to give continuing effect to this Agreement.

Q. **Contract Documents.** Upon UGAA's execution of the GMP Change Order, general references herein to "Contract Documents" shall be deemed to refer to Contract Documents as indicated in the GMP Change Order, as well as original Contract Documents and Component Construction Documents (as amended) subsumed into the GMP Change Order, and those Contract Documents attached to and incorporated in duly executed subsequent Change Orders. Documents incorporated by express reference shall be deemed to be incorporated as part of this Agreement as if set forth fully herein. In addition, where specific portions or sections of industry or governmental standards or codes are referenced herein as guiding, binding, or authoritative in the Contract Documents, those referenced portions and sections shall be deemed to be incorporated by reference in the part of this Agreement in which they are referenced.

1. **Contract Documents staged and iterative.** The Parties acknowledge that the Contract Documents, including the Construction Documents, Component Construction Documents, and GMP Construction Documents will be prepared and updated in a phased, iterative manner – in order to facilitate Component Change Orders and other staged, fast-track, or phased design and construction – all in order to complete the Work within the GMP and the Contract Time. Therefore: (a) Contract Documents, as indicated in this paragraph and those listed in **Supplement A1** (and as **Supplement A1** is amended upon execution of Component Change Orders, the GMP Change Order, and/or subsequent Change Orders (where applicable)) will be prepared in stages and updated as needed to make that possible; and (b) Design-Builder acknowledges that it is the intention of UGAA that the Construction Documents, Component Construction Documents, and GMP Construction Documents shall be deemed to require Design-Builder's provision of *all* items, systems, assemblies, materials, and labor necessary for proper execution and full and Final Completion of the Work – and for its completed use in the manner intended by UGAA – and *all* within the GMP and the Contract Time. Consistent with the foregoing, UGAA maintains its right to issue substantive revisions, modifications, adjustments, and clarifications throughout the design and construction process without incurring claims for extensions of time or increases in the GMP, Design-Builder Construction Fee, or Design-Builder Construction Overhead Costs as a result. Design-Builder expressly accepts the risk of this phased, iterative process, and agrees that that such revisions, modification, *etc.* are provided for within the GMP.
2. **Contract Documents complementary.** What is required by one Contract Document is binding as if required by all. Notwithstanding the appearance of subcontract-specific labels and language in the various divisions of the Specifications and in other Construction Documents, Design-Builder remains responsible to UGAA for full performance of all the Work in accordance with the Contract Documents.
3. **Order of precedence.** Conflicts among the Contract Documents shall be resolved by applying the following, in descending order of precedence: (a) duly executed Change Orders to this Agreement, including changes to **Supplement A1** (as **Supplement A1** is amended upon execution of Component Change Orders, the GMP Change Order, and subsequent Change Orders (where applicable)); (b) this Agreement and Supplements to it; (c) the FOR CONSTRUCTION Construction Documents issued and certified by

Design Professional; (d) the Construction Specifications issued and certified by Design Professional; (e) specific documents, statutes, and regulations incorporated by express reference in this Agreement; and (f) other documents, statutes, and regulations expressly referred to in this Agreement (or in the Contract Documents by specific reference) and expressly indicated in this Agreement (or in the Construction Documents) to be controlling only with respect to specific elements or categories of the Work (e.g., NFPA § 241 in ¶ XV(H)(2)). If language set forth in a document incorporated herein conflicts with that set forth in this Agreement, the language of this Agreement shall prevail. Where in conflict, large-scale drawings are given preference over small-scale drawings. Drawings are not to be scaled for dimensions. If questions on dimensions exist, it is Design-Builder's sole obligation to seek guidance from Design Professional and/or the ADR – using the RFI process – to determine the dimensional requirement.

- R. **Predominant purpose.** The predominant purpose of this Agreement is the performance of Work and provision of labor services – as opposed to provision of goods.
- S. **Limitations on actions.** Statutes of limitation and repose on any cause of action by either Party to this Agreement shall commence to run on the Realized Date of Substantial Completion or upon termination of this Agreement by UGAA, whichever occurs earlier.

ARTICLE III – DESIGN-BUILDER'S OBLIGATIONS, DUTIES, AND WARRANTIES

- A. **Safety.** Design-Builder's primary duty is to perform the Work safely, adhering to all Laws. That duty is nondelegable; and it is not shared with UGAA, UGA, the Board of Regents, the ADR, or others – except that Design-Builder must, by written Subcontract, impose a similar and coextensive duty upon each Subcontractor with regard to its respective portion of the Work.
 - 1. **Precautions.** Design-Builder shall take all precautions necessary for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to: (a) employees performing the Work and other persons, including without limitation, the general public, who may be affected thereby; (b) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of Design-Builder or Subcontractors of any tier; and (c) other property at or adjacent thereto, such as trees, earthwork, shrubs, lawns, walks, pavement, roadways, structures, and utilities not designated for removal, relocation, replacement, or other modification as part of the Work. In addition to all other obligations of indemnity, *etc.*, Design-Builder shall make good all damage, loss, or injury resulting from its failure to take the precautions required herein.
 - 2. **Correction of unsafe conditions.** If Design-Builder observes an unsafe condition or activity on-site, property damage, or personal injury, it shall: (a) stop Work in areas potentially impacted or endangered by it; (b) remove workers from the affected area, securing immediate medical and emergency assistance where persons are injured or property is further threatened; (c) post and secure the unsafe area; (d) stabilize the condition; and (e) immediately notify the ADR by e-mail (and telephone if jeopardy to life or property is involved), detailing: (i) the unsafe condition; (ii) what Work was stopped; (iii) which workers were removed from the area, when, and under what circumstances; (iv) whether and how the unsafe condition was stabilized and secured; (v) known or suspected causes of the condition; and (vi) recommended alternative

remedies or means to correct it. Design-Builder shall continually update the ADR as to: (A) corrective measures taken; (B) which Laws and contract provisions were affected; (C) which emergency, health, medical, law enforcement, or other officials or facilities, if any, were notified, and how they responded; (D) whether citations were issued, fines imposed, or other governmental action was taken or threatened; (E) how and when correction will be completed and Work resumed; (F) how the condition was ultimately corrected or rendered safe; and (G) what adjustments, if any, are needed to conform to the Project Schedule and to complete the Work within the Contract Time.

3. **Duty to report safety-related occurrences or criminal conduct.** In addition to taking any other steps required herein or under Law, Design-Builder shall adhere to all local, state, and federal Laws requiring the reporting of accidents, death, personal injury, property damage, or criminal conduct related to the Property, the Project, or the Work; and shall timely report to the appropriate governmental agencies or officials all such accidents, death, personal injury, property damage, criminal conduct, and any other occurrences and incidents to applicable law enforcement, unit of government, and insurers (so as to preserve rights of coverage for all concerned) – and shall concurrently and formally notify the ADR of same. Nothing in this Agreement shall be construed to relieve Design-Builder of duties imposed by applicable Laws in this regard.
4. **Essential communications on-site.** Design-Builder and Subcontractors shall take all steps necessary to assure that, at all times, every person employed by them at any tier on-site has the ability to see, recognize, and understand: (a) the task assigned to them; (b) all hazard warnings and labels published in English; (c) restricted areas; and (d) audible or visual safety-related warning signals and announcements in English.
5. **Trenches.** Design-Builder shall adhere to all safety-related federal, state, and local Laws and regulations pertaining to trenches and other excavations, including excavation safety standards published in the Code of Federal Regulations, 29 CFR 1926 (Subpart P), as that standard may be amended from time-to-time. Design-Builder shall permit no person to work in or near a trench unless it is: (a) braced in compliance with the above-noted regulations and applicable Laws; and (b) Design-Builder's Superintendent or other specially trained safety supervisor is continually present at the excavation or trench, itself.
6. **Design-Builder's responsibility for site safety.** Safety is the exclusive responsibility of Design-Builder. Design-Builder shall be solely responsible for complete compliance with rules and regulations of the Occupational Safety and Health Act and other state, federal, and local Laws pertaining to safety. Design-Builder's provision of safety-related information to UGAA shall not be construed as UGAA's approval or review of information provided; nor shall it impose any safety-related duty or obligation upon UGAA.
7. **Inadvertent access.** Design-Builder shall provide all safety barriers, signage, fences, and barricades necessary to: (a) protect persons on the Project site and those entering it; (b) prevent inadvertent or unauthorized entry by the public onto the Project site and any Work Area; and (c) designate the Work Area as a "Danger" area to warn and protect person from any hazards which may occur during the course of the Work. The Danger area shall be the area immediately surrounding the location where the site is disturbed or where Work is underway. The exact location of barriers shall be placed by Design-

Builder and coordinated with ADR before commencement of the Work. Design-Builder shall erect a fence to protect the limits of construction and to secure materials kept on-site – or otherwise secure the materials. Costs associated with the foregoing shall be deemed to be part of the Design-Builder Construction Overhead Costs within the GMP.

8. **Fire prevention and other hazard-related issues.** Design-Builder shall take reasonable and adequate precautions to protect the Work against damage by fire and smoke.
 - a. No open fires or burning of structures or materials is permitted.
 - b. In addition to other measures required to satisfy the obligations set forth in this ¶ III(A), Design-Builder shall, at a minimum, perform the following measures: (i) provide fire extinguishers or fire hoses in readily accessible locations; (ii) periodically inspect fire extinguishers, removed discharged extinguishers immediately, and replace with new or recharged extinguishers; (iii) keep fire extinguishers or fire hoses within five feet of any welding or open flame operations; (iv) remove oil-soaked and paint-soaked materials, including paper and rags, from the site daily, and more frequently as necessary to eliminate danger of fire; and (v) prohibit workers from smoking on-site.
 - c. Design-Builder shall adhere to all state federal and local Laws regarding to open fires, fire prevention, and fire control within or adjacent to the Project Work Area. No use or storage of explosives or other hazardous materials or equipment of unusual methods shall be permitted without the express, written consent of the ADR and UGA. For purposes of this subparagraph, Hazardous Materials shall include those falling within the definitions provided in ¶ XV(G)(1) herein.
9. **Prohibition of obstructions.** Design-Builder shall not, for any reason or for any length of time, obstruct fire exits, corridors, or any other means of egress from any structure or area of refuge in or near used or occupied buildings.

- B. **Products and substitutions.** When a material, article, or piece of equipment is identified in the approved FOR CONSTRUCTION Construction Documents by reference to a particular manufacturer or vendor, trade name, product number, or other specification, Design-Builder shall provide the specified product. If Design-Builder proposes a substitution, it must submit its proposal in the form of a PCO (as provided in Article VIII) and must include cost-related information and any other information pertinent to the UGAA decision as to whether to allow the substitution. Substitutions agreed before execution of this Agreement shall be included in an addendum, which shall expressly be incorporated into, and listed among, the Contract Documents listed in **Supplement A1**. Substitutions agreed after execution of this Agreement shall be set forth in an ITC or Change Order, as appropriate. By proposing a substitution, Design-Builder warrants that the quality of the proposed assembly will not be reduced from that originally specified, and that, if the substitution is approved, all warranty requirements herein and as provided with the originally specified product will continue to apply to the substituted product or assembly.
- C. **Standards.** All materials, equipment, or workmanship specified by reference to any number, symbol, or title of any ASTM, ANSI, federal, industry, or government agency standard specification shall comply with the version of that specification in effect on the Effective Date of this Agreement.

- D. **Standard of care.** Without exception, Design-Builder shall perform the Work in conformance with the requirements set forth in the Contract Documents and in a workmanlike manner that meets the standard of care required of a diligent and conscientious design-builder performing work on projects of similar nature and complexity to this Project in the State of Georgia (“Standard of Care”). No act, directive, or communication from Design Professional, the ADR, UGAA, UGA, the Board of Regents, or any other person or entity shall relieve the Design-Builder of this obligation or diminish the requisite Standard of Care to be applied.
- E. **Research and coordination; utilities.** Design-Builder accepts an affirmative obligation to seek out and obtain information from UGAA, utilities, governmental agencies, authorities, and officials, and others possessing information needed to: (i) determine the adequacy of available utility service, limits and restrictions on construction and use of the subject Property or Project site, and the existing conditions impacting the Project; (ii) perform the Design Services completely and in accordance with the Design Professional’s Standard of Care as set forth in Article XVI; and (iii) assure that the Work complies with applicable Laws and with the Contract Documents. Design-Builder shall also confirm the information contained in the following subparagraphs of this ¶ III(E). Although, all such inquiry and confirmation must be complete *before* Design-Builder begins the Work, and all such inquiry by Design Professional shall be completed before its submittal of designs, drawings, specifications, Construction Documents, reports, certifications, and other deliverables (“Deliverables”), this duty of inquiry and confirmation is ongoing throughout the performance of the Work. If Design-Builder believes that UGAA has (or must provide) information not otherwise available to the Design-Builder through the foregoing inquiry, and that information is essential to Design-Builder’s performance of the Work or the Design Services, Design-Builder shall request that information from the ADR in a written RFI before execution of this Agreement or at the earliest possible time thereafter, but in no case before it performs Work or Design Services that depend upon the Design-Builder’s obtaining the information. The absence of such a request from Design-Builder shall be deemed to indicate Design-Builder’s representation that it already possesses sufficient information to competently and completely perform the Work and the Design Services.

1. **Utilities.**

- a. **Utility owners and contacts.** Among those entities that may be sources of information to Design-Builder are the following owners of utilities who, upon occasion, provide utility services to UGA or to UGAA:

Water: ACC Public Utilities or UGA
Sanitary Sewer: ACC Public Utilities or UGA
Septic Sanitary System: UGA
Storm Sewer: UGA
Electric Power: Georgia Power Company or UGA
Natural Gas: Atlanta Gas Light Company or UGA
Steam: UGA
Chilled Water: UGA
Data Communications: Enterprise Information Technology Services (EITS)

Voice Communications: AT&T or EITS

Television Cable: Charter Communications or EITS

Fire Alarm Systems: UGA (maintenance contract with Fire Protection Associates)

Security & Access Systems: UGA Public Safety Division

Irrigation: UGA Facilities Management Division

Especially for Projects remote from Athens, Georgia, but in all cases, Design-Builder shall verify with the ADR the identity of person to contact at all current utility providers to the Project.

- b. **Locator notification.** Design-Builder's attention is directed to the fact that there are active utilities on or near the Project site and the Work Area. Utilities are owned by UGA and public utility companies. Seventy-two hours in advance of any digging, Design-Builder shall contact:
 - i. Public Underground Utility Locator Service at 1-800-282-7411 or 811 as required by Georgia State Law. Design-Builder shall retain routine locate number and email this information to utilities@uga.edu, the ADR, and UGA's representative in order for the balance of utility locate requests to be initiated.
 - ii. UGA Facilities Management Division at (706) 542-7450 to locate irrigation lines.

Design-Builder shall be liable for all repair costs and other damages incurred if it fails to timely notify utility locators as described above and/or excavates or digs before locators have marked the Property affected. In addition, any utility line or service damaged by Design-Builder (or its Subcontractors of any tier) that was marked or identified by UGAA, UGA, or utility locator shall be repaired by Design-Builder at its own expense. In the event the owner of the utility elects to make the repairs with its own work force, Design-Builder shall reimburse the owner of the utility for the cost of repairs and indemnify the Indemnites identified in ¶ XI(B) for all damages, losses, claims, costs or demands of any kind related to the utility damage. In no case can funds reallocated from the Design-Builder Contingency Account be used to pay for costs of repairs, damages, losses, claims, *etc.* incurred due to Design-Builder's failure to comply with this provision.

- c. **Connections to existing utilities.** Design and construction of all utility Work involving connections to existing utility systems (including but not limited to: electrical, communications, water, gas, steam, chilled water, storm water & sanitary systems) shall be coordinated with UGAA and UGA at least seventy-two hours in advance.
- d. **Effect on existing facilities.** Design-Builder shall notify the ADR before any proposed shutdown, outage, or Work of any nature that will interrupt or disturb any building or utility system or equipment served by that system. Shutdowns, where unavoidable, shall be scheduled at the convenience of UGAA and UGA.

- e. **Utility assistance.** Design-Builder shall advise and assist UGAA and Design Professional with the preparation of all applications for water, sewer, electrical, gas, telephone, and other utility services necessary for the completion and operation of the Project.
2. **Fire alarm and fire sprinkler deactivation.**
- a. **Four hours or less at one time.** If the Project has an existing fire alarm system or fire sprinkler system that will be encountered during the Work that will from time to time require temporary deactivation (for four hours or less at one time), Design-Builder shall contact the ADR a minimum of seventy-two hours in advance to coordinate the deactivation request. Design-Builder shall also make the following notifications: (i) UGA Environmental Safety Division, Fire Safety ((706) 369-5706); (ii) UGA Police Department ((706) 542-5813); and (iii) UGA fire alarm monitoring company, Fire Protection Associates ((706) 548-8659); and (iv) UGA specific facility affected.
 - b. **More than four hours at one time.** If a sprinkler or fire alarm system on the UGA campus is out of service for more than four hours, a fire watch must be implemented according to the following procedures:
 - i. **Notifications.** (A) UGA Environmental Safety Division, Fire Safety ((706) 369-5706); (B) UGA Police Department ((706) 542-5813); and (C) UGA fire alarm monitoring company, Fire Protection Associates ((706) 548-8659); and (D) UGA specific facility affected.
 - ii. **Fire watch duties.**
 - A. Person(s) on fire watch duty should not have any other responsibility during the time the fire watch is in effect and must keep a cell phone in his/her possession at all times during the fire watch;
 - B. Patrol the entire area affected by the service outage every 30 minutes and look for any signs of fire, smoke, and any activities that could create a fire;
 - C. Keep a log of all fire watch patrols;
 - D. Maintain fire watch for one hour beyond the last time that welding or other high-heat operations occurred.
 - E. If a fire is discovered: (1) activate the building alarm system if in service; (2) call 911 to report the fire; and (3) if the building alarm system is out of service, ask the campus police or other first responders to assist in evacuation of the building.
 - F. Once the need for a temporary fire watch has passed and the fire protection system has been fully restored, the person on fire watch duty will cancel the fire watch by contacting the ADR, UGA Environmental Safety Department, UGA Police Department, UGA fire alarm monitoring company, and the UGA-specific facility that is affected by the fire watch.

- iii. All costs associated with the fire watch shall be included in the Design-Builder Construction Overhead Costs within the GMP.
 - iv. To the extent that this Agreement contains other fire-watch provisions, in addition to the foregoing, the most rigorous and supportive of safety will continue to apply; and none of either are waived or released.
3. **Telecommunications cable.** The current version of the EITS “The University of Georgia Telecommunications Design Guide and Standards” can be located at: http://eits.uga.edu/ExpressionEngine/files/documents/UGA_Cabling_Standards.pdf. Design-Builder shall contact the ADR to schedule a meeting with EITS and the appropriate Subcontractors before installing telecommunications wire and cable or related infrastructure to ensure compliance.
 4. **Utilities.** Design-Builder shall confirm in advance the availability of utilities needed for the Project. The GMP takes into account extension to the Project site of any utility of different pressure, capacity, type, *etc.* required by Design-Builder that is not available on-site. Certain utilities, if owned and operated by UGA, required for Work to be performed hereunder shall be furnished by UGAA at Design-Builder’s expense. However, these utilities shall be furnished at the point and in the capacity that they are available adjacent to the construction site. Any utility of different pressure, capacity, type, *etc.* required by Design-Builder that is not available within the area shall be arranged for by Design-Builder at its own expense. Any expense involved to Design-Builder in extending the utilities from the present location to the point required shall be at Design-Builder’s expense and included in the Cost of the Work.
 5. **Modifications.** As part of the Cost of the Work, Design-Builder shall adjust all existing and new utility structures (manholes, valve boxes, *etc.*) to meet new grades as required to complete the Project.

F. **Deliverable Project Information.** Any and all Project Information created or prepared by Design-Builder and Design Professional shall be provided by Design-Builder to the ADR in both paper and digital (.pdf and native) electronic formats. References herein to “read-only” documents shall mean documents prepared using the current version of Adobe “.pdf” software – in .pdf format. Any document that Design-Builder (or a Subcontractor of any tier) is required to supply or provide to the ADR or UGAA shall be provided (and delivered or transmitted) in both electronic and print form. Unless another format is approved in advance in writing, digital copies of documents shall be provided to the ADR in .pdf format and in the following formats:

- Drawings: .dwg format (by AutoCAD)
- Photographs: .jpg format
- Textual files: .doc or .docx format (by Microsoft) and Adobe .pdf
- Presentation materials: .ppt (by Microsoft)
- Spreadsheets: .xls format (by Microsoft)
- Other graphical materials: Adobe Illustrator, Photoshop, or In-Design
- Other materials: In native format approved by the ADR.

Design-Builder’s cost to procure, license, maintain, and use the requisite software is included in the Design-Builder Construction Fee, and shall not be the subject of a claim for reimbursement

or additional compensation, except to the extent that UGAA gives prior written approval to include such costs in the Cost of the Work within the GMP. UGAA's receipt of Project Information in the formats specified is a condition precedent to UGAA's obligation to pay.

- G. **Obligation to discharge liens.** Design-Builder acknowledges that, pursuant to Law, the subject Property and Project improvements hereunder are public property of the State of Georgia, and, thus, are not subject to lien or levy. Within three days of learning of or receiving notice that a claim of lien has been filed against the Project, the Property, UGAA, UGA, or the Board of Regents by persons or entities who provided Work, labor, material, or services of any kind on the Project at the instance of Design-Builder or a Subcontractor of any tier, Design-Builder must cause that lien to be immediately dissolved by a statutory bond or otherwise fully discharged and cancelled as of record in the office of the clerk of the Superior Court in the county in which the lien was filed. Design-Builder's timely satisfaction of this obligation (without regard to whether the lien is allegedly based on facts or is otherwise lawful) is a condition precedent to UGAA's obligation to pay.
- H. **Payment of taxes.** Design-Builder is solely responsible for paying all federal, state, and local taxes (including but not limited to, sales and use taxes) pertaining to the Work and this Agreement, as well as employment taxes for its employees, compensation for payment of taxes being included within the GMP. Design-Builder shall indemnify, defend, and hold harmless UGAA and UGAA Indemnitees as indicated in ¶ XI(B) (and shall indemnify and hold harmless the State Indemnitees as indicated in ¶ XI(B)) for all claims, demands, and other liability arising from failure by Design-Builder or its Subcontractors of any tier to pay taxes.
- I. **Design-Builder's representations and warranties.** In addition to other representations and warranties provided by Design-Builder herein, and as an inducement to UGAA to enter this Agreement, Design-Builder further warrants and represents the following:
1. **General warranties.** Design-Builder warrants that materials and equipment provided will be new, of good quality, free from defects, and conformant in every respect with the requirements of the Contract Documents. In addition to other warranties provided herein and elsewhere in the Contract Documents, Design-Builder shall provide a five-year warranty on roofs and walls in the forms supplied at **Supplement M**, or such other form as is requested by the ADR at the time of execution of this Agreement.
 2. **Competence and licensing.** Design-Builder (and its Subcontractors of all tiers) possess and will continually maintain all licenses, registrations, certifications, tax bonds, code compliance bonds, other Work-specific bonds, certificates of authority, and other approvals required by governmental authorities and agencies having jurisdiction over the Work, the Project, Design-Builder, and its Subcontractors throughout the performance of the Work and the entire course of the Project, making proof thereof available at all times to UGAA upon request.
 3. **Qualifications and commitment.** Design-Builder: (a) is sufficiently qualified and experienced to competently and efficiently perform its obligations under this Agreement in accordance with the requisite Standard of Care; (b) is a sophisticated business entity, experienced and regularly involved in the application of skill and knowledge to perform Work of the type required on this Project; (c) will, at all times, supply an appropriate number of skilled, experienced, and appropriately licensed construction and professional design personnel so as to proficiently and timely perform the Work in a manner that complies with the Project Schedule, all applicable Laws, and the Contract

Documents; and (d) will impose and enforce its obligations hereunder upon its Subcontractors for their respective parts of the Work.

4. **Fitness.** Design-Builder warrants that the Work will be fit for UGAA's intended purpose and consistent with the Contract Documents and that materials delivered will be merchantable and fit for UGAA's intended purpose.
5. **Insurance.** Design-Builder has provided, and will continue to provide, insurance coverage as required in Article XII and by Law, and will substantiate that provision by supplying to the ADR the requisite documentary proof of coverage: (a) upon execution of this Agreement; (b) between thirty and sixty days in advance of each policy's renewal date; and (c) at other times when requested by the ADR.
6. **Acceptance of Project conditions.** Design-Builder: (a) has visited the site; (b) has thoroughly reviewed all existing Contract Documents and the existing conditions on-site; (c) is aware of the conditions and limitations relevant to the Work and the site; (d) if the Work affects an existing structure or improvements, has thoroughly reviewed and inspected same; and (e) has determined that the above-noted Stated Cost Limitation and Contract Time are reasonable and sufficient to allow its safe, timely, and complete performance of the Work in accordance with the terms of this Agreement and consistent with the requisite Standard of Care.
7. **Title.** Title to all Work, materials, and improvements shall pass to UGA without encumbrance or liens of any kind upon delivery to the site or, in the case of materials stored off-site in accordance with ¶ V(B)(4)(c), upon their delivery to the approved storage facility.
8. **Design-Builder in position of trust.** Design-Builder hereby accepts its role as a fiduciary of UGAA with responsibility and duties owing to UGAA of good faith, trust, confidence, and candor. Design-Builder agrees that it will exercise a high standard of care in managing money and property with respect to UGAA and the Project. In that regard, Design-Builder will, at all times, act in the best interests of UGAA and in furtherance of timely completion of the Work. UGAA is entitled to rely on truthfulness, accuracy, and completeness of Design-Builder's representations, warranties, certifications, notices, applications, and other communications. Design-Builder will pay all amounts due to Subcontractors as they become due. Design-Builder acknowledges that it occupies a position of trust and confidence with regard to the Project, and that UGAA depends upon Design-Builder's conscientious performance and care for UGAA's interests, and upon Design-Builder's prompt payment to Subcontractors of all amounts as they become due. Funds paid by UGAA for Work performed by Subcontractors are accepted by Design-Builder in trust. While Design-Builder's express fiduciary obligations do not extend to require its segregation or investment of funds paid to it for Subcontractors' Work, Design-Builder agrees that its failure to timely pay Subcontractors in accordance with this Agreement would be an unlawful, damaging, and material breach of this Agreement and of Design-Builder's fiduciary duties to UGAA.
9. **Likelihood of damages to UGAA upon breach.** Design-Builder acknowledges that if Design-Builder does not fully and timely perform, UGAA will sustain damages, including loss of income, profit, business opportunities, competitive advantage, and/or other significant economic losses – and that UGAA is entitled to recover from Design-

Builder attorneys' fees and other damages, costs, and expenses incurred by UGAA as a result of Design-Builder's failure to perform or Design-Builder's breach of this Agreement.

10. **Financial solvency.** Design-Builder represents that it is financially solvent and able to pay its debts as they mature; that it possesses sufficient working capital to complete the Work and perform its obligations under this Agreement; and that no funds paid to Design-Builder by UGAA on this Project will be applied to any use that is inconsistent with the terms of this Agreement.
 11. **Legality of employment.** Design-Builder will take steps necessary to assure that all persons performing Work and Design-Services on the Project (including without limitation Subcontractors of any tier and their employees) are properly trained and legally eligible for employment within the United States – and as otherwise required by Laws applicable to the Work, the Design Services, the Project, the Parties, and the Property, including state law governing employment and reporting thereof. Design-Builder shall cooperate with and participate in all statutorily required worker identification and verification programs, including but not limited to applicable on-line worker verification programs. Design-Builder shall include an express provision commensurate with the foregoing in all Subcontracts.
 12. **Supervision and conduct.** Design-Builder shall schedule and control all persons and entities performing Work and Design Services on-site. In the absence of express written permission to the contrary issued by the ADR, Design-Builder, Design Professional, Subcontractors, and/or those employed by them shall not use UGA or UGAA toilet facilities; nor shall they track dirt or debris of any kind into existing structures and facilities. Violent or threatening behavior, smoking in UGAA or UGA buildings or facilities or within the subject Project structure, profanity, inappropriate dress, lewd or suggestive interaction (or attempted interaction) with students or with UGA or UGAA personnel, possession of alcohol, firearms, or illicit drugs, or other inappropriate conduct is not permitted. UGAA reserves the right to permanently eject from the Property (and from the UGA Campus and any Board of Regents property) employees of Design-Builder, Design Professional, or any Subcontractor, or any other person engaged in the foregoing prohibited conduct if, in UGAA's sole judgment and discretion, that person exhibits such conduct. In addition to any other reporting requirement imposed by Law or regulation, Design-Builder shall both immediately and formally notify the ADR in writing of all incidents or occurrences involving death, personal injury, fire arms and weapons, and/or threats made on persons or the Work, as well as any communications with public safety or law enforcement officials involving the Project – detailing the incident, its status, and its current outcome.
 13. **Materiality of representations.** Design-Builder acknowledges and agrees that its satisfaction of each of the preceding representations and warranties is a material obligation of Design-Builder and a condition precedent to UGAA's obligation to pay.
- J. **Means and methods of construction.** Design-Builder is solely responsible for the means, methods, techniques, sequences, and procedures for safely performing the Work and for coordinating its Work with others (including, without limitation, governmental officials, Subcontractors of any tier, and Separate Contractors) – and shall impose, by written subcontract, similar responsibility upon its Subcontractors of any tier for their respective

portions of the Work. That imposition shall not, however, relieve Design-Builder of its obligations under this paragraph. No act, communication, or representation of UGAA (or any other person) shall relieve Design-Builder of this obligation or its obligations to competently and timely perform the Work according to this Agreement, the requisite Standard of Care, and applicable Laws. Design-Builder shall supervise and direct the Work, using its best skill and attention.

1. **Design-Builder's examination of Contract Documents.** Before commencing construction of the Work, Design-Builder shall review and compare the Contract Documents, and shall immediately inform the ADR and Design Professional in writing of any inconsistencies, conflicts, omissions, or errors observed in them, as well as any aspects of them that Design-Builder has reason to believe may not comply with applicable building codes and standards, or that may otherwise negatively affect Work to be performed. Design-Builder's execution of this Agreement shall be deemed to be its representation that Design-Builder has diligently reviewed the Contract Documents for these purposes. If Design-Builder believes that additional information is needed to properly perform its obligations hereunder, Design-Builder shall, before signing this Agreement, request the ADR to provide that information, using a form acceptable to the ADR. Before signing PCO's, Component Change Orders, the GMP Change Order, or other Change Orders, Design-Builder shall thoroughly examine the site and existing structures (if any) affected by the Work, comparing them to then-current Contract Documents. Design-Builder's execution of a GMP Change Order, Component Change Orders, or other Change Orders under Article VIII shall be deemed to be its representation that the Contract Documents contain sufficient information for Design-Builder to perform the Work.
2. **Design-Builder's ongoing duty to investigate, examine, and compare.** Design-Builder has an affirmative obligation to continually investigate, review, examine, and compare existing conditions, existing structures (if any are affected by, or involved with, the Work), Work-in-Place, and the Contract Documents – and to timely report discovered conflicts to the ADR and Design Professional. During construction, Design-Builder shall continually examine the Contract Documents and shall observe, measure, analyze, and compare them to existing conditions revealed (in the case of excavation and entire or partial demolition of structures) and new Work-in-Place to ascertain whether the remaining Work can be performed as indicated in the Contract Documents; and, if Design-Builder has reason to believe that remaining Work cannot be performed as so indicated, it shall promptly give written notice to the ADR and Design Professional of that opinion, and the basis for it.
3. **Consequence of failure to report conflicts.** In addition to the other indemnity-related obligations imposed hereunder, Design-Builder shall indemnify the UGAA Indemnitees and State Indemnitees (as indicated in ¶ XI(B) herein) for damages, losses, and costs incurred to the extent they could have been reduced or avoided by Design-Builder's diligent and conscientious performance of its examination, comparison, and reporting obligations hereunder or by Design-Builder's prompt disclosure to UGAA of known or suspected errors, omissions, or other problems with the design or the Contract Documents. If Design-Builder knows, or has reason to believe, that the Work indicated in the Contract Documents varies from requirements of applicable ordinances, rules, regulations, or other Laws, it shall promptly notify the ADR and Design Professional in

writing of that variance. If Design-Builder performs Work that does not comply with applicable Laws or is otherwise defective, Design-Builder shall bear all costs relating to or arising out of that performance and the requisite corrections.

4. **Certified improvements survey.** If required under ¶ I(X), after foundations are staked, but before concrete formwork is undertaken, Design-Builder shall provide a survey (prepared by a licensed land surveyor) indicating the staked location on-site and certifying that the building improvements, as staked: (a) fall within the Property; (b) are located as indicated in the Construction Documents; and (c) do not violate applicable set-backs, easements, and other site restrictions indicated in the Construction Documents.
5. **Public notices and filings.** Design-Builder shall, not later than five days after the Effective Date of this Agreement or before the First Payment Application is submitted (whichever is earlier): (a) prepare and file with the clerk of the Superior Court of the county in which the Project is located a statutory Notice of Commencement (in the form supplied as **Supplement K**); and (b) obtain and post all Land Disturbance and NPDES permits. Design-Builder shall, within five days of commencing Work on the Property (and continually, until Final Completion), post in a protected and conspicuous place a copy of all employment notices, permits, proof of insurance, the Notice of Commencement, and other documents required by Law or this Agreement to be posted.
6. **Design-Builder's use of site.**
 - a. **Intermittent access.** Design-Builder acknowledges that there are many times throughout the course of the Project when portions of the Property and/or the Work Area may not be accessible to Design-Builder or Design Professional due to various academic, athletic, construction, or other activities on the UGA campus or Board of Regents property – not all of which are knowable in advance. The Contract Time shall not be extended as a result of those activities. Design-Builder shall coordinate its Work and the Design Services so as to not interfere with access to and operation of UGA or UGAA facilities. In addition to the foregoing, Design-Builder shall cease all Work commencing at 3:00 p.m. on the day before UGA home football games; and Work shall not recommence until the next Work day following the game. Design-Builder shall secure the Project site to prevent unauthorized access during periods of cessation of Work.
 - b. **Hours of operation.** Design-Builder shall adhere to all local and UGA codes, ordinances, rules, and other Laws governing hours of construction operations, as well as to any further restrictions specified in the Contract Documents. UGA and/or UGAA may occasionally further restrict hours of construction operations. Design-Builder shall perform the Work during normal working hours, which are deemed to be Monday through Friday, from 8:00 a.m. to 7:00 p.m., excluding New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day ("holidays"). Work during other-than-normal times (*e.g.*, weekends, holidays, and after-hours) shall be coordinated with and subject to written approval of UGAA, which approval can be withheld for any reason. A minimum of seventy-two hours' advance written notice is required for the ADR to issue such approval, if approval is otherwise justified.

- c. **Noise.** UGA and/or UGAA may restrict hours of noisy operations during the course of the Work; and such restriction shall not be the basis of a change in GMP or Contract Time. No radios, CD's, other electronic music players, speakers, or ear phones, or other audio entertainment devices shall be used on-site.
- d. **Work Area.** Design-Builder shall confine activities and operations to the Work Area designated in the Contract Documents. If no Work Area is specifically indicated, the Work Area shall be deemed to be confined to those areas of the Project site needed to perform the Work, as approved in advance by the ADR.
- e. **Protection of existing facilities and structures.** Any marking of existing facilities, surfaces, structures, landscape material, *etc.* by Design-Builder shall be temporary in nature. No permanent spray paint or other marker devices shall be used. Any modification of landscape material occurring in the process of performing the Work shall be approved in advance in writing by the ADR, which approval can be withheld for any reason. Design-Builder shall take all affirmative steps necessary to keep roadways, busways, bikeways, sidewalks and other pedestrian paths, other paved surfaces off-site, as well as walls and other vertical surfaces clear of dirt, mud, waste, construction debris, *etc.* and keep them safe and operational during the course of the Work. Paved and vertical surfaces installed as part of the Work shall be protected from mud, staining, and other damage incurred during the performance of the Work and until Final Completion and acceptance by UGAA. Design-Builder shall instruct all employees and Subcontractors to prevent tracking dirt and debris into existing buildings, the subject structure(s), and onto paved areas. Design-Builder shall protect all Work, including but not limited to, excavations and trenches, from rainwater, surface water, and back-up of drains and sewers. Design-Builder shall furnish all labor, pumps, shoring, enclosures, and equipment necessary to protect and to keep the Work, trenches, and excavations of all types free of water.
- f. **Duty to protect.**
 - i. All existing landscape and hardscape, including but not be limited to, buildings, curb and gutter, stairs, sidewalks, retaining walls, bus shelters, roadways, parking lots, trees and shrubbery not specified for demolition shall be protected during the course of the Work, and all damage to them corrected at Design-Builder's expense before Substantial Completion.
 - ii. Where the Work involves new construction, Design-Builder has an absolute nondelegable duty (and primary responsibility) to assure that the Work, as it is installed, is and remains stable, supported, and incapable of, and unsusceptible to, collapse, fire, or other damage during the course of the Work.
 - iii. Where the Work involves renovations or other modifications of existing structure(s), Design-Builder has an absolute nondelegable duty (and primary responsibility) to assure that both the existing structure(s) to remain and the new Work are stable and supported as they are modified and/or installed, as the case may be, and that both are incapable of, and unsusceptible to, collapse, fire, or other damage during the course of the

- Work. Portions of existing structure(s) to remain shall be protected by Design-Builder as if they were new construction.
- iv. Design-Builder is fully responsible for continual provision of lateral support, earthwork, bracing, and other means of protecting excavations on-site, the Work, existing structures, as well as adjacent property and any public or UGA streets, roads, or other public ways affected by the Work.
 - v. Design-Builder shall make good any damage, injury, or loss as a result of failure to stabilize, support, and protect existing structures to remain and/or new Work-in-Place. Design-Builder shall, in addition to other indemnifications provided for herein, indemnify UGAA, UGAA Indemnities, and the State Indemnities identified in ¶ XI(B) if it fails in any way to do so.
 - vi. All damaged and/or stained existing utility, structures, surfaces, and paving and other hardscape shall be cleaned and repaired by Design-Builder. If UGAA or UGA elects to make necessary repairs with its own workforce, Design-Builder shall reimburse UGAA (or UGA, as the case may be) for all costs, damages, and fees incurred. Design-Builder shall repair or replace damage as required to return the affected utility, structure, surface, *etc.* to its original state before applying for Final Payment.
 - vii. Design-Builder shall repair sidewalks to result in complete panels as originally scored and with concrete of a color matching tone, color, and texture.
 - viii. Design-Builder shall protect all roof drainage systems during all Work or repairs involving roof assemblies and systems. Where the Work involves renovation of a structure, drainage assemblies and systems shall be protected and shall remain operational throughout the course of the Work. Protection shall include absolute prevention of foreign objects and debris entering into any drainage pipe, fixture, or other vessel. If Design-Builder fails in the foregoing obligation, it shall be held liable for all direct and indirect damages in the building to the roof or drainage structure or assembly, or building contents that results; and all repair and replacement shall be at Design-Builder's sole expense.
- g. **Revocable license.** Design-Builder has a revocable license to enter and perform Work upon the Project site within the Work Area. Design-Builder shall confine its plant, apparatus, staging, and storage of materials, and its operations as limited by the Contract Documents and Law and approved in advance by the ADR. Design-Builder shall not unreasonably encumber the Project site, or any structures thereon, with its materials; nor shall it load or permit any part of the Work or existing structures to be loaded with weight that endangers its safety or harms the structure.
- h. **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, ceiling, and other components without compromise or cutting of insulation or other components. Roughed-in dimensions shall be prepared by Design-Builder to accomplish this requirement. Design-Builder shall anticipate and locate all equipment that must be serviced, operated, or maintained in fully accessible positions. This provision includes but is not limited to valves, traps, cleanouts, motor, controllers, switchgear, drain points, filters, access doors, and fire dampers. If spaces, dimension, or other design conditions do not permit compliance with this paragraph, Design-Builder shall submit to Design Professional and the ADR an RFI seeking guidance and direction before installing related Work.

7. **Duty to timely inform UGAA.** Design-Builder's scheduling of the Work shall allow UGAA adequate and reasonable time to make informed decisions and to meet its obligations under the Agreement.
8. **Real-time electronic weather alerts.** In addition to other notices required herein, each business day on which Design-Builder's progress is slowed, impacted, or potentially delayed by weather or site conditions, Design-Builder shall, *during that day*, send an e-mail to the ADR identifying: (i) weather and ground conditions at the site; (ii) the nature of the event or condition that affects the Work; (iii) what portions of the Work were affected; and (iv) what Work, if any, took place on-site that day. Design-Builder shall place in the subject line of the e-mail the words "weather alert," followed by the Project name, followed by the date (e.g., "Weather Alert/UGAA Projectname 9.12.15."). This e-mail notice does not replace required Daily Reports.
 - a. Design-Builder hereby waives any and all claims for otherwise-justifiable weather-related adjustment of Contract Time or the Project Schedule if it fails to send the e-mail weather alerts specified in the preceding paragraph to the ADR *during each day* on which a weather event or condition occurs (whether or not the day of the occurrence will ultimately be the subject of a claim for adjustment).
 - b. The ADR's receipt of this e-mail weather alert notice does not constitute acceptance of, or agreement with, the claims or statements made by the Design-Builder in that alert.
9. **Meetings.** Design-Builder shall conduct periodic on-site project meetings at the intervals established in Article I – and more frequently as requested by the ADR or as needed to maintain progress of the Work and meet all Milestone Dates set forth in the Project Schedule.
 - a. **Persons required to attend.** Design-Builder shall cause the following persons to attend each periodic on-site meeting: (i) Design-Builder's Project Manager; (ii) Design-Builder's on-site Superintendent; (iii) key Subcontractor superintendents, foremen, or other persons with authority and information to act on behalf of each Subcontractor whose Work is to be discussed, planned, or at-issue in the meeting; and (iv) DPR, DP Project Manager, or a designee that is approved in advance by the ADR).
 - b. **Agenda.** The agenda of every periodic on-site meeting shall include: (i) safety; (ii) review and approval of past meeting minutes; (iii) sequence and timing of the Work, key deliveries, use of the site, storage, temporary facilities; (iv)

outstanding RFI's, ITC's, PCO's, Change Orders, Payment Applications, *etc.*; (v) existing conditions and Work-in-Place; (vi) past and new action items; (vii) items that could affect Cost of the Work, GMP, or Contract Time (viii) realized or anticipated problems or hazards; (ix) utilities and road and curb cuts; (x) scheduling of inspections and tests of all types, and reviewing results of those performed; (xi) weather-related issues; (xii) Separate Contractors and installation of UGAA Equipment; (xiii) payments to Subcontractors; (xiv) demands, claims, or disputes (if any); (xv) site maintenance; and (xvi) review of progress and how it complies (or fails to comply) with the then-current Project Schedule and Design-Builder's Progress and Completion Schedule.

- c. **Meeting minutes.** Design-Builder shall prepare written minutes for each Project-related meeting (including without limitation Preconstruction Meetings), transmitting same within three days in MS Word format to the ADR and Design Professional for their respective review and comment – and shall make subsequent corrections accordingly. Upon request of the ADR, Design-Builder shall digitally record meetings – either in audio or in audio-video format, as requested by the ADR – and transmit recordings digitally to the ADR within three days of the meeting recorded. No photographic, video-graphic, audio, or digital recording of meetings involving UGA or UGAA personnel may take place without the express written consent of the ADR, which can be withheld for any reason.

- 10. **Design-Builder's duty to obtain competitive pricing; Self-performed Work.** Whether pertaining to Component Change Order Work, GMP Change Order Work, or other Cost of Work or other changes in accordance with Article VIII, Design-Builder acknowledges its fiduciary duty in the service of UGAA's interests to seek and obtain competitive pricing from potential Subcontractors and suppliers, which duty applies to both pricing of adjustments to the GMP and payment for Work under any circumstances in which Subcontract costs affects payments to Design-Builder or the Cost of the Work. Unless excused in advance in writing by the ADR, satisfaction of this duty requires Design-Builder to obtain by fair and competitive means at least three written proposals for each element of the Work that affects payments to Design-Builder of any kind. Self-performance of the affected Work by Design-Builder will not satisfy this requirement unless: (a) Design-Builder has provided to the ADR the proposed costs involved in performance of the affected Work; (b) Design-Builder has obtained *bona fide* competitive price proposals from at least two other potential providers of the Work to be performed; and (c) the maximum cost of the subject Self-performed Work is approved in writing in advance by the ADR. Design-Builder waives any right it may have to compensation for Self-performed Work that it undertakes without written consent of the ADR or without having justified the performance in the manner specified in this paragraph. Design-Builder shall provide to the ADR and Design Professional copies of scope sheets, comparative analysis of scope and bids, and Design-Builder's recommendation of the proposed Subcontractors. That said, nothing in this Agreement shall require UGAA to accept Design-Builder's recommendation or to make price the dominant factor in selection of Subcontractors.

- K. **Preconstruction Services.** All Preconstruction Services shall be performed taking into account that the Project must be constructed within the then-current Stated Cost Limitation. At the

outset of Preconstruction Services, Design-Builder shall prepare for ADR approval a Design-Build Plan including a Preconstruction Bar Chart (Gantt) Schedule, as described in ¶ VI(F)(1), addressing existing conditions and programming, potential component identification, potential bid package categories, construction strategy, cash flow and invoicing, potential staging or phasing of construction, scheduling, security, quality control, safety, costs, on-site facilities, and coordination with UGAA, Design Professional, and others involved in the design and construction process. Terms and conditions of this Agreement shall also apply to Preconstruction Services.

1. **Examination of Project criteria and studies.** Design-Builder shall examine Project Criteria, program, preliminary studies, surveys, existing conditions, and any other existing information provided by UGAA. Throughout the Preconstruction process, Design-Builder shall work collaboratively with UGAA and Design Professional, supplying costs estimates, cost evaluation, value engineering recommendations, design analysis, constructability reviews, and technical input on methods of construction, materials, details, bidding formats and strategies, and options for creation of separate bidding packages and Component Construction Documents packages.
2. **Preconstruction meetings.** Preconstruction meetings will take place with the ADR and/or Design Professional as often needed to assure timely performance of Preconstruction Services and progress of the Project. As part of the Design-Builder Preconstruction Fee and Design-Builder Preconstruction Overhead Costs, Design-Builder (together with all of its key preconstruction personnel) shall attend all preconstruction meetings.
3. **Review and development of designs and components.** Design-Builder shall participate in and contribute to the review and development of the Project's design and scheduling of the design and construction, including Components thereof, construction of Components of the Project under Component Change Orders, and of the entire Project under a GMP Change Order. At each stage of Preconstruction Services, Design-Builder shall provide analysis of different construction methods in each major trade group for potential quality, cost, and scheduling enhancements or improvements.
4. **Construction Documents review.** Design-Builder shall examine Construction Documents (including Component Construction Documents) as they are being prepared and shall furnish prompt and timely up-dated feed-back to same with regard to constructability, maintainability, scheduling, cost, permitting, and value-driven potential substitutions of materials, systems, and assemblies and other value-engineering options.
5. **Schedules.** Design-Builder shall develop: (a) a master Project schedule; and (b) Preconstruction Schedule, consistent with schedule requirements set forth in Article VI.
6. **Major equipment.** Design-Builder shall prepare major equipment and Lead-Time Item purchasing packages (as defined in ¶ III(M)(6)(a)).
7. **Safety, quality assurance, and schedule adherence.** Design-Builder shall prepare written requirements for safety, quality assurance, and schedule adherence.
8. **Preconstruction Budget.** Before commencement of Work under a Component Change Order and/or under the GMP Change Order, Design-Builder shall provide to UGAA and update a detailed Preconstruction Budget, including in it line-item estimated costs

for each discrete cost of the Work within the Stated Cost Limitation indicated in the information preceding Article I.

- a. Design-Builder shall revise and refine the Preconstruction Budget at appropriate intervals as requested by the ADR or required by the conditions of the Work and present the revisions to the ADR.
 - b. Design-Builder shall prepare estimates of the Cost of the Work at Preliminary and Conceptual Design Phase, Schematic Design Phase, Design Development Phase, 50% Construction Documents Phase, 80% Construction Documents Phase, 100% Construction Documents phase, and at such other times or intervals as the ADR may request. Estimates shall be accompanied by a written statement indicating whether the design, as indicated in the respective drawings and specifications, can be built within the then-current Stated Cost Limitation (or the then-current GMP, if a GMP Change Order has been executed by UGAA)
 - c. As projected costs of the Work become more determinable, the Design-Builder shall incorporate into the Preconstruction Budget approved changes as they occur; shall develop cash flow reports and forecasts; shall identify variances between actual and budgeted costs; and shall advise the ADR promptly whenever projected costs exceed or may exceed the budgeted cost.
 - d. The Preconstruction Budget, as updated during the course of Preconstruction Services, shall form the basis of the initial Schedule of Values upon execution of Component Change Orders and/or the GMP Change Order.
9. **Best efforts for Project success.** Design-Builder will assist UGAA in development of a strategy for the best approach to the successful completion of the Project as a whole, which assistance shall include, but not be limited to, provision of guidance in preparation of a reliable Preconstruction Budget and other cost estimates, Project Schedules, bid package allocations, *etc.*
10. **Bidding and Award.**
 - a. **Performance requirements.** Design-Builder shall develop requirements to assure cost and quality control and timely performance during construction.
 - b. **Schedule.** Design-Builder shall develop a provisional Preconstruction Baseline CPM Schedule indicating methods and sequencing of construction – for review by UGAA and issuance with the bid packages.
 - c. **Bidders.** Design-Builder shall: (i) identify and pre-qualify bidders in a manner acceptable to UGAA; (ii) prepare the separate bid packages and documents in coordination with Design Professional; (iii) distribute bid documents in a manner consistent with ¶ III(J)(10); (iv) monitor bidding activity, and report it to the ADR; (v) schedule and conduct pre-bid conferences in conjunction with Design Professional for the various bid packages; (vi) review and analyze bids and advise the ADR accordingly; and (vii) update the Preconstruction Baseline CPM Schedule.

L. **Construction-phase Services.**

1. **Component Change Order process.**

- a. **Staged construction possible.** UGAA may elect to proceed with Construction-phase Services with respect to portions of the Work, even while Preconstruction Services are being performed for other portions of the Work. Construction may commence with UGAA's execution of a Component Change Order before its execution of the GMP Change Order. The terms and conditions of this Agreement, including Article VIII, also apply to Component Change Order Work. Construction-phase Services shall not begin unless and until UGAA issues (by e-mail or otherwise) a written Notice to Proceed with Construction-phase Services.
- b. **Proposal.** If, prior to the execution of the GMP Change Order, UGAA authorizes (as provided in the immediately preceding subparagraph) commencement of construction or procurement of any Component of the Project for which UGAA has approved Component Construction Documents, UGAA may request Design-Builder to obtain proposals and to submit a proposed Component Change Order to this Agreement under which the Design-Builder shall offer to contract with Subcontractor(s) for construction of the Component or procurement of items in the Component in accordance with the Component Construction Documents. UGAA's request will identify the specific Component of the Work for which a proposed Component Change Order is requested. Component Change Order proposals shall be accompanied by a proposed CPM-based Project Schedule conforming to the requirements of Article VI.
- c. **Component Construction Documents** shall be prepared by Design Professional with the assistance and construction-related advice of Design-Builder and shall:
(i) reasonably indicate or infer complete construction of the Component Work;
(ii) be sufficient so as to allow Design-Builder to price the completed Component Work; (iii) meet all life safety, building, health, and environmental codes, regulations, and Laws and other requirements imposed by the State Fire Marshal, UGA Fire Safety Division officials, or others having jurisdiction over the Work or the Project; and (iv) be sufficiently detailed to preclude the necessity for complete rework as the Construction Documents for the Work as a whole proceed to "FOR CONSTRUCTION" release.
- d. **Component Change Order Sum.** The Component Change Order Sum shall be the maximum amount that UGAA is required to pay Design-Builder for complete and compliant performance of the subject Component Change Order Work – and shall consist of: (i) Component Subcontract Sums for Subcontractor(s) to be engaged to perform Component Change Order Work; (ii) Design-Builder's estimated actual cost for UGAA-approved Self-performed Component Change Order Work; (iii) an ADR-approved UGAA Component Contingency Account (where otherwise justified hereunder); (iv) Design-Builder Construction Fee applicable solely to performance of Component Change Order Work *(limited proportionately for the Component Change Order to the same proportion applicable to the overall Design-Builder Construction Fee indicated (in the information preceding Article I) to the Stated Cost Limitation indicated in the information preceding*

Article I); and (v) Design-Builder Construction Overhead Costs (including without limitation mobilization costs, temporary facilities, all other Design-Builder costs and expenses) for complete performance and administration of the Component Change Order Work (*limited proportionately for the Component Change Order to the same proportion applicable to the overall Design-Builder Construction Overhead Costs indicated (in the information preceding Article I) to the Stated Cost Limitation (indicated in the information preceding Article I)*).

- e. **Bonds.** Before commencing Preconstruction Services, Design-Builder shall provide Bonds as required in Article XIII. The penal sum at any given time shall be not less than the total of approved Component Change Order Sums to-date (*even before execution of a GMP Change Order*). In the alternative, before a GMP Change Order is executed, Design-Builder may provide Bonds with a penal sum equal to the then-current Stated Cost Limitation. Concurrent with execution of the GMP Change Order, Design-Builder and its surety will provide Surety's endorsements on any existing Bonds that will increase the penal sum of Bonds as endorsed to not less than the GMP in the GMP Change Order, as that amount may be increased by subsequent Change Orders.
- f. **Execution and modifications of Component Change Orders** shall only be by those persons authorized in Article XVII to bind their respective Party and in the manner set forth therein. Modifications to Component Change Orders must be in writing in a manner that complies with Article VIII. Upon execution of Component Change Order, it will become part of the Contract Documents. The Work performed thereunder shall be performed and administered in accordance with the Contract Documents. Component Change Order Work must commence within three days after execution of the Component Change Order by UGAA.
- g. **Component Change Order Work not Preconstruction Services.** All costs, fees, profits, overhead, and any other compensation of any kind accruing hereunder to Design-Builder for Component Change Order Work shall be included in the Cost of the Work, Design-Builder Construction Fee, or Design-Builder Construction Overhead Costs, as the case may be – *and shall not be deemed part of either the Design-Builder Preconstruction Fee or Design-Builder Preconstruction Overhead Costs.*

2. **GMP Change Order.**

- a. **Proposal.** After designs and Construction Documents are sufficiently developed, and upon request of the ADR, Design-Builder shall submit for UGAA review and approval a proposed GMP Change Order to establish the GMP, which shall be inclusive of the Cost of the Work, Design-Builder Construction Fee, Design-Builder Contingency Account, and Design-Builder Construction Overhead Costs – all as necessary to complete the Work on or before the Contractual Date of Substantial Completion. The GMP Proposal shall be submitted to the ADR and Design Professional for review, comment, and, where appropriate, UGAA approval, together with the Schedule of Values, as required in ¶ V(B)(1). Scope of Work included Component Change Orders executed before execution of the GMP Change Order shall be subsumed into the GMP Change Order and shall be indicated on a line-item basis (in each of their constitute parts (*e.g., Component-*

specific Cost of the Work, Design-Builder Construction Fee, Design-Builder Contingency Account, and Design-Builder Construction Overhead Costs)) in the Schedule of Values, the GMP Change Order, and in subsequent Payment Applications, with credits for previous payments to Design-Builder allocated accordingly.

- b. **GMP Change Order as Contract Document.** The GMP Change Order will, upon execution by UGAA, become part of the Contract Documents.
- c. **Application to GMP of amounts paid.** Amounts due or paid to Design-Builder prior execution of the GMP Change Order (exclusive of Design-Builder Preconstruction Fee and Design-Builder Preconstruction Overhead Costs) shall be credited to UGAA under the GMP and applicable to: (a) amounts that may become due to Design-Builder within the GMP; and (b) Component Work for which payments were made.
- d. **Effect of GMP Change Order.** GMP Change Order shall bring forward and incorporate on a line-item basis all Component Change Orders that preceded it, including their respective Design-Builder Construction Fee, Design-Builder Construction Overhead Costs, and Cost of the Work, giving full credit to UGAA for all amounts paid for each. Cost of the Work, Design-Builder Construction Fee, and Design-Builder Construction Overhead Costs components of the Component Change Order Sums shall be cumulative so that the aggregate of those components of all Component Change Orders that are executed at any time shall be available for payment to Design-Builder where incurred, substantiated, and approved by UGAA in the performance of Component Change Order Work. Design-Builder Preconstruction Fee and Design-Builder Preconstruction Overhead Costs shall be accounted for separately from the GMP Change Order and any Component Change Orders, and are not part of the GMP.

M. **Complete performance of the Work.** Design-Builder shall fully and timely perform the Work in accordance with the obligations set forth herein and elsewhere in the Contract Documents.

- 1. **Design-Builder solely responsible for the Work.** No inspection, testing, job-site meeting, review of submittals, audit, review of schedules or Payment Applications, or any other decision, representation, or act of (or omission in) construction administration by UGAA, the ADR, Design Professional, government, or others shall relieve Design-Builder of its obligations under the Contract Documents and under Law.
- 2. **Daily clean-up.** Each day, Design-Builder shall broom-clean the paved surfaces of the site and the floor surfaces in the subject structure(s), removing all debris, waste, scrap, and trash from the Project site, placing it in a dedicated steel container designed for that purpose, and lawfully disposing of it off campus weekly, or more often as needed, keeping records of the manner and location of the disposal. Design-Builder shall deposit no debris or other waste of any kind or in any amounts in any UGA trash collecting container or facility. In no case shall combustible waste and debris be allowed to accumulate on-site. Design-Builder shall not permit any sanitary nuisance in or about the Work area at any time. If Design-Builder fails to satisfy the foregoing obligations, UGAA, without notice, may, but is not required to, undertake steps to do so itself, or by using other forces – deducting all costs and expenses incurred from the GMP by unilateral Change Order.

3. **Cutting and patching.** Design-Builder shall minimize cutting and patching of existing surfaces and building components to the degree possible under the circumstances. Where cutting is required, patching shall yield a resulting surface that is, in the opinion of the ADR, acceptable aesthetically and continuous in terms of color, texture, and strength.
4. **Dust control.** In addition to any other measures that may be indicated in the Construction Documents, Design-Builder shall install dust-proof enclosures, partitions, mechanical system filters, and other devices as necessary to avoid transmission of dust outside the Work Area – or into heating, ventilation, and air conditioning (“HVAC”) systems or other parts of the Work-in-Place in which dust is harmful or unacceptable. Design-Builder shall dampen debris and the Project site as required to avoid blown dust.
5. **Stabilization of the Work.** Design-Builder shall take all steps necessary to stabilize the Work-in-Place and any surrounding site, earthwork, or building features, systems, assemblies, and components to prevent deterioration, collapse, or damage of any kind. Design-Builder shall protect all Work, including but not limited to excavations and trenches, from rainwater, surface water, and back-up of drains and sewers.
6. **Submittals.** Design-Builder shall prepare and deliver all samples, shop drawings, and other submittals required by the Contract Documents (“Submittals”).
 - a. Concurrent with Design-Builder’s execution of the GMP Change Order, Design-Builder shall provide a schedule of Submittals and the anticipated dates on which each scheduled submittal item will be submitted, which schedule shall identify those items for which advance procurement will be necessary to meet the Project Schedule as set forth in Article VI (“Lead-Time Items”), and shall provide for them in its Project Schedule and in Progress and Completion Schedules. Design-Builder’s proposed Submittal schedule shall indicate, with respect to each Submittal, whether the Submittal is to be provided as an electronic (digital) Submittal or a hard-copy Submittal – or both. Even upon approval of a Submittal schedule by the ADR, the ADR may, at any time subsequent during the Submittal process, require that Submittals be provided by Design-Builder in either electronic or hard-copy form (or both) – and at no additional cost to UGAA.
 - i. *Electronic Submittals.* Electronic (digital) Submittals are acceptable in read-only form. Design-Builder (and Design Professional) shall stamp and sign the Submittals indicating unequivocal approval, then scan and distribute the documents as required herein including an electronic copy to the ADR.
 - ii. *Hard-copy Submittals.* If hard-copy Submittals are required during the course of the Work, Design-Builder shall submit five copies of all required Submittals to Design Professional. Submittals bearing final, unequivocal approval of Design Professional and Design-Builder shall be distributed by Design-Builder as follows: (A) two copies to the ADR (one being delivered with Closeout Materials required herein); (B) one copy to Design Professional; and (C) one copy retained by Design-Builder.

- b. Design-Builder shall deliver Submittals for review by the Design Professional sufficiently in advance of need to allow a time for review and comment without delaying delivery of Lead-Time Items or progress of the Work. In no case shall less than fourteen days be allowed for that review. Design-Builder waives in advance all objections to, or claims arising out of, lengthened review of submittals that are not timely submitted in accordance with ¶ III(M)(6)(a).
- c. Design-Builder shall date, consecutively number, stamp (with text indicating its unconditional approval), and sign (indicating that approval) each copy of each Submittal (and Resubmittal) before delivering them for review to the Design Professional (and/or others where directed).
- d. By transmitting a Submittal or Resubmittal for review, Design-Builder represents that it has thoroughly reviewed that Submittal or Resubmittal, and that the component, material, or assembly described in that Submittal or Resubmittal complies with the Contract Documents and can be installed as shown; and any disclaimers to the contrary shall be of no effect.
- e. On each Submittal, Design-Builder shall note its approval of the information contained therein as being conformant with the requirements of the Contract Documents – and note graphically *and* textually any and all deviations between the components, products, and/or assemblies indicated in the Submittal and the correlative construction drawing or specification section(s) from which they deviate. Design-Builder shall mark graphically *and* textually, noting on Resubmittals, all changes and updates from previous version(s) of Submittals.
- f. Design-Builder shall maintain a Submittal Log, indicating each Submittal, Resubmittal, and relevant information regarding its status.
- g. Design Professional will review, comment, and, if appropriate, approve or reject Submittals, returning reviewed Submittals to Design-Builder for modification and Resubmittal or for installation consistent with the review and comments. Design-Builder shall keep a complete set of Submittals, Submittal comments and review notes, Resubmittals, Submittal logs, and related documents on-site, allowing access by UGAA and Design Professional upon request. Reviews and/or comments by the ADR shall not be for correctness of dimensions, quantities, or coordination with existing conditions or other Work, all of which remain the sole responsibility of Design-Builder.
- h. Submittals are not Contract Documents. No review and comment (or failure to review or comment) by UGAA, the ADR, Design Professional, or others will relieve Design-Builder of its obligation to fully and timely perform as required by the Contract Documents. Nothing noted in Submittals or on them shall modify the Contract Documents in the absence of a duly executed Change Order proposed in the manner set forth in Article VIII.
- i. To the extent the Contract Documents expressly permit or require signature and seal (or other certification) by DPD's or other licensed professionals of shop drawings or other Submittals related to a particular component, material, or assembly, each page of the Submittal (in the case of drawings) and the cover of each textual Submittal (*e.g.*, product information, specification, warranties, and

other written text) shall bear the professional seal and signature of the DPD or other licensed professional under whose personal, direct, and responsible supervision the document(s) was prepared. UGAA shall be entitled to rely on the DPD's seal and signature as an indication that DPD accepts full professional responsibility for the contents of the documents bearing that seal and signature.

- j. Design-Builder cannot, by stamp, cover letter, or otherwise, limit, disclaim, or deny responsibility for content of the Submittals or professionally certified documents; and disclaimers to the contrary are of no effect.
 - k. If Design-Builder contends that comments or notes by UGAA, the ADR, Design Professional, or others on Submittals constitute a change from the Contract Documents that requires modification of the Project Schedule, Milestone Dates, Contract Time, or GMP, Design-Builder shall, within seven days of receiving the comment or note, submit to the ADR and Design Professional a PCO documented in the manner prescribed in Article VIII – or waive any right Design-Builder might otherwise have to compensation (or adjustment of Contract Time) related to the purported change.
 - l. To the extent that UGAA incurs costs or fees of any kind related to re-review necessitated by non-approval of Design-Builder's Submittals, Design-Builder shall immediately reimburse UGAA for those costs; or, in the alternative, UGAA may issue a unilateral Change Order, reducing the GMP accordingly.
 - m. All costs related to preparation of Submittals shall be borne by Design-Builder as part of the Design-Builder Construction Overhead Costs within the GMP.
7. **Daily Reports.** Each weekday and other day on which Work is performed on-site, Design-Builder shall contemporaneously prepare daily written reports, detailing: (a) the Work performed; (b) the Design-Builder's personnel on-site (and the hours worked); (c) Subcontractors' personnel on-site (and the hours worked); (d) deliveries of major materials and assemblies; (e) the temperature and other weather and site conditions; (f) inspectors or other nonparties or governmental agents on-site and their respective activities; (g) notation of tests performed and test results received; (h) meetings held; (i) safety concerns encountered or addressed; (j) RFI's and PCO's issued; (k) notices, claims, or demands received; and (l) any other information or content requested by the ADR. Each Daily Report must be prepared on the day covered by it (or the next business day at latest) and must be signed contemporaneously by Design-Builder's Superintendent, which signature is Design-Builder's representation of their accuracy and reliability. Design-Builder's preparation of contemporaneous and accurate Daily Reports is required in all cases; and their submittal to the ADR within 72 hours of an ADR request is a condition precedent to UGAA's obligation to pay. Copies of any and all Daily Reports must be submitted to the ADR at any time upon request.
8. **As-built information.**
- a. **As-built Construction Documents.** Design-Builder will continually update a distinct, complete set of Construction Documents, contemporaneously documenting all Work that either: (i) is covered or hidden by subsequent Work, earthwork, *etc.* as it is installed; or (ii) deviates in location or method of installation from that which is indicated in the Contract Documents. Required as-

built information must be recorded *at the time of installation* (in graphic and textual form), showing precisely what material or component was installed, the date it was installed, at what location it was installed, at what elevation it was installed, what other Work or existing conditions were modified to permit installation, and noting in detail, by special markings, how (if at all) installation in each such case deviated from that indicated in the Contract Documents – identifying also the person noting the as-built information and the date it was noted;

- b. **Progress Photos.** Design-Builder shall digitally photograph: (i) each element of the Work *as it is installed* and *before* it is covered or concealed by other Work; (ii) daily construction activities or *non-activity* on-site each business day and on any other day that Work is performed; and (iii) any safety or other condition requiring notice hereunder. Progress Photos shall bear digital time and date imprints. Copies of any and all Progress Photos must be submitted digitally to the ADR at any time upon request; *and*
 - c. **Finishes Binders.** Design-Builder shall, during the course of the Work, supply the Design Professional with updated samples, swatches, and examples and pieces of actual materials used in the Work for Design Professional's incorporation into finishes binders ("Finishes Binders"). Materials contained in Finishes Binders shall be fully labeled and shall bear identification of the product using the same finish tags, labels, and specification numbers used to identify and describe the product in the Construction Documents.
9. **Temporary facilities.** Design-Builder shall provide and maintain the following on-site (until removal is authorized in writing by the ADR):
- a. A current set of record Contract Documents, Change Orders, RFI's, PCO's, ASK's, Payment Applications (for Design-Builder and Subcontractors), Subcontracts, purchase orders, delivery tickets – all of which shall be secured so as to allow access only by UGAA, the ADR, DBR, Design-Builder's Project Manager, and Design-Builder's Superintendent;
 - b. A permit set of Construction Documents bearing the stamps and notes of governmental officials having jurisdiction over the Project or the Work; as well as current inspection sign-off sheets and other products of review by governmental inspectors, building officials, *etc.*;
 - c. All temporary excavation shoring, bracing, forms, underpinning, lateral support, enclosures, structures, and devices needed to perform the Work and to secure and protect the Work-in-Place, all materials stored on-site, adjacent property, existing structures (or portions of existing structures) to remain, and persons on-site or adjacent to the site from injury, deterioration, collapse, damage, and harm of any kind, and in accordance with Contract Documents;
 - d. Temporary site and building lighting and all other appurtenances and measures as needed for complete maintenance of Project safety, security, and performance of the Work at all stages;
 - e. Temporary power, water, and other utilities;

- f. First-aid kits and any other needed safety equipment, accessible and distributed as needed;
 - g. Temporary access roads, and off-street parking and loading areas – where approved in advance in writing by the ADR;
 - h. Site grading, gravel, paving, soil stabilization, and other temporary measures needed to: (i) facilitate uninterrupted progress of the Work; (ii) avoid ponding of water and unlawful run-off of sediment at all stages of grading; (iii) avoid erosion and rutting of soils; and (iv) install, observe, and maintain (and replace as necessary during the course of the Work) equipment and measures adherent to Best Management Practices as set forth in ¶ XV(Q)(7) herein to protect the Project site, adjacent property, roads, streams, wetlands, and waterways against unlawful sedimentation, erosion, and other Pollutants;
 - i. Posted and protected notices, including notices of commencement, notice of bonds, permits, a directory indicating after-hours emergency telephone numbers for DBR, Design-Builder's Superintendent, Design-Builder's Project Manager, and the ADR, and any other postings required by the Contract Documents, the ADR, or by federal, state, or local Laws;
 - j. Where ASK's clarify information on drawings, Design-Builder shall append copies of the ASK to the drawing(s) clarified by it;
 - k. Design-Builder may provide and install site signage as required to direct deliveries; however, signage design and location must be approved in advance in writing by the ADR – and cannot serve as advertising for Design-Builder, Design Professional, Subcontractors, suppliers, or others; *and*
 - l. Other Temporary Facilities as set forth in ¶ I(R).
10. **Inspection of Work before it is covered.**
- a. **Design-Builder's duty to inspect.** Design-Builder has an affirmative, indivisible, nondelegable, and nontransferable obligation to UGAA to inspect the Work (and involved portions of existing structures to remain, if any) at all stages of construction and to supervise and superintend performance of the Work in such manner as to enable it to confirm and certify at all times that the Work has been executed in strict accordance with the Contract Documents. Design-Builder expressly waives any defense to breaches of its obligations hereunder based upon: (i) another person or entity's failure to bring a noncompliance or defect in the Work to Design-Builder's attention; or (ii) alleged fault of a Subcontractor of any tier.
 - b. **UGAA opportunity to inspect.** UGAA is entitled to, but is not required to, observe and inspect all Work before it is covered by Design-Builder. Design-Builder shall provide sufficient advance notice that installed Work is to be covered so as to allow UGAA, Design Professional, and governmental inspectors having jurisdiction over the Project and the Work reasonable opportunity to inspect it. If, without notifying the ADR, Design Professional, government inspectors, *etc.*, Design-Builder covers Work before such inspection, or covers Work that the ADR (or Design Professional or government inspectors) have

asked to inspect before covering, UGAA can require Design-Builder to uncover the Work for inspection, with Design-Builder bearing all related costs (without regard to whether the Work uncovered is found to be defective). This obligation is not discharged by Design-Builder's provision of Progress Photos of the Work to be covered.

11. **Testing and quality control.** Design-Builder shall provide that testing which is assigned to Design-Builder in the Contract Documents.
- a. **Design-Builder's testing obligation.** Design-Builder shall engage independent, licensed, technicians and engineers to certify fire alarm and fire suppression systems, as installed.
 - b. **Reporting test results.** Design-Builder shall submit resulting reports to the ADR no more than seventy-two hours after the test is performed, and shall thereupon deliver to the ADR any related citations, claims, demands, or retests in the manner prescribed herein for notices and claims.
 - c. **Scheduling tests.** Design-Builder shall arrange for and schedule all materials testing and quality control measures required by the Contract Documents – as well as test and inspections by UGAA's Testing Consultants (*see* ¶ IV(C)), building officials and other agents of government, and other nonparties.
 - d. **Re-testing.** Design-Builder shall bear the costs of testing and retesting as provided in ¶ IV(C)(3).
 - e. **Scheduling inspections.** Design-Builder shall arrange for inspections by the State Fire Marshal (or delegatee UGA Fire Safety Division officials) at 80% completion (*i.e.*, installation of fire walls, vertical shafts, stairways, smoke stops, hazardous area separations, roof and ceiling assemblies, corridors and doors, HVAC systems, and similar systems and assemblies) and 100% completion (*i.e.*, all Work complete with Certificate of Occupancy in-hand). Design-Builder shall issue notice to the ADR and UGA Fire Safety Division when all items on the 100% completion inspection report have been satisfied and completed. Design-Builder shall submit the executed Certificate of Occupancy to the ADR.
 - f. **Mold, mildew, and other moisture-related contamination – precautions and testing.**
 - i. Design-Builder shall permit no part of the Work or any part of any Project structure(s) to contain, develop, or be contaminated to any degree whatsoever with mold, mildew, or any bacterial or fungal growth or infestation (collectively "contamination" or "moisture-related contamination").
 - ii. Before accepting delivery of materials for use in the Project, Design-Builder shall examine the material or assembly delivered for dryness in accordance with the requirements of the Construction Documents and other Contract Documents. The materials shall be tested for moisture content upon delivery, stored, secured, and protected as required by the Contract Documents and as needed to preserve them from the weather, moisture, and contamination-causing forces.

- iii. Design-Builder shall take all steps necessary to assure that stored and installed materials and assemblies are kept and preserved in a way that prevents mold, mildew, bacterial and fungal infestation, and other forms of contamination.
- iv. The Work and stored materials shall be retested for moisture content at the time of installation.
- v. Before any Work is covered, Design-Builder shall examine the materials and Work to be covered and the substrate on which it is installed or to which it is attached to assure that it is free of moisture or moisture-related contamination, and shall not permit Work to be covered if water, visible moisture, or other conditions contrary to the requirements of the Contract Documents are present. Where the Work involves modifications of, or additions to, existing structure(s), this requirement also applies to involved or adjacent portions of existing structures that are to remain, as well as to new or modified construction.
- vi. Work installed or performed in contravention of this and related provisions shall, by definition, be deemed Defective Work.

12. **Defective or Noncompliant Work.** Design-Builder shall notify the ADR upon its discovery of Defective Work.

- a. **Duty to correct Defective Work.** As a material obligation of this Agreement, and whether or not formally rejected or condemned by UGAA or others, Design-Builder shall replace all Noncompliant or Defective Work, thereafter resequencing and/or accelerating the Work as needed to comply with the Project Schedule and satisfaction of Milestone Due Dates in it. In no case shall demolition or correction of Defective or Noncompliant Work justify an increase in the GMP or an extension of Contract Time.
- b. **Aesthetic judgment.** Judgments and decisions of the ADR in matters of aesthetics pertaining to the Work shall be determinative and binding on the Parties. Aesthetic opinions, if any, offered by Design Professional are deemed to be advisory only.
- c. **Repair and correction.** Where, in the opinion of UGAA, Defective Work can be repaired in a way that is likely to result in compliance, Design-Builder may attempt repair. Consent by UGAA to Design-Builder's attempt to repair, however, shall not waive UGAA's right to require Design-Builder's removal and replacement of any and all Defective Work that is not repaired to UGAA's satisfaction or is not brought into full compliance with the Contract Documents.
- d. **UGAA right to correct Defective Work.** If Design-Builder fails to timely correct Defective Work, UGAA may, upon three days' notice (or sooner in emergencies), perform the correction itself or engage Separate Contractor(s) to correct it. Design-Builder shall pay all costs and fees related to, or arising out of, removal, demolition, replacement, correction, repair, re-inspection, and re-testing of the Work, as well as any and all related governmental fees, costs, penalties, and fines, including attorneys' fees and other costs incurred by UGAA related to the Noncompliant or Defective Work.

e. **UGAA's option to accept certain Defective Work.** UGAA may, but is not required to, accept Defective Work. If UGAA chooses to accept Defective Work, UGAA will determine, in good faith, what reduction in value the completed Work will suffer due to the Defective Work and will, upon notice to Design-Builder, issue a unilateral Change Order reducing the GMP by an amount equal to that value, plus all of UGAA's costs in addressing the Defective Work. In determining that value, UGAA may, but is not required to, take into account the estimated cost to remove and replace the Defective Work with Work that complies with the Contract Documents. UGAA's election to accept an element of Defective Work does not excuse or release Design-Builder from any warranty obligation, one-year correction obligation, or any other obligation hereunder. If Design-Builder objects to UGAA's proposal, Design-Builder must immediately notify the ADR of its intention to remove and replace the Defective Work without increase in Cost of the Work, GMP, or Contract Time – and must do so without delay. If the ADR does not receive written notice of Design-Builder's objection within seven days from issuance of the ADR's proposal, Design-Builder waives objection to issuance of a binding unilateral deductive Change Order at the value determined by UGAA or UGAA's correction by other means.

13. **Deliveries.** UGAA cannot accept delivery of any materials. Design-Builder shall be solely responsible for accepting and unloading its materials and equipment, and moving them as necessary during the course of the Work.

14. **Use of site; on-site storage.** Design-Builder shall coordinate and use only the area(s) designated or approved by UGAA for Project-site office, storage of materials and equipment, parking and staging operations. These areas and grounds shall be left clean and restored by Design-Builder to the same condition (or as otherwise indicated in the Construction Documents) at Substantial Completion of the Work. Construction and staging are limited to designated (or ADR-approved) areas. Design-Builder shall store and secure materials on-site so as to avoid theft, vandalism, and destructive environmental forces and contamination.

N. **Project information and accounting.**

1. **Duty to keep accurate business records.** Throughout the course of the Work and the Design Services and for a period no less than six years after its conclusion, Design-Builder shall maintain a complete set of Project records, including financial and accounting records, which are to be accessible to UGAA at all times upon reasonable notice.

2. **Audits.** Without limiting the foregoing inspection rights or any other rights of UGAA under this Agreement, and independent of, and in addition to, Design-Builder's obligations to support Interim Payment Applications with documentary back-up, Design-Builder shall facilitate a comprehensive audit by UGAA of all Project-related records once during each calendar year during the course of the Work, and again upon submittal of Design-Builder's Final Payment Application, and at any other time upon request of UGAA. Design-Builder's costs in assisting with above-noted routine audits are included in the GMP. In no case, however, shall costs pertaining to any further and additional examination or audit be reimbursable if the examination was prompted by a failure of Design-Builder, Design Professional, or other Subcontractors of any tier, to

provide requested information – or if examination discloses any irregularity or impropriety of record-keeping or Payment Applications, or other breaches of this Agreement.

3. **Nonparty communications.** Design-Builder shall deliver to the ADR without delay copies of all Project-related communications it receives pertaining to: UGAA's Testing Consultants, governmental inspectors and authorities, Sureties, testing consultants employed by Design-Builder, or other nonparties.
4. **UGAA's access to Project information.** In addition to any other statement of accounts or other information to which UGAA is entitled by contract or Law, Design-Builder shall provide to UGAA and the ADR, upon request, prompt access during business hours (or any other time with cause) to all records related to the Work, including but not limited to: Design-Builder's costs, payments to (or made by) Design-Builder, proposals, estimates, bids, Schedules of all kinds, insurance, Bonds, licenses, certifications, governmental reports, accident and safety reports, Project finances, expenses, Subcontracts, purchase orders, invoices, field reports, Daily Reports, Progress Photos, testing reports, logs, ITC's, RFI's, ASK's, and any other records, data, information, or documents, including those in possession or control of Design-Builder, or its Subcontractors of any tier – regardless of where the document is stored, in what media it is stored, or whether its contents pertain to pricing of adjustments to GMP, Contract Time, or Schedules.
5. **Currency of application software.** If particular software or equipment is necessary in order for UGAA to retrieve and review Design-Builder's records, Design-Builder will provide it, along with the services of technicians to operate it.
6. **Consent to UGAA's access to information.** By executing this Agreement, Design-Builder expressly consents to permit UGAA to obtain (without further notice) all credit reports and any other information that, in UGAA's opinion, will assist UGAA in determining the financial condition and circumstances pertinent to Design-Builder's performance of its obligations hereunder. This provision is among those that survive the completion of the Work or expiration or termination of this Agreement.

O. **Separate Contractors; UGAA Equipment.** UGAA may, from time to time, engage independent contractors, Testing Consultants, Separate Consultants (as defined in Article XVI), and other persons or entities to perform work and provide services on-site ("Separate Contractors").

1. **UGAA Equipment.** UGAA may choose to engage Separate Contractors to perform services and work related to UGAA-specific equipment, devices, furnishings, conduit, wiring, supporting devices, or other Project-related elements ("UGAA Equipment") – whether or not procurement or installation of UGAA Equipment is included in the Work indicated in the Contract Documents.
 - a. The GMP includes Design-Builder's entire compensation for scheduling, coordinating, and resequencing its Work and logistics at the Project site to accommodate the services provided by Separate Consultants and the delivery, storage, installation, and protection of UGAA Equipment by Separate Contractors – and, to the extent indicated in the Contract Documents, it includes Design-Builder's installation of UGAA Equipment procured directly by UGAA. In all cases, Design-Builder shall review the installation requirements of UGAA

Equipment to be installed, and shall participate in meetings as needed to plan and coordinate the requisite scheduling and logistics pertaining to installation of UGAA Equipment.

- b. This Agreement contemplates that installation of UGAA Equipment (by Separate Contractors or others) will likely result in some incidental damage to the Work-in-Place. Design-Builder shall take the steps necessary to protect both the Work-in-Place and installed UGAA Equipment from damage – and repair damage caused by lack of protection. Design-Builder shall remove ceiling tiles and panels, and similar assemblies on other surfaces, to allow Separate Contractors to install UGAA Equipment as needed, with Design-Builder reinstalling all such tiles, *etc.*, and repairing or replacing them where damaged.

2. **Coordination and cooperation.**

- a. Design-Builder shall coordinate its Work, and that of its Subcontractors, with that of all Separate Contractors and Separate Consultants, Testing Consultants, and others employed on the Project by UGAA, taking into account the needs of each, and managing on-site storage, logistics, access, and scheduling of the Work for the benefit of all.
- b. If Design-Builder determines that the conduct or activities of Separate Contractors or Separate Consultants materially impacts the Work in such a way that is not reasonably anticipated and in a way that Design-Builder contends will require adjustment of Contract Time or GMP, Design-Builder must within seven days notify the ADR by submitting a PCO in the form acceptable to the ADR. Design-Builder waives any claim for equitable adjustment of the GMP or Contract Time if it fails to timely do so in strict conformity with Article VIII.

3. **UGAA's access to site; partial occupancy.**

- a. **Access to site; right of entry.** UGAA and UGA shall have unlimited use of, and access to, the Project site, the Work-in-Place, stored materials, and any temporary facilities, as shall governmental officials having jurisdiction over the Work – and such access and right of entry are available to UGAA and UGA for inspection, repair of existing utilities, or for any other reason. Where reasonably possible (and in the case of non-emergency or non-imperative access), the ADR will attempt to coordinate access with Design-Builder in advance.
- b. **Partial occupancy.** If UGAA accepts partial use and occupancy of the Project, Design-Builder shall prepare for UGAA's approval a Certificate of Substantial Completion limited to that portion of the Work completed and ready for occupancy. Upon acceptance in writing by UGAA of that Certificate of Partial Substantial Completion, and after that Work is put in service by UGAA, Design-Builder will not be responsible for normal wear and tear on the area of partial occupancy. UGAA's partial or intermittent use of, or access to, one or more areas of the Project shall not be deemed to be acceptance of those areas and shall not begin warranty periods on equipment or components of the Work.

- 4. **Integration period.** During a period beginning thirty days before the Contractual Date of Substantial Completion and continuing until Final Completion, Design-Builder shall, in coordinating the Work on-site, give deference at all times to UGAA's needs, including

the need for continual and uninterrupted access by Separate Contractors and UGAA for their installation of UGAA Equipment – which deference may require Design-Builder to perform portions of the Work at night, on weekends, and holidays, or otherwise out-of-sequence, all at no additional cost to UGAA.

- P. **Substantial Completion.** Upon Substantial Completion of the Work, Design-Builder shall: (1) obtain all necessary final governmental inspections, certificates, and other approvals needed for occupancy and use of the Project in the manner intended by UGAA; (2) comply with all Closeout Obligations as set forth herein; and (3) execute under oath a Certificate of Substantial Completion (in the form supplied as **Supplement L**), which shall subsume any Certificates of Partial Substantial Completion previously accepted in writing by UGAA.
- Q. **Closeout Obligations.** Before submitting its proposed Certificate of Substantial Completion for UGAA approval, Design-Builder shall perform and submit, for UGAA's review, documents in support of its complete satisfaction of the following Closeout Obligations:
1. **Test and balance adjustments.** Design-Builder shall: (a) facilitate examination of test and balance of HVAC systems by UGAA's Testing Consultant; (b) adjust the system according to the results of the testing, until the Work complies with requirements of the Contract Documents; (c) perform plumbing backflow tests and any other tests (*e.g.*, HVAC test and balance) when specified in the Construction Documents as being performed by Design-Builder; and (d) rigorously test all other building systems, materials, and assemblies for compliance with the Contract Documents;
 2. **Cleaning.** Design-Builder shall: (a) remove all labels from materials (except for those designated by the ADR to remain); (b) clean all materials and assemblies as required by the Contract Documents and UGAA; (c) install all light bulbs; (d) remove and lawfully dispose of trash and other debris from the site; (e) restore all affected existing structures, systems, paving, and landscaping that were not part of the Work to pre-Project conditions; (f) install new filters; and (g) maintain the Work and the Project site until Final Completion. The Parties acknowledge that the only maintenance that UGAA will be required to provide before Final Completion is routine cleaning, incidental to UGAA's use of the partially completed Work. The Parties, therefore, assume that all dust, dirt, stains, smudges, surface damage, *etc.* will be the product of continued Work and completion of Punchlist Work, and will, therefore, be repaired and cleaned by Design-Builder;
 3. **Transfer of all utility accounts.** To the extent that Design-Builder or its Subcontractors have established separate accounts for temporary utilities, Design-Builder shall pay all outstanding utility bills and pending bills, submitting proof that all utility balances have been paid, and taking all steps necessary to transfer control of utility accounts to UGAA as of the Realized Date of Substantial Completion as indicated in the Certificate of Substantial Completion accepted in writing by UGAA;
 4. **Attic stock.** Design-Builder shall provide UGAA with attic stock and other materials as required in the Construction Documents, delivering and storing usable-but-otherwise-uninstalled materials, attic stock, required spares, and other items as instructed by the ADR. Finishes Binders, tubs, and storage boxes for stored materials shall be labeled, using the specifications numbering system indicated for that material in the Construction Documents. Consistent with that labeling, Design-Builder shall create and provide to the ADR an MS Excel spreadsheet inventory of attic stock and other

materials, indicating product name, applicable specification section, quantity of contents, and location(s) of its use;

5. **Punchlist.** Design-Builder shall assist and cooperate with the ADR and the Design Professional in their preparation of a complete list of Defective or incomplete Work and Punchlist Work to be corrected and/or completed; *and*
6. **Closeout Materials.** Design-Builder shall assemble and submit for UGAA's approval the Closeout Materials and other information required in this Article and otherwise in the Contract Documents, including:
 - a. **Submittals.** Prepare and deliver to the ADR one complete hard-copy set of all shop drawings, samples, and other Submittals, including drafts, as mark-ups, as well as related transmittals, correspondence, and other documents, organized and categorized consistent with the Submittal Log, which shall also be updated and delivered to the ADR – and one digital, read-only color electronic copy of same;
 - b. **Logs.** Deliver to the ADR a digital copy and the original and three complete sets in print of logs for Submittals, RFI's, PCO's, and ASK's;
 - c. **As-built Construction Documents.** Deliver to the ADR original and three copies of complete sets of As-built Construction Documents (updated) on print and read-only digital media (in a format acceptable to UGAA);
 - d. **Finishes Binder materials.** Where otherwise required herein, Design-Builder shall deliver to Design Professional (for submittal to the ADR) one original and three copies of final samples, swatches, brand-specific color chips, *etc.* of all finish materials actually used in the Work for Design Professional's incorporation in Finishes Binders, as well as a digital copy of same (to include photographs in lieu of physical samples);
 - e. **Progress Photos and Daily Reports.** Upon request of the ADR, deliver to the ADR (in digital form in a format acceptable to UGAA) a complete set of Progress Photos and Daily Reports, including but not limited to all those, if any, submitted with Interim Payment Applications;
 - f. **Warranties, maintenance data, and manuals, with certification.** Submit four printed, bound, and indexed copies and read-only digital copy of maintenance data, each operating manual, certified original warranties (including but not limited to five-year wall and roof warranties in the form supplied as **Supplement M**), manufacturers' certifications of installation and completeness of major mechanical and electrical components, product literature, and other information required by the Contract Documents, indicating for each supplier of major equipment and Subcontractor, the name, address, e-mail, and 24-hour telephone number of the person(s) to be contacted if problems occur with the product or system – and such other information as the ADR may request, certifying in writing to UGAA that the manuals are complete and accurate;
 - g. **Project directory.** Submit Project directory to the ADR, updated to include persons and entities applicable to warranty period;

- h. **Reports and other commissioning documents.** Submit original and three printed copies and one digital copy of all testing reports compiled, prepared, or received by Design-Builder, and other reports and documents demonstrating completion of testing and compliant results;
- i. **Mold certification.** Submit three original Design-Builder certifications (in the form supplied as **Supplement P**) that the structures and materials comprising the Work are free of mold, mildew, and bacterial and fungal infestation, that no Work was covered unless the substrate and Work to be covered were examined for dryness, absence of water or visible moisture in cavities and on the Work to be covered, and that materials and assemblies delivered to the Project site were tested as required for adherence to standards of dryness set forth in the Construction Documents before acceptance and incorporation in the Work;
- j. **Proof of costs.** Submit all documents not already submitted that substantiate Payment Applications and any other component of the Cost of the Work;
- k. **Waivers and releases and other back-up materials.** Submit final waivers and releases by Design-Builder (**Supplement G**) and Subcontractors of any tier (**Supplement I**), Design-Builder Final Affidavit (**Supplement H**), and other documents substantiating Payment Applications under Article V and satisfaction of Closeout Obligations;
- l. **Consent of Surety.** Provide three original copies of Consent of Surety to Release of Retainage and Final Payment to Design-Builder;
- m. **Governmental approvals and certifications.** Provide a copy of governmental permits and inspection reports, documents issued by the State Fire Marshal (or UGA Fire Safety Division official or other delegates of the Fire Marshal) authorizing occupancy of the entire Project, and other documents demonstrating that Design-Builder timely obtained all necessary governmental inspections and approvals. Design-Builder shall deliver any original governmentally issued final Certificate of Occupancy (or equivalent document where applicable) to the ADR;
- n. **Certification of costs and claims.** Design-Builder shall provide a separate statement under oath that states that “all costs, charges, invoices, and any claims or demands of any kind made upon UGAA by Design-Builder on the Project are, and have been, accurate and truthful”;
- o. **Other certifications.** In addition to other required certifications, Design-Builder agrees to provide such additional certifications as may be requested by UGAA pertaining to the Project, the Work, Design-Builder, and/or its Subcontractors, upon which certifications UGAA and nonparties may rely. Design-Builder will not be required to certify facts that are outside Design-Builder’s knowledge and that could not be determined by Design-Builder in the course of its performance or upon diligent review of information available to it thereafter; *and*
- p. **List of unpaid Subcontractors.** Design-Builder shall certify under oath, and submit to the ADR, a detailed list of names, addresses, and telephone numbers of any and all Subcontractors of any tier, and any other persons or entities who have not been fully paid with respect to the Work and the Project, specifying, in detail, the amount unpaid, the justification or excuse for nonpayment, and when

(and under what circumstance) Design-Builder will pay them or will cause them to be paid. Design-Builder's provision of this list does not excuse its payment obligations to Subcontractors hereunder and under Law. If Design-Builder does not submit such a list, that non-submittal will be deemed an affirmative representation by Design-Builder that all Subcontractors of any tier have been fully paid.

- q. **Assignment and transfer of warranties.** Design-Builder shall assign and transfer to UGAA all guarantees, warranties, agreements, and post-construction warranties from all Subcontractors of any tier regarding their respective portions of the Work and conformance of that Work with the requirements of the Contract Documents, subject to Design-Builder's reservation of rights under such warranties to the extent necessary to enable Design-Builder to fulfill its obligations to UGAA hereunder. Design-Builder shall protect UGAA's interests in all such warranties and shall take no action nor commit an act or omission that renders such warranties void or voidable. UGAA is free to further assign warranties, as its needs require.
- r. **Certifications of absence of asbestos, formaldehyde, and lead from installation.** Design-Builder shall submit certifications by Design-Builder, its Subcontractors, and all suppliers of materials of the absolute absence of asbestos, formaldehyde, and lead-containing materials from the Work – or, in the case of Subcontractors and suppliers, their respective portion thereof. Certifications shall be provided in the forms provided respectively for Design-Builder and Subcontractors as **Supplements S and S1** respectively.
- s. **Training.** Design-Builder shall conduct comprehensive, in-person, formal training of all UGAA and UGA-related persons and entities designated by the ADR in matters of operation and maintenance of all systems, assemblies, structures, and equipment installed as part of the Work; and Design-Builder shall separately certify completion of such training, specifying the location and subject matter of the training and the UGAA or UGA-related persons attending. Training for technical systems, assemblies, and equipment shall be conducted by persons knowledgeable in each such system, assembly, *etc.*, and empowered to speak authoritatively in behalf of the pertinent Subcontractor, supplier, or manufacturer. Training shall be scheduled at times designated by the ADR. Design-Builder shall create digital videos of all training; and shall transmit digital copies to the ADR. Completion of the foregoing training and transmission of digital video recordings of same is a condition precedent to Realized Substantial Completion of the Work.
- t. **Waste Management Plan update** – as required under ¶ XV(P)(3) herein.

- R. **Correction of Punchlist Work.** Design-Builder shall promptly (but in no case longer than thirty days after the Realized Date of Substantial Completion) complete all Punchlist Work and give notice thereof to the ADR.
- S. **Final Completion.** Date of Final Completion is the date on which the Project is actually complete and Design-Builder has fully and completely satisfied all Closeout Obligations and the following conditions precedent to Final Payment:

1. **Punchlist and warranty Work complete.** Design-Builder has completed all Punchlist Work and known warranty Work to the satisfaction of the ADR;
2. **Closeout Obligations.** Design-Builder has demonstrated its satisfaction of all Closeout Obligations;
3. **Discharge of liens and Bond claims.** Design-Builder has demonstrated that any and all outstanding claims of lien, liens, and Bond claims filed or asserted by Design-Builder or Subcontractors of any tier, have been discharged and cancelled as a matter of record with the clerk of the Superior Court in every county in which claims or liens were filed;
4. **Delivery of furniture and equipment.** Design-Builder has delivered (upon request by the ADR) to a location in Athens, Georgia designated by the ADR all furniture, unused materials, and equipment;
5. **Final Payment Application.** Design-Builder has submitted a Final Payment Application in substantially similar form to that required for Interim Payment Applications. Before submitting its Final Payment Application, Design-Builder shall complete the following:
 - a. **Design-Builder Waiver and Release Upon Final Payment.** In the form provided as Supplement G;
 - b. **Design-Builder Final Affidavit.** Design-Builder shall certify under oath, in content and form consistent with that supplied as Supplement H;
 - c. **Return of Project-related documents.** If requested by the ADR, Design-Builder shall deliver to a place designated by the ADR all printed and electronic copies of Project-related documents and files, as required under Article XIV, except for the archival copy permitted under that Article; *and*
 - d. **Subcontractor Waivers and Releases Upon Final Payment.** In the form provided in Supplement I for each Subcontractor whose Waiver and Release is required under ¶ V(H)(4).

T. **No implied acceptance of Work.** UGAA's acknowledgement of Realized Date of Substantial Completion, its receipt of the Certificate of Occupancy or other Closeout Materials, its partial and entire release of retainage, or its issuance of Final Payment to Design-Builder shall not be deemed to imply acceptance of the Work; nor shall they relieve Design-Builder of its duty to fully perform its obligations under the Contract Documents. UGAA will notify Design-Builder in writing of final acceptance of the Work at the time of Final Payment.

U. **UGAA's post-completion right to demand correction of Defective Work.** In addition to all its other obligations under this Agreement, Design-Builder warrants that, for a period of twelve months, beginning the Date of Final Completion, it shall, within seven days of issuance of a request by UGAA, cure and correct any and all Defective Work and perform all other warranty obligations hereunder. UGAA's right to obtain Design-Builder's correction of Defective Work during this one-year period is in addition to, and not exclusive of, any other rights and remedies UGAA has under Law, this Agreement, or under related warranties.

1. This one-year additional warranty period does not: (a) limit or reduce warranty periods of greater length required under the Contract Documents with respect to certain elements of the Work; (b) shorten or reduce any statutory periods of limitation or repose; (c) shorten or limit any longer warranty period provided by manufacturers or suppliers

- of materials and systems; or (d) limit the period in which UGAA is entitled to Design-Builder's correction of Defective or Noncompliant Work.
2. For Work completed and accepted on or before the Realized Date of Substantial Completion, warranty periods shall begin on the Realized Date of Substantial Completion.
 3. For Work that is either incomplete or Noncompliant on the Realized Date of Substantial Completion, warranty periods shall begin on the day on which the particular incomplete or Noncompliant Work is actually completed and corrected to the satisfaction of UGAA and shall continue for the full term thereafter.
 4. Design-Builder and the DPR (or the DP Project Manager) shall conduct an inspection of the Work on the eleven-month anniversary of the Realized Date of Substantial Completion (or the first business day following it) and shall, within five days after that inspection, submit a written report of the findings to the ADR for approval. Design-Builder shall correct Noncompliant Work or Defective Work within fourteen days of that inspection.

ARTICLE IV – UGAA’S OBLIGATIONS AND DUTIES

- A. **Payment.** UGAA shall pay amounts due Design-Builder under the terms of this Agreement for timely performance of the Work, payments being proportionately limited in all cases by progress of the Work.
- B. **UGAA-provided information.** UGAA shall provide Design-Builder, upon request, with the following:
 1. Project program and preliminary studies, if any, prepared within the previous two years of the Effective Date of this Agreement, pertaining to the site or to structures involved in the Work;
 2. Access to a complete set of Contract Documents in digital form;
 3. Information necessary for Design-Builder's timely filing of a statutory Notice of Commencement, the form of which is attached as **Supplement K**;
 4. If incorporated herein pursuant to ¶ I(O), engineer-certified Geotechnical reports and written studies, if any, issued in final form within the two years preceding the Effective Date of this Agreement involving relevant aspects of the existing condition(s) of the site and the Property;
 5. For Projects involving new building construction and/or site improvements, site surveys, if any, prepared within the two years preceding the Effective Date of this Agreement; *and*
 6. Access to those documents in UGAA's possession that are incorporated, or referred to, in the Supplements, to the extent applicable to Design-Builder hereunder.
- C. **Testing.** Subject to Design-Builder's obligations under Article III for re-testing, correction of Defective Work, *etc.*, and except where Design-Builder is expressly required by the Contract Documents to provide testing, UGAA shall provide the services of independent testing

consultants and technicians (“Testing Consultants”) to perform initial tests of systems and materials indicated in the Contract Documents.

1. Design-Builder shall coordinate the Work so as to facilitate testing services by UGAA’s Testing Consultants.
2. Design-Builder shall notify UGAA’s Testing Consultants and the ADR at least two business days in advance of any compaction tests, foundation inspections, concrete pours, or any other testing, sampling, or observation required by the Contract Documents. Design-Builder shall prepare and store test cylinders (and other testing devices and accessories) as instructed by UGAA’s Testing Consultants.
3. Although UGAA shall pay for the costs of initial, routine tests performed by UGAA’s Testing Consultants, Design-Builder is liable for all costs related to or arising out of all subsequent testing and retesting in cases where: (a) Design-Builder provides inadequate notice of the need for testing or collection; (b) Design-Builder schedules tests or inspections by UGAA’s Testing Consultants, Design Professional, governmental officials, or others but the Work is insufficiently prepared for testing and inspection; (c) the Work, as tested, fails to comply with the Contract Documents; (d) subsequent acts or omissions of Design-Builder or Subcontractors of any tier result in possible damage to, or noncompliance of, the Work, requiring or justifying additional testing to confirm compliance with the Contract Documents; or (e) retesting is required for any reason caused in whole or in part by Design-Builder. UGAA shall deduct from the GMP by unilateral Change Order an amount equal to the sum of all fees and costs incurred by UGAA for retests and other expenses and fees related to such testing and retesting. In no case shall retesting fees, costs, and expenses be paid by reallocation of funds from Design-Builder Contingency Account.

- D. **UGAA communications not limited.** UGAA or its representatives may communicate freely with any person or entity, including Design-Builder, its managers or employees, Design Professional, its management and employees, and its Subconsultants and Subcontractors of any tier, their respective Sureties, insurers, or inspectors on any subject related to Design-Builder, Subcontractors, the Work, or the Project, which communication shall not be deemed to be interfering or otherwise wrongful. UGAA and UGA retain the right to enter the Project site at any time and for any reason.
- E. **Disclaimer of implied warranty.** UGAA makes no warranties except for those that are express in this Agreement; and it expressly disclaims all implied warranties, including, without limitation, any warranty of constructability of the Work depicted in the Contract Documents.

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ARTICLE V – PAYMENT

- A. **Preconstruction-phase billings and payment.**
1. **Preconstruction Schedule of Values.** Design-Builder shall submit for UGAA approval a schedule of values (“Preconstruction Schedule of Values” or “PCSoV”) containing line-items for: (a) Design-Builder Preconstruction Fee; (b) Design-Builder Preconstruction Overhead Costs (with constituent line-item sub-costs as set forth in **Supplement N**); (c) any anticipated Component Change Orders (with their respective constituent line-items); (d) Design-Builder Construction Fee; (e) Design-Builder Construction Overhead Cost (with constituent line-item sub-costs as set forth in **Supplement O**); and (f)

estimated Cost of the Work (with constituent line-items). The sum of all the foregoing shall not exceed the Stated Cost Limitation set forth preceding Article I above. The initial PCSoV shall be submitted upon the occurrence of the earliest of the following events: (1) presentation of Schematic Design by Design Professional; (2) proposal of the initial Component Change Order covering Work to be performed on-site; or (3) proposal of the GMP Change Order.

2. **Preconstruction-phase Payment Applications.** On or before the day of each month specified in ¶ I(N), Design-Builder shall submit to the ADR electronic and print drafts of sequentially numbered and dated proposed Preconstruction Payment Applications, covering compliant Design Services and other Preconstruction Services performed during the monthly period ending on the twenty-fifth day of the subject month, with reductions for other withholding as indicated in this Agreement.
3. **Support information.** As a condition precedent to UGAA's obligation to pay amounts applied for, Design-Builder shall provide the additional information set forth in ¶ I(N) with each Preconstruction Payment Application (as well as any other documents requested by the ADR to substantiate a Payment Application). Payment Applications submitted in final form by Design-Builder shall reflect comments received from the ADR with respect to draft proposed applications.
4. **Method of calculating Preconstruction Payment Applications.** The total payment for Preconstruction Services will not exceed the sum of products obtained by *first* adding the costs and expenses incurred that are also authorized within the Design-Builder Preconstruction Overhead Costs as established in **Supplement N**; *then* adding to that sum the product of multiplying the Design-Builder Preconstruction Fee times the percentage multiplier of completion of Preconstruction Services (*e.g.*, percentage multiplier for 22% completion is ".22"); *then* subtracting from that subtotal sum amounts to be withheld or deducted by UGAA (for undocumented amounts applied for and as otherwise provided in this Agreement); and *then* subtracting from that subtotal remainder the total of amounts previously paid to Design-Builder by UGAA for Design-Builder Preconstruction Fee and Design-Builder Preconstruction Overhead Costs on this Project.
 - a. **Exception for Design Services.** With respect to the line-item in the Design-Builder Preconstruction Overhead Costs covering Design Costs, amounts due for that line-item will always be limited proportionately by the following schedule and by the percentage multiplier for progress in completing the Design Services.

Upon completion and approval of Preliminary and Conceptual Design	5%
Upon completion and approval of Schematic Design Phase:	20%
Upon completion and approval of Design Development Phase:	25%
Upon completion and approval of Construction Documents Phase:	50%

Total Basic Design Services Fees (*exclusive of fees for*) 100%

The progress-based limitations set forth in this subparagraph will continue to apply to Basic Design Services and Construction-Administration-phase Design Services that are performed after execution of the GMP Change Order.

- b. **Further limitation on Preconstruction billing and payment.** The formula established in this ¶ V(A)(4) notwithstanding, in all cases UGAA's obligation to pay is limited to actual proportionate progress of the Work – as determined by multiplying the GMP times the percentage of overall completion of the Work (as determined in good faith by UGAA), less backcharges, setoffs, and other withholding and deductions permitted hereunder. Moreover, UGAA is, at all times, permitted to withhold payment from Design-Builder amounts determined in good faith by UGAA to be required for UGAA to pay remaining contract obligations and to complete the Design Services and the Work using Separate Contractors, should Design-Builder's performance be discontinued.

B. Construction-phase billings and payment.

- 1. **Schedule of Values.** Concurrent with proposal of any pre-GMP Component Change Order and concurrent with Design-Builder's proposed GMP Change Order, Design-Builder shall submit for UGAA approval a schedule of values containing line-items a detailed Scope of Work that separately itemizes each element of the Work with an installed value greater than \$999.99 (or that is the subject of a section in the Project Specifications), assigning remaining scope items to line-item categories to which they are most logically related (collectively, "Schedule of Values").
 - a. The then-current line-items from the PCSoV shall be incorporated as separate line-items in the Schedule of Values, which shall also include categories for: (i) Cost of the Work (with constituent line-items as provided in this Article); (ii) Design-Builder Construction Fee; and (iii) Design-Builder Construction Overhead Costs (with constituent line-items consistent with those established in **Supplement O**).
 - b. Constituent line-items within the Cost of Work category shall be organized by trade, Scope of Work, and generally in accordance with the divisions and sections of Work established in the specifications of the Construction Documents. Subject to ¶¶ V(B)(4)(a) and (d) herein, the Design-Builder may adjust individual line-items to reflect actual costs incurred in performing the Work provided that other line-items are commensurately adjusted in order to maintain the then-current GMP. That said, adjustments that involve removing line-item costs from one division of the Specification in the Construction Documents and increasing line-items costs in another division of the Specification must be must be approved in advance by the ADR before the modified Schedule of Values can become the basis for Payment Applications as modified.
 - c. The sum of the values of all line-items in the Schedule of Values shall equal the Stated Cost Limitation – or, in the case of a proposed GMP Change Order, the GMP (which Schedule of Values shall also include a line-item for the ADR-approved amount for the Design-Builder Contingency Account within the Cost of Work category).

- d. Design-Builder shall substantiate its proposed Schedules of Values by providing legible and complete copies of bids, proposals, Subcontracts, back-up and other documents demonstrating proper allocation of line-item costs. Notwithstanding the foregoing, UGAA may order Design-Builder's adjustment of line-item values according to and commensurate with the actual costs, as estimated in UGAA's good faith opinion.
2. **Interim (post-GMP) Payment Applications.** Once approved, the Schedule of Values shall be incorporated in the GMP Change Order and in all subsequent Payment Applications, with the Schedule of Values being amended from time-to-time, when approved by the ADR, to reflect Change Orders and re-allocations of the Design-Builder Contingency Account as provided in this Article V. The Schedule of Values shall be the basis for subsequent Payment Applications and their evaluation on a line-item basis.
- a. **Cost of the Work.** Each Cost of Work line-item shall indicate the maximum installed price to be paid for all Design-Builder's costs to perform and install the Work that is related or attributable to that particular line-item, which are specifically limited to include only the following:
 - i. **Wages and salaries** actually paid for on-site labor and Design-Builder Services not exceeding the prevailing rate, including only labor-force salaries (limited to approved Self-performed Work), hourly wages, statutory employment taxes, and retirement contributions and health insurance costs (in those cases where those contributions and insurance costs were paid by the Design-Builder (or Subcontractor) to a given employee continually for a period of at least three months preceding the Effective Date of this Agreement). Wages and salaries shall not exceed those set forth in **Supplement O** – and cannot include increased wages, discretionary awards or bonuses of any kind, costs of private use of company vehicles, or other perquisites;
 - ii. **Cost of materials, supplies, and equipment** installed as part of the Work or wholly consumed in the performance of the Work on-site; further including the costs of permitting, initial testing, and initial inspections, where not provided by UGAA;
 - iii. **Sales and use taxes** imposed by government in connection with the performance of the Work;
 - iv. **Subcontract Costs** as set forth in written Subcontracts, approved by UGAA, not to exceed line-item amounts for each as set forth in the Schedule of Values – such costs not to receive further markup;
 - v. **Self-performed Work**, where approved in advance by the ADR, indicated in the Schedule of Values on a line-item basis by type of Work.
 - vi. **Rental charges.** When approved by the ADR in advance, Cost of the Work may include: (i) rental charges of all necessary equipment used on-site (exclusive of hand tools) including only the costs of loading and unloading, installation, dismantling, removal, cost of lubrication, and transportation; and (ii) labor of operators (limited as set forth in the preceding subparagraph 2(a)(i)). Rental charges may not include repairs,

insurance, or other costs not expressly allowed in this paragraph. Rental rates may not exceed more than 80% of the rate set forth in the latest addition of the "Compilation of Nationally Averaged Rental Rates for Construction Equipment" of the Associated Equipment Distributors; *and*

- vii. **Demolition and stabilization costs** attributable and necessary to performance of the Work – but not attributable to problems with Design-Builder's performance of the Work or its failure to fully perform in accordance with this Agreement.

Design-Builder Contingency Account. The amount unallocated from the Design-Builder Contingency Account shall appear as a discrete line-item in each Payment Application Schedules of Value. Reallocated funds from the Design-Builder Contingency Account shall be reflected in subsequent Payment Applications Schedules of Values as provided in ¶ V(B)(4)(d).

Express exclusions to Cost of the Work. In no case shall Cost of the Work include food, meals, repairs to equipment, vehicle maintenance and registration, use of vehicles not in performance of the Work, fines, penalties, lost or stolen equipment, undocumented costs, deductible costs pertaining to insured losses, capital expenses, legal fees, cost to discharge liens, re-testing and re-inspection costs, profit sharing, commissions, costs due in whole or in part to Design-Builder's negligence, default, oversight, or lack of due care, costs of cleaning, temporary facilities, field office, safety, security, and other General Conditions and other items falling within the scope of Design-Builder Construction Overhead Costs (as established in ¶ II(C)(2)(e)), unallocated Design-Builder Contingency Account, or Design-Builder Construction Fee.

- b. **Design-Builder Construction Overhead Costs.** Design-Builder Construction Overhead Costs indicated in the information preceding Article I is maximum amount that Design-Builder will be entitled (exclusive of Design-Builder Construction Fee) for reimbursement for all temporary facilities, Project Administration, superintendence, field office, home office, communications, safety, security, cleaning, Design Professional Construction Administration Costs, and other General Conditions and overhead costs and expenses incurred by Design-Builder in the complete performance of the Work and of construction-phase Design Services, allowable Design-Builder Construction Overhead Costs being only items those listed above in this subparagraph and in **Supplement O** (and as further limited therein) – payment of which Design-Builder Construction Overhead Costs is further limited proportionately at any given time to the percentage of Design-Builder's actual completion of the Work and the construction-phase Design Services. Design-Builder Construction Overhead Costs exclude, however, food, meals, repairs to equipment, vehicle maintenance and registration, use of vehicles unrelated to the Work, fines, penalties, lost or stolen equipment, undocumented costs, deductible costs pertaining to insured losses, capital expenses, legal fees, cost to discharge liens, re-testing and re-inspection costs, profit sharing, commissions, other amounts not expressly included in **Supplement O**, any costs due in whole or in part to Design-Builder's negligence, default, oversight, or lack of due care, or any Cost of Work indicated above.

3. **Payment Application.** On or before the day of each month specified in ¶ I(N), Design-Builder shall submit to the ADR and Design Professional electronic and print drafts of sequentially numbered and dated draft proposed Interim Payment Application, covering compliant Design Services and Work suitably performed and materials suitably stored and secured off-site (where approved in advance in writing by the ADR consistent with this Article) during the monthly period ending on the twenty-fifth day of the subject month, with reductions for retainage and other withholding as indicated in this Agreement.
- a. As a threshold condition precedent to UGAA's obligation to pay amounts applied for, Design-Builder shall provide the additional information set forth in ¶ I(N) with each Interim Payment Application (as well as any other documents requested by the ADR to substantiate a Payment Application, *e.g.*, updated as-built information, test results, observation reports, daily reports, *etc.*). Payment Applications submitted in final form by Design-Builder shall reflect comments received from the ADR on the draft.
 - b. Design-Builder's Payment Applications are to be submitted using AIA Standard Forms G702 and G703, submittal of which does not relieve Design-Builder of its obligation to also provide a sworn Design-Builder Interim Affidavit (in the form supplied as **Supplement E**).
 - c. With respect to any amount applied for (including amounts pertaining to PCO's, and Change Orders), the ADR may, but is not required to, demand thorough, legible, and valid documentation of every component of Cost of the Work and Design-Builder Construction Overhead Costs, with documentation including, without limitation: (a) certified payroll records showing name, classification, date, daily hours, total hours, rate, and extension for each laborer, Project Manager, Superintendent, or other manager or employee of Design-Builder or its Subcontractors; (b) equipment type and model, dates of use, daily hours, total hours, rental rate, or other rates, operator costs and hours, and other related costs; (c) invoices showing payment for specific materials, prices, extension, and delivery costs; (d) daily records of waste removed from the Project site with proof of lawful deposit in landfills or other lawful means of disposal; (e) engineer-certified measurements of excavations, pilings, fill work, and any other civil earthwork, rock removal, *etc.* for which compensation is (or may be) based upon volume; (f) transportation records for materials, including prices, loads, and extensions; and (g) any other information indicated in ¶ I(N). Design-Builder's provision upon request of the foregoing is a condition precedent to UGAA's obligation to pay.
4. **Method of calculating amounts applied for in Interim Payment Applications.** The total payment applied for at any given time will not exceed the sum of products obtained by *first* applying Reallocation Authorizations (issued in accordance with ¶ V(B)(4)(d) on a line-item basis to the Cost of the Work (or line-item Change Orders as the case may be); *then* multiplying each individual Cost of the Work line-item and Change Order line-item in the Schedule of Values times the percentage multiplier of completion (*e.g.*, percentage multiplier for 22% completion is ".22") of the Work described in that line-item (as determined and approved in good faith by UGAA, and as substantiated by documentation acceptable to the ADR, taking into account materials suitably stored (as

approved in accordance with this Article)) – *thus* obtaining the subtotal sum of the products; *then* adding to that subtotal sum permit-related fees, if any, paid by Design-Builder that are reimbursable hereunder; *then* adding to that subtotal sum the product of multiplying the Design-Builder Construction Fee times the percentage multiplier of completion of the Work; *then* adding to that subtotal sum the sum of authorized Design-Builder Construction Overhead Costs incurred for the subject period (*as that sum is further limited by the product obtained by multiplying the Design-Builder Construction Overhead Costs times the percentage multiplier of completion of the Work (as substantiated by documentation acceptable to the ADR))*); *then* subtracting from that subtotal sum the amount to be withheld as retainage (in accordance with this Article); *then* subtracting from that subtotal remainder amounts to be retained or otherwise withheld or deducted by UGAA (for undocumented amounts applied for and as otherwise provided in this Agreement); and *then* subtracting from that subtotal remainder the total of amounts previously paid to Design-Builder by UGAA on this Project, exclusive of payments for Design-Builder Preconstruction Fee and Design-Builder Preconstruction Overhead Costs.

- a. **Payments limited to progress.** The formula established in the immediately preceding paragraph notwithstanding, in all cases UGAA’s obligation to pay is absolutely and proportionately limited to actual progress of the Work – as determined by multiplying the GMP times the percentage of overall completion of the Work (as determined in good faith by UGAA), less retainage, backcharges, setoffs, and other withholding and deductions permitted hereunder. UGAA is, at all times, permitted to withhold payment from Design-Builder amounts determined in good faith by UGAA to be required for UGAA to pay remaining contract obligations and to complete the Work using Separate Contractors, hypothetically presuming Design-Builder’s discontinuance of performance and the Work.
- b. **Retainage.** UGAA shall retain 10% from amounts otherwise due to Design-Builder for Work completed, materials stored, Design-Builder Construction Fee, and Design-Builder Construction Overhead Costs from each progress payment until Final Payment.
 - i. Once the Work is at least 50% complete, UGAA may, but is not required to, waive its right to retain additional amounts from *future* amounts applied for if: (A) the Work has progressed in accordance with the Project Schedule and appears to UGAA likely to be completed within the Contract Time; (B) no condition of Design-Builder default or breach exists; and (C) the Work-in-Place conforms with the Contract Documents.
 - ii. If UGAA elects to waive retainage under the immediately preceding subparagraph, it may, at any time, and for any reason, revert to retaining 10% from all amounts due to Design-Builder for Work performed to-date.
 - iii. UGAA will release retainage as part of Final Payment, *i.e.*, only after: (A) the Work is complete; (B) Punchlist Work is complete; (C) Closeout Obligations have been fully satisfied; (D) no claims of lien or other claims have been filed against UGAA, the Board of Regents, UGA, the Project, or the Property the Design-Builder has not fully and finally discharged as of public record; (E) no claims have been made against the Bonds; and (F)

Design-Builder has obtained and supplied to UGAA a written Consent of Surety to Release of Retainage and Final Payment to Design-Builder.

- iv. Upon timely realization of Substantial Completion, UGAA may, but is not required to, release part or all of the retainage withheld to-date. Design-Builder's provision of a Consent of Surety is a condition precedent to any such release.
 - v. Within five days of its receipt, Design-Builder shall release to Subcontractors their *pro rata* share of retainage released to Design-Builder by UGAA – unless Design-Builder shall have given written, formal notice to UGAA of some contractually justifiable reason (acceptable to the ADR) to withhold release of retainage from Subcontractor – in which case UGAA may continue to withhold that portion of the retainage. Only UGAA may hold retainage on Subcontractor amounts; Design-Builder shall not hold retainage for Subcontractor Work performed.
- c. **Materials stored off-site.** UGAA may, but is not required to, permit Design-Builder to apply for payment for materials securely stored off-site if Design-Builder provides advance written verification of the following: (i) the materials stored conform to the requirements of the Contract Documents and are, where applicable, identified by serial number and labeled as the property of UGAA; (ii) Design-Builder has provided the ADR with photographs of materials, as stored and labeled; (iii) the storage facility is insured as required in Article XII for Subcontractors; (iv) Design-Builder and storage facility operator have agreed in writing that UGAA may take possession of the materials at-will and without consent of Design-Builder (and Design-Builder has provided copies of that agreement to the ADR); (v) the materials stored are secured and separated from other materials stored at the facility, and materials are clearly labeled as belonging to UGAA; (vi) all of the foregoing are provided by Design-Builder at no cost to UGAA; and are (vii) accepted in advance by UGAA in writing. If UGAA is deprived of access or use of the materials stored, and damaged in any way as a result, UGAA is authorized to issue a unilateral deductive Change Order, reducing the amounts then due to Design-Builder and the GMP by an amount equal to that which UGAA paid for the materials plus any costs incurred by UGAA, including but not limited attorneys' fees, as a result of the deprivation, loss, or damage.
- d. **Reallocations from Design-Builder Contingency Account.** The Design-Builder Contingency Account shall consist of reserve funds (in amounts approved by the ADR) intended for possible reallocation to the Cost of the Work in situations in which the Scope of Work is changed and where that change could not have been reasonably anticipated at the time of the GMP Change Order (or subsequent Change Orders, as the case may be) and was not due in whole or in part to Design-Builder's failure to perform or satisfy its obligations hereunder.
- i. **Reallocation Authorizations Discretionary.** Design-Builder may reallocate funds from the Design-Builder Contingency Account to line-items within the Cost of the Work, if e-mail notice of the reallocation is sent to the ADR in advance. No reallocation of amounts \$5,000.00 or

greater may occur without the ADR's prior written consent by e-mail or otherwise. The ADR, in his or her discretion, may disallow reallocations for any reason. In no case shall funds from the Design-Builder Contingency Account be reallocated in order to pay for correction of Defective Work, untimely performance of the Work, or any other fines, costs, damages, fees, *etc.* attributable to (and collectable by Design-Builder from) a Subcontractor.

- ii. **Reallocation does not affect GMP.** Reallocation will not modify the GMP. To the extent that reallocation from the Design-Builder Contingency Account is the exclusive source of funding for certain Change Order Work, the ADR may issue a Change Order indicating that changed Work, but the GMP will not be increased by that Change Order. Where reallocation supplies funding for part, but not all, of certain Change Order Work, increases in the GMP in the resulting Change Order will include only those amounts not funded by reallocation from the Design-Builder Contingency Account. A Reallocation Authorization need not be accompanied by a Change Order if the reallocation does not fund a change in Scope of Work, Contract Time, Project Schedule, or other change for which a Change Order is required under Article VIII.
- iii. **Effect on Payment Applications.** Payment Applications subsequent to a Reallocation Authorization shall reflect that reallocation, with the reallocated amount modifying the line-item Cost of the Work (or Change Order as the case may be) to which reallocated funds were applied, denoting the modified line-item by asterisk or other graphic device acceptable to the ADR.
- iv. **Unused contingency.** Unused amounts remaining in the Design-Builder Contingency Account will be deducted by unilateral Change Order from the GMP on or about the Realized Date of Substantial Completion – or when, in the judgment of the ADR, it appears likely that remaining Design-Builder Contingency Account funds will not be reallocated – whichever occurs earlier. Nothing in this provision diminishes or otherwise abrogates Design-Builder's assumption of the risk that it must fully and timely perform the Work within the GMP and without reallocation of Design-Builder Contingency Account funds.

- 5. **Payment Applications to separately reflect executed Change Orders and other line-items.** Subject to requirements set forth in ¶ V(B)(4), Payment Applications shall reflect only those Change Orders executed by UGAA at the time of the subject Application. For purposes of Payment Applications, unless otherwise requested by the ADR, each duly executed Change Order and unilateral Change Order issued during the period covered by the Payment Application shall be listed as a separate line-item at the end of the Design-Builder's line-item Schedule of Values contained in the Payment Application. Force Account amounts justified under Article VIII, requested by Design-Builder, and approved by the ADR in advance, shall also be indicated as separate line-items in the Payment Application for the period in which approval was obtained and the cost incurred – and for each subsequent period. Similarly, Design-Builder Construction Overhead Costs, Design-Builder Construction Fees, and the unallocated remainder of

the Design-Builder Contingency Account shall be indicated as discrete line-items in each Payment Application.

- C. **Timing of progress payments.** Subject to other limitations and conditions established herein, UGAA shall pay amounts due within thirty days after UGAA's receipt of a timely and complete Payment Applications in final form. Non-draft Preconstruction and Interim Payment Applications shall be deemed to be received on the day they are received by the ADR with: (1) an amount applied for that is justified by progress and consistent with this Agreement; and (2) the requisite affidavits, certifications, and back-up documentation. In no case shall draft Payment Applications receive accelerated review if they are not received by the ADR by the day of the month stated in ¶ I(N) or are not promptly submitted in final form after comments are issued by UGAA and/or Design Professional. In no case shall more than one certified Payment Application be accepted in a given month, without prior written approval of the ADR.
- D. **Proper disbursement.** Payments by UGAA shall in all cases be applied by Design-Builder solely to accounts pertaining to this Project. Before Design-Builder may allocate funds paid for its own use and purposes, it must *first* disburse amounts received from UGAA to all Subcontractors whose Work is included in amounts applied for by Design-Builder.
- E. **Payment not indicative of acceptance of Work.** UGAA's payments to Design-Builder shall not be construed as UGAA's acceptance of the Work.
- F. **UGAA's right to withhold payment.** UGAA may withhold from payments otherwise due Design-Builder the sum of amounts that UGAA reasonably believes it might be exposed to, or liable for, due to: Work found to be defective or incomplete for which Design-Builder has already been paid; Design-Builder's failure to correct Defective Work; Design-Builder's untimely or negligent performance; Design-Builder's failure to provide sufficient skilled workers and proper materials so as to achieve progress in accordance with the Project Schedule; Project-related claims by nonparties; liens filed by Design-Builder or Subcontractors of any tier; notices and claims by Subcontractors asserting Design-Builder's failure to pay; Design-Builder's failure to provide certifications when requested and required hereunder; discovery of past overpayments to Design-Builder by UGAA; overpayments resulting from previous incorrect Payment Applications; circumstances justifying UGAA's declaration of Design-Builder's default; uncorrected damage to existing Work, structures, and/or the Property; damage to UGAA Equipment or the work of Separate Contractors; back-charges for costs incurred by UGAA to correct Design-Builder's Defective Work-in-Place, *etc.*; or other amounts pertaining to Design-Builder's failure to satisfy its obligations hereunder. UGAA has no obligation to pay amounts applied for unless the Payment Application is timely submitted and it includes legible, credible documentation proving that Design-Builder has timely performed the Work for which it seeks payment, which documentation is a condition precedent to UGAA's obligation to pay. Whether or not otherwise requested herein, the ADR may at any time require additional information, documents, and data to substantiate the amounts applied for.
 - 1. **Notice of withholding.** UGAA will give notice to Design-Builder by e-mail or otherwise of its withholding of amounts applied for and its reason for it. If Design-Builder objects to the withholding, it shall, within five days of issuance, provide to the ADR a formal written notice of objection ("Notice of Objection"), detailing its reason(s) for objection, and citing specific Contract Document provisions that support Design-Builder's objection – otherwise, Design-Builder waives that objection.

2. **UGAA's recovery of overpayments and backcharges.** If amounts otherwise due and owing to Design-Builder on this Project are insufficient to cover the withholding to which UGAA is entitled under this Article, UGAA shall issue a unilateral Change Order reducing the GMP by the amount required to correct overpayments or to cover the conditions justifying withholding; and Design-Builder shall immediately repay amounts required to conform therewith. In no case shall UGAA's withholding of payment, or obtaining recovery of past overpayment(s), excuse Design-Builder's timely payment to its Subcontractors or its uninterrupted performance of the Work. Retainage shall not be considered when calculating repayment to UGAA, and repayments shall not be deemed to reduce UGAA's right to hold retainage.
3. **Other projects involving the Parties.** If Design-Builder is entitled to payment from UGAA on other projects, and if amounts due to Design-Builder on this Project are insufficient to cover amounts due to UGAA from Design-Builder for repayments, backcharges, or other Design-Builder liability pertaining to this Project, Design-Builder hereby agrees that UGAA may set-off and reduce amounts due to it on those other Projects as needed to satisfy UGAA's demand for coverage of exposure as provided in this paragraph; and Design-Builder waives any claim on the other project(s) pertaining to this provision.

G. **Design-Builder's payments to Subcontractors.** Design-Builder's timely payment of Subcontractors is a material performance obligation of Design-Builder and a condition precedent to UGAA's obligation to pay.

1. **Obligation to confirm validity of Subcontractor invoices.** Design-Builder must take all affirmative steps necessary as a fiduciary to UGAA to assure that amounts invoiced by Subcontractors are valid, that they are supported by legible verifiable documentation, that they are consistent with actual progress of the Work, and that Subcontractors have correctly applied as a priority payments previously received to lower-tier Subcontractors for whose Work payment was issued. Design-Builder shall include Subcontractor documentation as back-up for Design-Builder's Payment Applications. Design-Builder's submittal of Payment Application for Subcontract Work shall be deemed a representation by Design-Builder that the amounts invoiced for that Subcontract Work are legitimate and authorized herein.
2. **No Payment Application to include amounts to be withheld from Subcontractors.** Design-Builder may not apply for payment for Subcontractor Work that is incomplete, defective, or for which a Subcontractor will not be paid by Design-Builder within ten days of Design-Builder's receipt of payment from UGAA of part or all of the amount applied for, regardless of Design-Builder's reason for the proposed withholding from the Subcontractor.
3. **Repayment of Subcontractor-related overpayment by UGAA.** If Design-Builder becomes aware that it has applied for payment for Subcontract Work that is defective or incomplete, Design-Builder shall: (a) immediately notify the ADR and Subcontractor of that fact by e-mail; and (b) reduce accordingly amounts applied for in subsequent Payment Applications (or, at election of UGAA, refund to UGAA the overpayment).
4. **UGAA's right to make payment directly to Subcontractors.** If UGAA has reason to believe that Design-Builder has not timely and fully paid amounts due to one or more Subcontractors for Work performed or that Design-Builder cannot or will not pay

Subcontractors amounts applied for, UGAA may, but is not required to, upon e-mail notice to Design-Builder, pay the Subcontractor(s) directly (or, in UGAA's discretion, by joint check), thereupon issuing a deductive unilateral Change Order, reducing the GMP by an amount equal to the sum of UGAA's direct (or joint) payment(s) to the Subcontractor(s) *plus* related (*pro-rata*) Design-Builder Construction Fee and Design-Builder Construction Overhead Costs *plus* UGAA's related damages, costs, and attorneys' fees incurred by UGAA due to Design-Builder's nonpayment. UGAA's payment to Subcontractor by joint check, or direct payment, shall not be deemed to constitute interference by UGAA or Design Professional in Design-Builder's contractual relations, or those of its Subcontractors.

H. **Final Payment.** Final Payment is due not more than thirty days after UGAA has received, in the form and with the content required, the following:

1. Design-Builder's Final Payment Application, in a form consistent with those required for Interim Payment Applications, adjusted to reflect the terms herein pertaining to Final Payment;
2. A sworn Design-Builder Waiver and Release Upon Final Payment (in the form supplied as **Supplement G**);
3. A sworn Design-Builder Final Affidavit (in the form supplied as **Supplement H**);
4. Subcontractor Waivers and Releases Upon Final Payment (in the form supplied as **Supplement I**) sworn and executed by: (a) all mechanical (including HVAC and conditioned air), electrical, plumbing, low voltage, earthwork, cast-in-place concrete, roofing, building enclosure systems, and structural steel Subcontractors; (b) all Subcontractors of any tier providing rental equipment used on the Project; (c) all Subcontractors of any tier who have issued a Notice to Owner, Notice to Contractor, or other statutory notice; (d) all other Subcontractors of any tier for whom the ADR has requested interim waivers; (e) all other Subcontractors of any tier who have asserted, or threatened to assert, Project-related claims or demands of any kind including without limitation claims of lien or claims against a Bond; and (f) any and all other Subcontractors or vendors who were, or are to be, paid for labor, materials, or other Work in amounts exceeding the threshold established in ¶ I(N)(4);
5. Sworn documents demonstrating that all claims of liens or other encumbrances on the Property or the improvements to it have been discharged, satisfied, or otherwise cancelled by Design-Builder as of record in the office of the clerk of the Superior Court in each county in which such liens or demands have been filed or otherwise asserted – and that demands on Bonds or rights thereto have been waived and/or released in writing;
6. Verification and sworn confirmation that Design-Builder has completed all Punchlist Work to UGAA's satisfaction upon final inspection of the Work;
7. Verification and sworn confirmation that Design-Builder has completed, to UGAA's satisfaction, its Closeout Obligations set forth in Article III, and has submitted, to UGAA's satisfaction, all Closeout Materials;
8. Final Certificate(s) of Occupancy issued by the appropriate governmental authority(ies) having jurisdiction over the Project;

9. Upon request of the ADR, printed and digital copy of all Project-related cost and accounting records as required for UGAA to perform a final audit ("Final Accounting Materials"); *and*
 10. Executed Consent of Surety to Release of Retainage and Final Payment to Design-Builder.
- I. **Conditions precedents to Final Payment.** Satisfaction of each of the requirements in the immediately preceding sub-paragraphs is a condition precedent to UGAA's obligation to pay amounts applied for or to release retainage.
 - J. **Effect of Final Payment Application.** In addition to other waivers and releases required hereunder, Design-Builder's acceptance of release of retainage and/or acceptance of payment responsive in whole or in part to its Final Payment Application shall operate as a waiver and release by Design-Builder of all claims it has against UGAA, UGA, and/or the Board of Regents.
 - K. **Issuance of Final Payment not a release or waiver by UGAA.** UGAA's issuance of Final Payment shall not relieve Design-Builder of its obligation to fully perform under this Agreement, nor shall it be construed as a waiver of any right UGAA has under this Agreement or under Law to obtain Design-Builder's full performance of the Work or its correction of Defective Work or otherwise Noncompliant Work.
 - L. **Unit Prices.** Unit Prices specified in **Supplement C** hereto are the maximum price per unit of material that UGAA will pay for Design-Builder's installation of a specified material in quantities differing materially from those required in the Contract Documents.
 1. As a condition precedent to UGAA's obligation to pay for materials provided on a Unit Price basis, Design-Builder shall keep detailed, contemporaneous records (in the units specified and as required under Article VIII to substantiate changes in GMP) of quantities of materials delivered, excavated, supplied, installed, or otherwise used – or waive compensation therefor.
 2. The Unit Prices, themselves, shall not be subject to change, except by express Change Order.
 3. Unit Prices include all sums for payment, reimbursement, compensation, or any other cost of type involved in performance and administration of the Work involved in performing Unit Price Work. The initial Design-Builder Construction Fee and Design-Builder Construction Overhead Costs shall be deemed to take into account all overhead, profit, and administration costs with respect to performance of Work covered by Unit Prices, and shall not be increased as a result of application of Unit Prices.
 4. Unit Prices shall apply equally to material additions or deductions in quantities.
 - M. **Allowances.** Although allowances may be used in calculation of a Preconstruction Budget, no allowances may be used in the Schedule of Values incorporated into the GMP Change Order, or thereafter, except with the prior written approval of UGAA (which can be withheld for any reason).
 - N. **UGAA option to convert GMP to fixed Contract Price.** Upon agreement of Design-Builder and UGAA, UGAA may issue a Change Order to convert the GMP to a fixed Contract Price. Upon execution of a Conversion Change Order (**Supplement B3**), the fixed Contract Price shall equal the then-current GMP – minus amounts remaining unallocated in the Design-Builder

Contingency Account and minus unexpended Design-Builder Construction Overhead Costs (based on *pro rata* allocation determined by completion of the Work at the time of conversion). Upon conversion, all amounts paid by UGAA (exclusive of Design-Builder Preconstruction Fees and Design-Builder Preconstruction Overhead Costs) shall be fully credited to UGAA against the Contract Price. Changes to Contract Price thereafter will be addressed in the manner consistent with the way in which changes to GMP are addressed in Article VIII. UGAA may, but is not required to, demand and obtain from Design-Builder detailed back-up materials for Payment Applications subsequent to the conversion in the manner required hereunder for Payment Applications before conversion. After conversion, payments under the Contract Price format are strictly limited by the *pro rata* completion of the Work on a line-item basis, including the converted Design-Builder Construction Overhead and Design-Builder Construction Fee items, which shall be limited to *pro rata* completion of the overall Work. Attached as an Exhibit to the Conversion Change Order shall be a resultant Schedule of Values containing constituent line-items for various components of the Costs of the Work, as well as the adjusted Design-Builder Construction Fee, and adjusted Design-Builder Construction Overhead Costs, which are now included as components of the Contract Price. The sum of all line-items shall equal the initial fixed Contract Price.

ARTICLE VI – TIME

- A. **Time is of the essence.** Time is of the essence in this Agreement.
- B. **Work Continuous.** Work shall begin within the time stated in ¶ I(B) – and, in the absence of written instructions or directions to the contrary by UGAA, shall be performed continually and expeditiously, and in accordance with the Project Schedule, until Final Completion.
- C. **Modification of Contract Time.** Contract Time can only be adjusted by duly executed Change Order proposed, prepared, and executed in accordance with this Article and Article VIII. Neither Design-Builder’s submittal of a proposed schedule revision, nor the ADR’s review of one, changes the then-current Project Schedule – nor do they modify Design-Builder’s obligations under this Agreement.
- D. **Schedules.** Design-Builder shall prepare and maintain accurate schedules, using scheduling software approved by UGAA. Schedule accuracy is the sole obligation of Design-Builder. UGAA’s receipt of schedules, and any response (or lack of response) to them, shall not be construed as UGAA’s agreement to their basis or content. Design-Builder shall provide the ADR with two printed copies and a digital copy of each schedule supplied.
 - 1. **Schedule Data.** Both printed and digital Schedules shall include the following “Schedule Data”: (a) Project name and location; (b) Design-Builder’s name; (c) the date prepared, the preparer, and the data date (on each page); (d) the type of Schedule, software used to produce it, and the version or edition of it; (e) actual dates on which Work-in-Place was installed; (f) planned activities of Design-Builder, Subcontractors, Separate Contractors, and others distinguishing periods during which subdivisions of Work (*e.g.*, installation periods for structural footings, walls, slabs, framing, enclosure dry-in, delivery, approvals, inspections, testing, *etc.*) are to be performed; (g) anticipated deliveries and installation of any UGAA Equipment; (h) interim Milestone Dates (missed, achieved, and/or anticipated); (i) Contractual Date of Substantial Completion; (j) planned key submittal dates and related review periods; (k) dates of utility tie-ins,

start-ups, installation of temporary service, *etc.*; (l) anticipated and likely Realized Date of Substantial Completion; (m) occupancy and move-in dates; and (n) other schedule-related information that may be requested by UGAA.

2. **Milestone Dates.** Schedules shall include dates on which significant tasks, activities, events, and key progress points of the Work are to be accomplished – all of which are to be established by UGAA and Design-Builder at the time of execution of this Agreement (“Milestone Dates”). Design-Builder’s satisfaction of Milestone Dates is a material obligation of this Agreement and a condition precedent to UGAA’s obligation to pay.
3. **Schedules to account for anticipated adverse weather.** Schedules shall be designed allow for Anticipated Adverse Weather Days as contemplated in ¶ VIII(C)(8)(c).
4. **Resource-loaded schedule.** Schedules shall be resource-loaded to include manpower, key production equipment, Subcontract Work, and, to the extent known, the work of Separate Contractors. Design-Builder shall prepare and submit all Schedules after consulting with all relevant Subcontractors and Separate Contractors.
5. **Data preservation.** Design-Builder shall preserve intact (in printed and digital form) Schedule Data in succeeding versions, avoiding deletion or modification of historic data and other information contained in them.

E. **CPM scheduling.** Design-Builder is required to employ Precedence Diagramming Critical Path Method (“CPM”) on all Project Schedules; and the Critical Path shall be shown on each Project Schedule. CPM is a method of planning and scheduling a construction project where activities are arranged based on activity relationships. Network calculations determine: (1) when activities can be performed; and (2) the Critical Path of the Project. Critical Path is the longest continuous chain of activities through the network schedule that established the minimum overall Project duration and contains no float. A subject task or component of the Work is deemed to be “on the Critical Path” if subsequent Work must follow completion of the subject task or component, and that subsequent Work, in turn, controls the start of further subsequent Work in a way that, if the subject Work is delayed, Design-Builder’s completion of the Work will also be delayed. Float is time during which an activity is not on the Critical Path. If float is created, it is deemed to be for the exclusive benefit and use of UGAA.

F. **Types of schedules.**

1. **Preconstruction Schedule.** Design-Builder to submit (in paper and electronic form at intervals requested by the ADR) a Preconstruction Bar Chart (Gantt) Schedule, indicating all major Work, tasks, construction activities, and other information required for such Schedules in ¶ III(K), updated continually during the Preconstruction Process.
2. **Baseline CPM Schedule.** At least three days in advance of the mandatory, final preconstruction meeting indicated in ¶ I(K)(1) (or upon submittal of a proposed Component Change Order, whichever occurs first), Design-Builder shall provide for UGAA’s approval an initial proposed baseline CPM-based schedule of the Work and Design Services (“Preconstruction Baseline CPM Schedule” or “Baseline CPM Schedule”), containing the information set forth in ¶¶ VI(D) and VI(E), and consistent with the foregoing.
 - a. Design-Builder shall attach to the proposed Baseline CPM Schedule copies of all Subcontracts, Subcontract proposals, estimates, purchase orders, preliminary

- schedules, and other documents and information needed to substantiate the proposed Baseline CPM Schedule.
- b. Design-Builder's submittal of an acceptable Baseline CPM Schedule is a condition precedent to (i) Design-Builder's submittal of the first Payment Application covering actual construction; and (ii) UGAA's obligation to pay.
 - c. Upon approval, the Baseline CPM Schedule shall thereafter remain unchanged as a record for comparison.
3. **Project Schedule.** Once approved by UGAA, the Baseline CPM Schedule will become the initial approved "Project Schedule." Project Schedules shall contain the data required under ¶¶ VI(D) and VI(E) and other information that may be required by the ADR.
- a. **Design-Builder's duty to perform in accordance with Project Schedule.** As a material obligation under this Agreement, and as independent condition precedent to UGAA's obligation to pay, Design-Builder shall perform the Work and the Design Services: (i) in accordance with the Project Schedule; (ii) within the Contract Time; and (iii) so as to complete intermediate tasks, activities, and other Work and Design Services on or before each respective Milestone Date set forth in it.
 - b. **Modifications.** Where possible, Scope of Work added by Change Order shall be treated as a separate activity on the Project Schedule. Revisions shall be designated as such, with previous Milestone Dates retained and marked. Modifications to Project Schedule must reflect the Contract Documents and duly executed ITC's, Change Orders, or other UGAA-approved modifications of Design-Builder's obligations in accordance with Article VIII, and the Project Schedule shall be updated monthly, consistent with them.
 - c. **Design-Builder's obligation to accelerate Work.** If Design-Builder fails to meet Milestone Dates, or if the rate of progress of the Work indicates Design-Builder's likely inability to complete the Work within the Contract Time, Design-Builder shall, whether or not upon request by the ADR, and at no expense to UGAA, accelerate the Work as needed to bring the progress of the Work in conformance to the most recently approved Project Schedule, meeting subsequent Milestone Dates, and completing the Work within the Contract Time.
4. **Progress and Completion Schedules.** If the progress of the Work is such that it appears to UGAA likely that the then-current, approved Project Schedule cannot or may not be met or that the then-current Contractual Date of Substantial Completion cannot or may not be achieved, Design-Builder shall attach to each Interim Payment Application a proposed "Progress and Completion Schedule" showing historic progress of the Work to-date, the timing and sequence of Work to be performed, future Milestone Dates, and other Schedule Data, all of which shall indicate Design-Builder's intended plan for completing the Work on or before the Contractual Date of Substantial Completion.
- a. **As-built and anticipated Work noted.** Progress and Completion Schedules shall contain all the Schedule Data required in other schedules, including CPM data. The as-built portion of the Progress and Completion Schedule shall accurately reflect historic progress of the Work. The portion of it showing planned Work

shall to be resource-loaded to indicate the performance required of the Design-Builder to complete the Work within the Contract Time.

- b. **Contractual Project Schedule not affected.** Submittal of updated Progress and Completion Schedules shall not modify the then-current (and approved) Project Schedule, which can only be modified as provided above. Mere submittal of Progress and Completion Schedules does not: (i) satisfy Design-Builder's notice obligations set forth herein; (ii) modify Contract Time; or (iii) relieve Design-Builder of its obligation to meet Milestone Dates in the Project Schedule and to complete the Work within the Contract Time.
- c. **Points of nonconformance with Project Schedule noted.** In each monthly Progress and Completion Schedule, Design-Builder shall graphically note and highlight key critical path activities and Milestone Dates that were not met historically and/or will not be met under the proposed Progress and Completion Schedule.
- d. **UGAA's right to order schedule modifications.** To the extent UGAA determines in good faith that the proposed or submitted schedule (and/or subsequently proposed or updated schedules) do(es) not reflect actual conditions, realistic projections of time needed to perform, the actual resources or funds allotted for performance, or UGAA's needs consistent with this Agreement, UGAA may, but is not required to, require the Design-Builder to modify its proposed Progress and Completion Schedule and/or specific Milestone Dates and Schedule Data contained in it and to plan for acceleration and/or resequencing of the Work as necessary to complete it within the Contract Time at no additional cost to UGAA.

- G. **Summary Schedule Comparison.** When requested by the ADR, Design-Builder shall, with its Interim Payment Applications, submit a graphical comparison of the Baseline CPM Schedule, the then-current Project Schedule, and an updated Progress and Completion Schedule ("the Summary Schedule Comparison"). The Summary Schedule Comparison shall condense key tasks, events, Work sequences, and Milestone Dates, vertically aligning a condensed graphical Baseline CPM Schedule, the then-current Project Schedule, and the updated Progress and Completion Schedule on one document, employing identically time-scaled grids.
- H. **Progress Reports.** In addition to other schedules, daily reports, and other required reports, Design-Builder shall submit narrative Progress Reports at the intervals indicated in ¶ I(Q), detailing the Work performed, Subcontractor activity, all pending claims, issues, and disputes, and comparing the current Project Schedule with actual progress of the Work. Progress Reports shall describe the progress of the Work and deviations, if any, in the progress of the Work from the then-current Project Schedule. Design-Builder's failure to indicate in a Progress Report deviations from the Project Schedule shall be deemed to be an affirmative representation by Design-Builder that the progress of the Work comports with the tasks and milestones set forth in the then-current Project Schedule.
- I. **Timely performance mandatory.** Design-Builder's full and complete performance within the Contract Time is a material obligation of this Agreement and a condition precedent to UGAA's obligation to pay.

ARTICLE VII – SUBCONTRACTORS

- A. **Subcontractors.** Design-Builder is fully responsible for the acts, omissions, performance, and conduct of Subcontractors of any tier with respect to the Work and the Project. Design-Builder shall not assert any failure, act, negligence, omission, inefficiency, insolvency, bankruptcy, incompetence, or any other act, omission, or circumstance of a Subcontractor of any tier as a justification or excuse for Design-Builder's failure to fully and timely perform the Work. Design-Builder must hire qualified Subcontractors with sufficient skill and forces and in sufficient numbers to timely and competently perform the various portions of Work, to meet Milestone Dates, and to supply the requisite materials and equipment to perform the Work. Design-Builder shall not employ Subcontractors (including but limited to Design Professional) to which UGAA has a reasonable objection. UGAA retains the right to raise subsequent objections for cause, upon which Design-Builder shall replace Subcontractor, with resulting costs to be borne solely by Design-Builder. Concurrent with presentation to the ADR of a proposed Component Change Order or GMP Change Order, Design-Builder shall provide, for the ADR's review, a list of proposed Subcontractors for all major trades and materials; and thereafter Design-Builder's use or employment of Subcontractors (including, without limitation Design Professional and Subconsultants of any tier) shall not be changed without express written consent of UGAA, which consent can be withheld for any reason.
1. **Written Subcontracts required.** Design-Builder shall engage no Subcontractor in the absence of a written Subcontract. For all Subcontractors the value of whose Work exceeds \$9,999.99, for Design Professional and Subconsultants (of any tier and at any Subcontract value) who may be engaged as Subcontractors by Design-Builder, and for others upon request of the ADR, Design-Builder shall provide to the ADR complete copies of any or all Subcontracts, requisite licensing information, and copies of all related Certificates of Insurance and Policies of Insurance.
 2. **Subcontract payment terms to be consistent with state prompt payment statute.** Design-Builder shall not enter Subcontracts in which its payment of Subcontractors is excused for periods longer than: (a) those set forth in the subcontractor provisions of the Georgia Prompt Pay Act (O.C.G.A. § 13-11-1 *et seq.*); or (b) ten days after receipt from UGAA of the payment of amounts applied for the Subcontractor's Work (whichever is less). Design-Builder shall not enter Subcontracts that purport to supersede or void Laws governing prompt payment of Subcontractors.
 3. **Competitive selection.** Design-Builder shall competitively select, in accordance with ¶ III(J)(10), all Subcontractors using comparative cost and other factors approved by the ADR. Where otherwise permitted herein, Design-Builder can perform Work with its own forces, but shall not enter Subcontracts for any other Work or Services of any nature on the Project without written, Subcontract-specific approval of UGAA.
- B. **Licensing and certifications.** Subcontractors must possess the occupational, trade, or professional licenses and certifications required by local and state governments having jurisdiction over the Work to perform their portion of the Work, as well as any insurance, bonds, and governmental certifications, authorities, business licenses, and permits required to conduct business in the state and locality of the Project. In addition to the foregoing, at any time that mechanical, electrical, plumbing, utility, or welding Work is being performed, it must be performed under the conscientious, observant, and direct supervision of a person licensed by

the State of Georgia in those respective trades. Design-Builder shall submit proof of the foregoing before Subcontractor performs Work.

- C. **Design services.** Any Subcontract of any tier issued to Design Professional or Subconsultants thereof shall contain an express provision incorporating the terms of this Agreement and acknowledging it specifically and by date. Concurrent with execution of this Agreement, Design-Builder shall provide, for the ADR's review and approval, a list of Design Professional's Subconsultants of any tier; and thereafter approved Subconsultants shall not be changed without express written consent of UGAA, which consent can be withheld for any reason.
- D. **Flow-through provisions.** Design-Builder shall cause each Subcontract (including that of Design Professional Subcontracts, if any) to contain express flow-through provisions that: (i) impose on Subcontractors of all tiers the same obligations and duties to UGAA with respect to their portion of the Work that this Agreement imposes upon Design-Builder as to UGAA, including but not limited to insurance obligations; and (ii) grant to UGAA the same rights and benefits as to the Subcontractor that UGAA enjoys under this Agreement as to the Design-Builder. In addition to all the other indemnities provided by Design-Builder herein, Design-Builder shall indemnify and hold UGAA harmless for Design-Builder's failure to effectively satisfy this provision.
1. UGAA shall have access to records of Subcontractors and may audit their financial records in the same way it may obtain and audit those of Design-Builder.
 2. Subcontractors shall provide insurance coverage for their respective portions of the Work commensurate with the coverage required of the Design-Builder by this Agreement. The policies shall name the University of Georgia (and its officers, directors, and employees) as Certificate Holders, and (except in the case of Workers Compensation and Professional Liability Coverage) the University of Georgia Athletic Association, Inc., the University of Georgia, and the Board of Regents of the University System of Georgia (and their respective officers, directors, and employees) as named Additional Insureds on all policies as set forth below, and providing copies of Certificates of Insurance, Policies of Insurance, and related endorsement at the outset of the Subcontractor's Work, and at other times when requested by the ADR.
 3. Requirements pertaining to Design-Builder regarding claims, demands, and notices apply fully to Subcontractors of any tier.

Design-Builder shall cause these flow-through provisions to be expressly included in each Subconsultant contract of any tier.

- E. **UGAA's right to accept assignment of Subcontracts.** Design-Builder shall cause each Subcontract to contain a provision that permits UGAA to obtain assignment of the Subcontract upon UGAA's notice to Subcontractor and Design-Builder upon occurrence of a condition of default by Design-Builder or upon UGAA's termination of this Agreement. UGAA may, in turn, reassign the Subcontract, as its needs require. UGAA's exercise of its right of assignment or substituted performance shall not excuse Design-Builder of its performance obligations hereunder or its obligation to adhere to its lawful and contractual duties with respect to Subcontractors. Assignment of Subcontracts to UGAA does not relieve Design-Builder of its sole and exclusive obligation to pay Subcontractors of all tiers for all amounts earned by Subcontractor before the assignment. This provision is among those that survive termination of this Agreement.

- F. **No direct contractual relationship between UGAA and Subcontractors.** Design-Builder is solely responsible for payments to Subcontractors, and UGAA has no obligation to pay Subcontractors for Work performed or labor, material, or services furnished to the Project. Although Design-Builder shall expressly incorporate this Agreement by reference in each Subcontract, that incorporation does not create any obligation or duty on the part of UGAA in favor of any Subcontractor (or any other person or entity). Nothing in this paragraph shall negate the obligations of Design Professional to UGAA as set forth in Article XVI and elsewhere in this Agreement.
- G. **Subcontractor claims and notices.** If any Subcontractor, or anyone providing labor, materials, services, or Work at the instance of Design-Builder or its Subcontractors of any tier, asserts (or threatens to assert) a claim or demand of any kind against UGAA, UGA, the Board of Regents, the Property, or Design-Builder, Design-Builder shall indemnify, defend, and hold harmless UGAA and UGAA Indemnitees as indicated in ¶ XI(B) (and shall indemnify and hold harmless the State Indemnitees as indicated in ¶ XI(B)) as to that claim in accordance with Article XI.
1. **Dual notice requirements.** In addition to any other notice-related requirements contained in this Agreement or required by Law, Subcontractors of any tier shall send to the ADR, by Statutory Overnight Delivery in accordance with ¶ XVII(A), a copy of any and all Project-related Notices to Contractor or Design-Builder, Notices to Owner, notices of subcontract, notices of nonpayment, claims of lien, Bond-related demands and claims, and Project-related claims, notices, citations, or demands of any kind that are either received by (or sent to) a Subcontractor or threatened, sent, asserted, filed, or delivered by (or to) a Subcontractor or any other person or entity.
 2. **Incorporation into Subcontracts.** Design-Builder shall expressly incorporate the provisions in this Agreement in each Subcontract entered on this Project; proof of compliance with this requirement being a condition precedent to UGAA's obligation to pay. Design-Builder agrees that failure to incorporate the terms of this Agreement into Subcontracts with Subcontractors of any tier is a material breach of this Agreement. UGAA may at any time demand proof of Design-Builder's compliance with this obligation to incorporate.
- H. **Joint and several liability.** Design-Builder shall be jointly and severally liable with its Subcontractors of any tier for all warranty obligations pertaining to Subcontract Work, defects in the Work of Subcontractors, and breaches of this Agreement with respect to the Work of Subcontractors.

ARTICLE VIII - CHANGES

- A. **Requests for Information ("RFI's").** If Design-Builder believes that it cannot perform part or all of the Work because the Contract Documents are incomplete or ambiguous, or for any other reason Design-Builder determines that it lacks information necessary to perform the Work, Design-Builder shall prepare an RFI and submit it concurrently to the ADR and the Design Professional in accordance with the following:
1. **Informal request to precede written RFI's.** If, in the judgment of the ADR during the course of the Work, the need arises, the ADR may order that, before submitting a written RFI, Design-Builder must concurrently request the information by e-mail from the ADR

and the Design Professional. In the absence of a follow-up RFI, such informal RFI's are presumed to have been satisfactorily and sufficiently answered;

2. **Effect of absence of timely RFI.** Absence of an RFI shall be deemed to indicate that Design-Builder has all information needed to fully perform the Work; and Design-Builder waives right to compensation for correction of Work or other Change Order related to a purported lack of information if Design-Builder fails to submit an RFI within seven days of determination by Design-Builder or its Subcontractor that it may lack sufficient information to perform the Work;
3. **Form of request.** RFI's shall be consecutively numbered, dated, and submitted in a form acceptable to the ADR. Each shall indicate: (a) the precise nature of the information requested; (b) when and from whom the Design-Builder informally requested the information; (c) the source and content of any prior response to Design-Builder's informal request(s); (d) which Contract Documents pertain to the issue involved; (e) when the information requested is needed; and (f) what task(s) or element(s) (if any) of the Project Schedule and the most recent Progress and Completion Schedule will be first impacted, or critically impacted, by Design-Builder's need for the information requested; *and*
4. **Tracking of RFI's.** Design-Builder shall continually update the RFI log, indicating with respect to each RFI: the subject; the date submitted; specific action taken or other resolution proposed or affected; the Contract Document provision(s) pertinent to the RFI and its resolution; and the number and date of any Proposed Change Orders and Change Orders to which the RFI relates. ASK's issued in response to RFI's shall be tracked and recorded with RFI's, as well as separately logged and stored as a group.

B. Changes in Scope of Work.

1. **UGAA's Instructions to Change ("ITC's").** Without invalidating this Agreement, the ADR or UGAA's undersigned authorized representative may order changes in the Work or the Design Services by issuing a written ITC to Design-Builder.
 - a. ITC's shall be issued in substantially the form supplied as **Supplement Q** and consecutively numbered.
 - b. ITC's with respect to Design Services that are issued by the Design-Builder are not valid without the signature of the ADR or the undersigned authorized representative of UGAA.
 - c. ITC's that result in a modification of Contract Time or GMP will be incorporated into a Change Order within a reasonable time.
 - d. Where increased compensation is authorized by ITC, that compensation is calculated and limited in accordance with the Pricing of Adjustments provisions in this Article VIII and the not-to-exceed amount set forth within the ITC. Design-Builder assumes the risk that it will incur costs in excess of that amount in its performance of the changed Work described in the ITC. Where an ITC is signed only by the ADR, the not-to-exceed amount shall be deemed not to exceed the amount stated in ¶ XVII(C), unless a smaller amount is indicated in the ITC.
 - e. Upon the ADR's issuance of an ITC, Design-Builder's Work (or Design Services, as the case may be) shall be modified accordingly; however, if Design-Builder

believes that the amount specified in the ITC is unacceptable or that the change requires an increase in GMP or Contract Time, or a change in Project Schedule, Design-Builder shall perform the changed Work or Design Services, but shall promptly e-mail the ADR of its objections, and within seven days, submit a PCO to the ADR for consideration. Absence of objection and a timely PCO shall be deemed to be acceptance of the ITC by Design-Builder and a waiver of any claim for increased compensation or an extension of Contract Time.

- f. Where the Parties are unable to agree to an acceptable not-to-exceed amount with respect to a given change, UGAA may, but is not required to, establish a Force Account for the changed Work, managed consistent with the Force Account provisions set forth below in this Article.
- 2. **Design-Builder's proposed changes or substitutions.** No substitutions are permitted in the absence of a written approval as set forth in ¶ III(B).
- 3. **Proposed Change Orders ("PCO's").** Subject to the provisions of ¶ VIII(C), upon Design-Builder's receipt of an ITC, ASK, UGAA-issued PCO, an answer to an RFI, any modification or other direction by UGAA that could be perceived by Design-Builder as a change, or when Design-Builder discovers (or should with diligence discover) any other event, *force majeure* occurrence, circumstance, or differing site condition that will, or is likely to, in Design-Builder's judgment, result in a change of Scope of Work (or change in Scope of Design Services) that materially increases Design-Builder's costs or time to perform, or will otherwise impact GMP, Contract Time, or the Project Schedule ("triggering event"), Design-Builder shall, before performing the changed Work or Design Services involved, and in no case more than seven days after the triggering event, deliver to the ADR a detailed PCO (in substantially the same form as the Change Order supplied in **Supplement B2**, or in another form acceptable to the ADR, with content as required therein). Design-Builder's timely satisfaction of the foregoing requirement to provide a detailed PCO is a condition precedent to any obligation of UGAA to pay for changed Work or Services. Absence of timely submittal of a PCO shall indicate that Design-Builder waives compensation and claims related to or arising out of the subject of the triggering event; and, thereafter, Design-Builder shall perform the Work according to those ITC's (where signed by the ADR), ASK's, UGAA-issued PCO, and answers to RFI's, with subsequent Project and Completion Schedules modified accordingly. Mere receipt of a PCO shall not be construed as approval by UGAA of contents or assertions contained in the PCO – or any agreement on the part of UGAA that the proposal in any way justifies a Change Order.
 - a. **Content.** Each PCO shall compare the then-applicable Scope of Work to the proposed Scope of Work, detailing, with documents and other support data: (i) the Plan sheet, drawing number, specification section, and/or other Contract Document affected or involved; (ii) the reasons for the suggested impact; (iii) the effect of the proposed change on Design-Builder's cost to perform and the Project Schedule; and (iv) the precise adjustment proposed to the GMP and/or Contract Time.
 - b. **PCO's pertaining to differing site conditions.**
 - i. If ¶ I(O) indicates that a Geotechnical Report is incorporated in the Contract Documents, the conditions reported in it shall be deemed to

generally establish the soil and subsurface conditions anticipated. If Design-Builder encounters concealed or subsurface conditions that it contends differ materially and substantially from those expected conditions, Design-Builder shall promptly: (A) notify the ADR by telephone and in writing by e-mail; and (B) submit a PCO that, in addition to the other information required in PCO's: (1) details the depths, character, and quantities of the conditions encountered; (2) describes how and to what degree the conditions encountered differ from those anticipated; (3) indicates the steps taken by Design-Builder to inform UGAA and UGAA's Testing Consultants of the conditions encountered; and (4) specifies, to the degree known, the changes in the Work required to adapt to those conditions. Design-Builder shall continually update this PCO until resolution is complete contractually and in terms of the Work. Unit Prices stated in Supplement C shall be used to calculate compensation for remedial Work that is above and greater in volume than that which could be reasonably anticipated from the contents of the Geotechnical Report.

- ii. If a Geotechnical Report has been prepared but has not been expressly incorporated in this Agreement, the Geotechnical Report shall not be presumed to be authoritative or reliable. In that case, or if no Geotechnical Report has been performed, the subsurface and soil conditions are deemed "undetermined." In either case, the GMP shall be deemed to take into account grading and earthwork of a type or magnitude that is usual or reasonably anticipated. If, however, subsurface and soils conditions are encountered that require extraordinary remedial site Work and earthwork (*i.e.*, of the type and quantities that could not be reasonably anticipated) to accept foundations and other improvements as required in the Contract Documents, Design-Builder shall adhere to the steps indicated in the immediately preceding subparagraph. For purposes of this subparagraph, "extraordinary remedial site Work and earthwork" is deemed to be uncommon soil conditions rarely found in the vicinity of the Project or compensable rock requiring removal. No rock for which compensation is sought or expected shall be removed except pursuant to written authorization of the ADR. Shale, rottenstone, or stratified rock that can be loosened with a pick or removed by a hydraulic excavator equivalent to a Caterpillar Model 215, a single engine pan (Caterpillar 621 or equivalent) that is pushed by a crawler tractor (Caterpillar D-8K or equivalent), or similar equipment shall not be classified as "rock." Categories of compensable Rock are as defined in Supplement C.
- iii. That said, Design-Builder acknowledges that Geotechnical Reports are necessarily imprecise and *some* site Work and earthwork preparation is required in all projects involving foundation construction; and, thus, Design-Builder assumes the risk that subsurface conditions will vary to some degree from those described in a given report, and, in all cases, compensation for non-extraordinary and not unusual site Work and earthwork is included in the GMP.

- iv. If a Geotechnical Report contains foundation recommendations that differ or conflict with foundation design or soil preparation specification by Design Professional contained in the Construction Documents, the design indicated in the Construction Documents shall apply – but Design-Builder shall immediately issue an RFI regarding that difference or conflict to the ADR and Design Professional.
- c. **PCO's relating to Hazardous Materials conditions.**
 - i. If ¶ I(W) indicates that a Hazardous Materials Report is expressly incorporated in the Contract Documents, the conditions reported in it shall be deemed to generally establish the extent of Hazardous Materials that Design-Builder can expect to encounter. If Design-Builder encounters Hazardous Materials conditions that it contends differ materially and substantially from those expected, Design-Builder shall immediately: (A) notify the ADR by telephone and in writing by e-mail; and (B) submit a PCO that, in addition to the other information required in PCO's: (1) details the extent of the Hazardous Materials encountered; (2) describes how and to what degree the conditions encountered differ from those anticipated; (3) indicates the steps taken by Design-Builder to inform UGAA and UGAA's Testing Consultants of the Hazardous Materials encountered; and (4) specifies, to the degree known, the changes in the Work required to adapt to those conditions. Design-Builder shall continually update this PCO until resolution is complete contractually and in terms of the Work.
 - ii. That said, if ¶ I(W) indicates no Hazardous Materials Report incorporated in the Contract Documents, and Design-Builder encounters them, Design-Builder shall give immediate notice thereof to the ADR by e-mail and shall, within five days, prepare a PCO and proceed in accordance with the immediately preceding subparagraph.
 - iii. In the case of either of the foregoing conditions in this subparagraph, all other Hazardous Materials requirements in this Agreement shall continue to apply.
- d. **Time-related PCO's.** Updates of proposed, affected Project Schedules, Progress and Completion Schedules, and related support documents shall be attached to, and incorporated in, PCO's pertaining to modifications of Contract Time.
- e. **Numbering and signature.** PCO's shall be consecutively numbered and signed by the DBR or Design-Builder's Project Manager.
- f. **Submittal of PCO's.** Design-Builder shall submit to the ADR three copies of PCO's for review, comment, and, if appropriate, approval – and shall concurrently submit one copy of the PCO to Design Professional.
- g. **Certification.** By submitting a PCO, Design-Builder represents and certifies that the amounts claimed or extensions sought were competitively obtained (as required by ¶ III(J)(10)), and are justified by the facts and the Contract Documents.

- C. **Change Orders.** Unless otherwise requested or approved by the ADR, the information contained in an approved PCO shall form the basis for the resulting Change Order, which shall conform to the requirements of this Article VIII. Except as indicated above in this Article with respect to ITC's, changes that affect GMP, Contract Time, Project Schedule, or maximum amounts for Design-Builder Preconstruction Fee, Design-Builder Preconstruction Overhead Costs, Design-Builder Construction Fee, and Design-Builder Construction Overhead Costs can only be modified by duly executed written Change Order, signed and dated by the undersigned "authorized representative" of UGAA, the form of which is supplied as **Supplement B2**. In the absence of a subsequent designee appointed in accordance with Article XVII, the undersigned authorized representative of UGAA (or its Director of Athletics, or the ADR within the limits set forth in ¶ XVII(C)) is (are) the only person(s) with authority to execute Change Orders for UGAA. In the absence of a Change Order duly executed by UGAA, Design-Builder waives any and all claims or demands for payment or compensation of any kind – or extension of time for performance – arising out or relating to its performance of the changed Work.
1. Design-Builder's untimely, inadequate, unlawful, defective, or otherwise noncompliant performance shall not give rise to a Change Order increasing the GMP or Contract Time – or modifying the Project Schedule.
 2. Minor changes in the Scope of Work that do not substantially and unavoidably affect the time or cost required to perform shall not give rise to a Change Order that modifies the Contract Time or GMP.
 3. Change Orders are to be consecutively numbered and cross-referenced to underlying or precipitating PCO's. Upon execution of a Conversion Change Order, subsequent changes will be set forth in Post-Conversion Change Orders (**Supplement B4**); and changes to the Contract Price shall be addressed in manners commensurate with those set forth for changes to the GMP in this Article.
 4. As otherwise provided herein, UGAA, may, upon notice, issue unilateral Change Orders as needed or justified to protect legitimate interests of UGAA and to maintain progress of the Work, modifying the Contract Time, Project Schedule, or GMP. Amounts modified in unilateral Change Orders shall be determined in the good-faith judgment of the ADR. Unless otherwise stated in context, unilateral Change Orders are effective upon issuance by the ADR – and shall be reflected in subsequent Payment Applications. Interim Payment Applications shall reflect only fully executed bilateral or unilateral Change Orders – not PCO's or other as-yet-unapproved proposals or requests. If Design-Builder contends that a unilateral Change Order is prohibited under this Agreement under the circumstances or the amount adjusted is incorrect, it must object, stating with specificity the contractual and factual grounds for its objection. Design-Builder waives objections to the terms of a unilateral Change Order unless it gives formal notice of its objection (together with substantiated written back-up and objective reasoning on which the objection is based) in writing to the ADR within seven days of its receipt (by e-mail or otherwise) of the Change Order.
 5. **Pricing of adjustments to GMP.**
 - a. **Agreed pricing of adjustments.** Where otherwise justified by material change in Scope of Work, the specific amount of the adjustment of the GMP (except in cases of unilateral Change Orders) shall be agreed in writing by the Parties before the changed Work is performed and shall reflect the following limitations:

- i. *For approved Self-performed Work:* Adjustment to GMP limited to Cost of the Work (as Cost of the Work is further described and limited in ¶ V(B)(2)(a)) plus a Design-Builder markup of 7.5% – which markup includes without limitation all profit, overhead, general conditions, Bond premiums, insurance premiums, salaries, field office expenses, and any other costs pertaining to the changed Work.
 - ii. *For Work performed by a first-tier (direct) Subcontractor:* Adjustment to GMP limited to Subcontractor’s Cost of the Work (as Cost of the Work is further described and limited in ¶ V(B)(2)(a)) plus a Subcontractor markup of 7.5% of Cost of the Work plus a Design-Builder noncumulative markup of an additional 5% (for a total of 12.5%) – which markup includes without limitation all profit, overhead, general conditions, Bond premiums, insurance premiums, salaries, field office expenses, and any other costs pertaining to the changed Work for Subcontractor and Design-Builder.
 - iii. *For Work performed by a lower-tier Subcontractor:* Adjustment to GMP limited to Sub-subcontractor’s Cost of the Work (as Cost of the Work is further described and limited in ¶ V(B)(2)(a)) plus a Sub-subcontractor markup of 7.5% and Design-Builder and Subcontractor combined noncumulative markup of 7.5% for a total of 15%) – which markup includes without limitation all profit, overhead, general conditions, Bond premiums, insurance premiums, salaries, field office expenses, and any other costs pertaining to the changed Work for Subcontractors all tiers and Design-Builder.
- b. Cost of the Work shall, in no case, include Design-Builder Construction Fee or categories of costs included or inferable from those listed as Design-Builder Construction Overhead Costs in Supplement O.
 - c. The amounts determined in accordance with ¶ VIII(C)(5)(a) are deemed to include all compensation for any and all direct and indirect costs, overhead, profit, insurance, labor, materials, and time related to the change requested or ordered. Increases in costs of materials during the course of the Work shall not be cause for adjustment of the GMP.
 - d. In no case shall Design-Builder (or Subcontractors of any tier) be compensated for: (i) demolition, replacement, repair, or re-inspection of Defective Work or for costs resulting in whole or in part from failure by Design-Builder (and/or a Subcontractor of any tier) to perform as required by Law or this Agreement; (ii) changes in scope to the extent that they were avoidable by diligent, timely Design-Builder performance; (iii) re-inspection fees and costs caused by failure of Work to pass initial inspection, lack of readiness by Design-Builder for inspections, or for other less-than-diligent or non-conscientious conduct, planning, or scheduling by Design-Builder; (iv) home office expenses and other home and branch office costs and expenses commonly included in “Eichleay Costs,” where delay was not on the critical path or was avoidable by Design-Builder’s conscientious prosecution of the Work; (v) payroll costs for Design-Builder’s (or Subcontractors’) officers, executive, administrators, accountants,

counsel, engineers, timekeepers, estimators, clerks, or other similar administrative personnel; (vi) wages of personnel to the extent they are also assigned to other projects; (vii) charges for delinquent payments, small tools, incidental costs, rent, utilities, telephone and office equipment; (viii) food, meals, repairs to equipment, vehicle maintenance and registration, use of vehicles unrelated to the Work, fines, penalties, lost or stolen equipment, undocumented costs, capital expenses, legal fees, cost to discharge liens, re-testing and re-inspection costs, profit sharing, commissions, or any other costs due in whole or in part to Design-Builder's negligence, default, oversight, lack of due care; or (ix) costs related to Design-Builder's Superintendent, Project Manager, and other persons assigned to the Project and/or on-site without regard to the scope of the changed Work.

- e. The markups provided in ¶ VIII(C)(5)(a) for Change Orders are in lieu of change-related increases to Design-Builder Construction Fee and Design-Builder Construction Overhead Costs.
6. **Force Account.** If the Parties cannot agree in advance as to the appropriate modifications to the GMP as a result of an ITC or PCO, UGAA may establish a task-specific Force Account of a given not-to-exceed amount ("NTE Amount"), instructing Design-Builder to proceed with the changed Work on a time and materials basis within that NTE Amount. In that case:
- a. Design-Builder must deliver to UGAA formal notice of objection to the NTE Amount proposed for the subject Force Account Work by UGAA (together with substantiated written back-up and objective reasoning on which the objection is based) within five days after its receipt UGAA's proposal, or waive objection to its application as set forth in this ¶ VIII(C)(6).
 - b. As Force Account Work is performed, Design-Builder shall keep detailed, contemporaneous, separate records of time and actual costs, estimated *and* incurred (as they are incurred), in performing each discrete task comprising the changed Work; and shall provide legible copies of all back-up and support documents pertaining to each Force Account item with each subsequent Interim Payment Application (until a Change Order is agreed with respect to the change) – without regard to whether the time and material costs will or may be compensated in whole or in part by UGAA then or later.
 - c. Design-Builder's failure to maintain and provide to the ADR the detailed, contemporaneous, separate accounting of costs as they are incurred shall operate as an absolute and irrevocable waiver of any right it may otherwise have to compensation of any kind for the change. Where undisputed and properly documented, task-specific expenditures incurred and substantiated within each Force Account NTE Amount may be included as a line-item in successive Payment Applications, with the PCO and subsequent Payment Applications to reflect the amounts paid.
 - d. Work shall be expeditious and continuous during the time that Force Account Work is being performed, and thereafter.

- e. Within thirty days after UGAA receives a complete accounting from Design-Builder of actual costs for performing the subject Force Account Work, UGAA shall indicate to Design-Builder (by e-mail) a proposed adjustment to the GMP (if appropriate) reflecting its good faith judgment of the value of that Force Account Work. In no case shall UGAA be required to pay Design-Builder (for time and materials compensation otherwise justified hereunder) more than the lesser of: (i) the reasonable value of the changes requested; (ii) the sum of substantiated and valid time and materials costs, calculated in accordance with this paragraph; or (iii) the not-to-exceed amount established by the ADR for the subject change.
 - f. The provisions of ¶ VIII(C)(5) apply to pricing of Work performed during imposition of a Force Account under this paragraph.
 - g. If Design-Builder objects to a fixed Force Account Amount, or an NTE Amount proposed by the ADR or UGAA, Design-Builder must deliver to UGAA formal written notice of its objection (together with substantiated written back-up and objective reasoning on which the objection is based) within five days of Design-Builder's receipt of the proposed amounts. In the absence of such timely, reasoned objection, the amounts as proposed will be deemed to be agreed, any objection waived, and a unilateral Change Order may be issued accordingly
7. **Design-Builder obligation to advise and cooperate regarding changes.** Design-Builder shall advise and assist UGAA with regard to all aspects concerning changes, including providing cost analysis regarding potential changes.
8. **Changes to Contract Time.**
- a. **Time-related Change Orders.** Appropriately modified and updated Project Schedules, Progress and Completion Schedules, and related support documents shall be attached to, and incorporated in, Change Orders modifying Contract Time.
 - b. **UGAA right to suspend and resequence Work; no damage for delay.** This Agreement contemplates that UGAA may from time-to-time act in good faith but in a way that results in resequencing, suspension, or other impact to the Work – and that progress of the Work may be impeded by Extraordinary Adverse Weather Days, *force majeure*, or other occurrences. Design-Builder's sole remedy for such delay, if otherwise justified herein, shall be an extension of Contract Time in which to perform. Extension of Contract Time will not be granted for periods of UGAA-generated delay that are concurrent with delay in Design-Builder's performance or if the Work delayed by UGAA is not on the then-current Critical Path, with Design-Builder bearing sole responsibility for proving the absence of both such conditions in order to obtain an extension of Contract Time.
 - c. **Weather-related requests for extension of Contract Time.** For purposes of this ¶ VIII(C)(8)(c), weather is accounted for on a calendar-month basis. "Adverse Weather" is weather (or related site conditions lingering after a weather event) that forces Design-Builder to suspend, interrupt, delay, or prevent its performance of that portion of the Work that lies on the then-current Critical Path.

- i. **Adverse Weather.** An “Adverse Weather Day” is one in which Design-Builder is unable to perform Work on the Critical Path as a sole result of: (A) precipitation exceeding .10 inches of rain per day or 1 inch of accumulated snow falling; (B) winds gusting to the degree that Work on the critical path cannot be performed; (C) other extraordinary acts of nature that directly prevent Work on the critical path from being performed – all as verified by locality-specific weather data recorded by the National Oceanographic and Atmospheric Administration (“NOAA”) (or another mutually agreed-upon agency of government); or (D) lingering site conditions after one of the foregoing events that completely and unavoidably prevents Work in a way that inevitably prolongs the Critical Path of the Work and extends the time needed by the Design-Builder to achieve Substantial Completion of the Work.
- ii. **Anticipated Adverse Weather Days.** The Parties anticipate, and all prospective Project-related schedules will provide for, and the Contractual Date of Substantial Completion takes into account, the following number of days of Adverse Weather in each of the respective months: January (7 days); February (7 days); March (7 days); April (6 days); May (6 days); June (3 days); July (4 days); August (4 days); September (3 days); October (4 days); November (7 days); and December (7 days) (collectively, “Anticipated Adverse Weather Days”).
- iii. **Extraordinary Adverse Weather Days** are those Adverse Weather Days which exceed in number (on a calendar-month basis) the number of Anticipated Adverse Weather Days listed in ¶ VIII(C)(8)(c)(ii).
- iv. **Extraordinarily Beneficial Weather Days.** If weather is more favorable for construction in a given calendar month than that which is predicted in ¶ VIII(C)(8)(c)(ii), Work shall continue without interruption, and subsequent Project Schedules shall be adjusted to reflect commensurately earlier completion of the Work. In any given month, “unused” Adverse Weather Days (*i.e.*, “Extraordinarily Beneficial Weather Days”) shall be reserved as UGAA-controlled float days, to be applied (with UGAA approval) to negate previous and subsequent Extraordinary Adverse Weather Days.
- d. **Weather-based claims for extension of time.** If Extraordinary Adverse Weather Days occur, an extension of Contract Time and adjustment of Project Schedule may be permitted *only if* Design-Builder has met *each* of the following conditions: (i) Design-Builder has **contemporaneously** (*i.e.*, in the same day) reported adverse weather in writing to the ADR and Design Professional by e-mail as required in ¶ III(J)(8); (ii) Design-Builder corroborates the claim of Extraordinary Adverse Weather by submitting to the ADR actual NOAA records referred to above; (iii) contemporaneous digital Progress Photos and other data contained in the weather-related PCO affirmatively links the specific weather event and its impact on the then-current CPM Project Schedule and the most recently submitted Progress and Completion Schedule; (iv) Design-Builder provided adequate documentary back-up supporting each of these elements; and (v) Design-Builder demonstrates within thirty days of the Extraordinary Adverse Weather event

(using CPM Scheduling) that it could not have avoided the weather-related impact claimed by its expeditious and diligent performance of Work at all times previous to the occurrence of the Extraordinary Adverse Weather event(s) (e.g., by taking advantage of prior Extraordinarily Beneficial Weather Days or by avoiding previous delays in its performance). Design-Builder's failure to *timely* satisfy one or more of the foregoing conditions constitutes an absolute waiver of any right Design-Builder may have had to an adjustment of Contract Time or Project Schedule due to the subject Extraordinary Adverse Weather occurrence.

- e. **Burden on Design-Builder to monitor and report Critical Path.** As a condition precedent to UGAA's obligation to recognize Extraordinary Weather Days and grant any relief whatsoever to Design-Builder related thereto, Design-Builder must have provided to the ADR (at all times before the claimed Extraordinary Weather Day) valid, CPM-based Project Schedules at monthly intervals, or at other times as requested by the ADR. To obtain an extension of Contract Time, Design-Builder must demonstrate that the event that it claims justifies the extension of time or other relief, in fact, prolonged the Critical Path of the Work.
9. **Additional Design Services.** Additional Design Services Fees are compensable only when approved in advance in writing by UGAA using the Change Order form supplied as **Supplement B2**. Where otherwise justified and approved under this Agreement, Additional Services Fees shall be invoiced as a separate line-item within the Design-Builder Preconstruction Overhead Costs (Design-Builder Construction Overhead Costs, in the case of Additional Design Services pertaining to Construction Administration) in the Payment Application covering the month in which they were performed, and carried forward in subsequent Payment Applications.
- a. **Proposed Change Orders for Design Services.** When Design-Builder (or its Design Professional) receives a request for a change in Design Services from UGAA, their sequence, or the time required to perform them, it shall immediately review the requested change to determine what impact, if any, it will have on Design-Builder's costs to perform the changed Design Services and/or the time needed to perform. If, in the opinion of Design-Builder, the changed Design Services are not within the Scope of Basic Design Services provided herein (or if Design-Builder is asked to materially change the timing or sequence of performance in such a way that an adjustment of the Contract Time is required hereunder), it is the Design-Builder's sole obligation, within five days, and before performing any such purported changed Design Services, to notify the ADR (by written PCO) as to: (1) whether the changed Design Services are, in fact, Additional Services; (2) the impact, if any, of those changed Services on the time needed to perform; and (3) Additional Services Fees, if any, proposed by Design-Builder for the changed Design Services. Design-Builder shall attach the foregoing PCO representations to a proposed draft Change Order (in substantially the same form supplied as **Supplement B2**). The ADR will thereupon determine, in good faith, whether the PCO has merit; and whether the Change Order is justified as proposed – or in some other form. If Design-Builder disagrees with the ADR's decision, it must, within five days of receiving it, formally notify the ADR in writing of the basis for that disagreement, or waive objection to it. If, in the determination of the ADR, a Change Order is justified,

the ADR will issue a Change Order in a form substantially similar to the one supplied as **Supplement B2**.

- b. Additional Design Services Fees shall be fixed in advance of performance of the Additional Design Services in an amount agreed upon by the Parties. That said, if no fixed amount is agreed, at UGAA's election, it may order Design Professional's performance of the Additional Design Services on an hourly basis, with a not-to-exceed fee cap for the subject Additional Design Services established in good faith by the ADR in writing ("NTE Amount"). In no case shall Additional Design Services Fees for the subject changed Design Services exceed the agreed-upon sum or, if no sum is agreed to, the NTE Amount established by the ADR. Design-Builder and Design Professional shall perform no changed Design Services for which it intends to seek compensation in amounts in excess of the NTE Amount for the subject change (or, the agreed-upon amount specified in the Change Order for Design Services, if advance agreement is reached).
- c. The NTE Amount limits the sum of compensable Additional Design Services Fees (based upon hourly rates plus a mark-up, where permitted in this ¶ VIII(C)).
 - i. Hourly rates for Additional Design Services Fees shall be determined by the rates set forth in **Supplement U**. Bonuses, discretionary payments, company vehicles and other perquisites, and payments and contributions unique to the individual or staff rank shall not be included in Staff Costs comprising those rates. Except as provided in ¶ VIII(C)(5)(a)(ii) and limited by the NTE Amount, that sum may then be marked-up by the percentage set forth in ¶ VIII(C)(5)(a), which mark-up shall be deemed total compensation for all overhead, management, insurance, profit, and other costs related to the subject Additional Design Services. If the changed Services are provided by persons whose role is not among those listed expressly in **Supplement U**, the rate to be applied for those persons shall not exceed the rate specified in **Supplement U** for the role description that most closely matches, in the good faith judgment of the ADR, another role listed in **Supplement U**.
 - ii. Additional Design Services of Subconsultants will be invoiced to UGAA at-cost, and further limited as set forth in this ¶ VIII(C). In no case shall the mark-up indicated in ¶ VIII(C)(5)(a) – or any mark-up – apply to Subconsultant Additional Design Services if Design Professional invoices UGAA for its own Additional Design Services related to the subject changed Services.
 - iii. Design-Builder must deliver to UGAA formal notice of objection to the NTE Amount proposed by the ADR for the subject changed Design Services (together with substantiated written back-up and objective reasoning on which the objection is based) within five days of receipt of the proposed NTE Amount – or the amount will be deemed agreed, and a unilateral Change Order will be issued accordingly.

- d. As the subject changed Design Services are performed, Design-Builder and Design Professional shall keep detailed, contemporaneous, separate records of time and Additional Design Services Fees; and shall provide to the ADR legible copies of all back-up and support documents pertaining to each subject change.
 - e. Design-Builder's and Design Professional's failure to maintain and provide to the ADR the detailed, contemporaneous, separate accounting of hours and costs as they are incurred shall operate as an absolute and irrevocable waiver of any right it may otherwise have to the subject Additional Design Services Fees. Where undisputed and properly documented, task-specific expenditures incurred and substantiated within the NTE Amount maximum shall be indicated as line-items in successive Invoices for Services.
 - f. Services shall be expeditiously and continuously performed while the subject Additional Design Services are being performed, and thereafter.
- 2. Design-Builder waives compensation for Additional Design Services that are not invoiced to UGAA within sixty days of their provision by Design Professional.
- 3. If Design-Builder objects to a fixed Additional Design Services Amount, or an NTE Amount proposed by the ADR or UGAA, Design-Builder must deliver to UGAA formal written notice of its objection (together with substantiated written back-up and objective reasoning on which the objection is based) within five days of Design-Builder's receipt of the proposed amounts. In the absence of such timely, reasoned objection, the amounts as proposed will be deemed to be agreed, any objection waived, and a unilateral Change Order may be issued accordingly.
- D. **Deductive changes.** UGAA shall receive full value, including rebate of markups and overhead and profit, when calculating amounts of deductive Change Orders.
- E. **Administration of the change process included in the initial GMP.** The Design-Builder Construction Overhead Costs within the initial GMP are deemed to include all costs incurred by Design-Builder in preparing and responding to RFI's, ITC's, PCO's, and Change Orders whether or not they: (1) result in executed Change Orders; or (2) are caused to any degree whatsoever by Design-Builder's failure to perform.
- F. **Waiver and Release.** Design-Builder waives any right to adjustment of the GMP, Contract Time, or Project Schedule, or to payment of any kind for changed Work, if it fails to timely satisfy the notice, analysis, and other requirements pertaining to RFI's, ITC's, PCO's, and Change Orders set forth herein. Execution of a Change Order by Design-Builder shall operate as a release of all claims by Design-Builder and its Subcontractors of any tier in connection with the Work changed and any other putative changes for which there is no outstanding, unresolved PCO. General disclaimers and reservations of rights by Design-Builder that do not specifically detail putative claims outstanding will not avoid the releases and waivers indicated herein.
- G. **Ongoing rights related to events prompting unilateral Change Orders.** UGAA's issuance of a unilateral Change Order shall not deprive it of its right to issue subsequent unilateral Change Orders pertaining to the same subject matter as UGAA's determines the extent of its damages or costs incurred. Nor does UGAA's issuance of unilateral Change Order deprive it of its right, under this Agreement or under Law, to fully recover for damages, attorneys' fees, and other

losses suffered as a result of Design-Builder's performance or failure to perform, all of which rights are reserved.

ARTICLE IX – DISPUTES

- A. **Claims.** If the Parties cannot informally resolve disagreements related to or arising out of this Agreement, they may assert a claim against the other. Design-Builder shall deliver to the ADR written formal notice of a claim against UGAA (in the manner specified at ¶ XVII(A)) within fourteen days after the condition or event giving rise to the claim (or within fourteen days of the date on which Design-Builder knew or should with diligence have known of the condition or event, whichever is later). Design-Builder waives claims for which it fails to give timely notice in the manner specified. Claims based upon UGAA-requested changes in the Scope of Work or Contract Time shall be presented by Design-Builder in the form of a PCO in accordance with the provisions of Article VIII. UGAA may assert a claim by issuing written notice thereof to Design-Builder at any time after it becomes evident to UGAA that: (1) Design-Builder is not willing or able to satisfy demands by UGAA or perform as requested by UGAA; or (2) Design-Builder's partial efforts to satisfy demands have ceased or will not achieve the result required by the Contract Documents, whichever is later.
- B. **Notice; mediation.** As a condition precedent to the filing of any lawsuit against UGAA, Design-Builder must provide to UGAA in writing, in the manner prescribed in Article XVII for formal notices, a demand for mediation of all outstanding claims, disputes, and demands of any kind it has asserted against UGAA, which demand must be made at least thirty days before the filing of any lawsuit. Upon the demand, the Parties may agree on a mediator and a process for mediation; but, in the absence of such agreement, mediation will be conducted under the auspices of the American Arbitration Association mediation rules for the construction industry. The foregoing mediation condition precedent to a lawsuit brought by Design-Builder is not satisfied by a prior demand for mediation and mediation that did not address the same specific outstanding and unresolved claims, disputes, and demands that Design-Builder asserts, or intends to assert, against UGAA in a lawsuit.
- C. **Jurisdiction and venue.** All disputes relating to or arising out of this Agreement or the Project shall be litigated exclusively in a court of competent jurisdiction within Fulton County, Georgia or Athens-Clarke County, Georgia; and Design-Builder hereby waives objection to any such venues. In no case shall this provision be construed as a waiver of rights, if any, protected by the Eleventh Amendment of the Constitution of the United States. Design-Builder shall include commensurate jurisdiction and venue provisions in each Subcontract.
- D. **Work continuous during disputes.** Design-Builder shall perform the Work expeditiously and without interruption during the pendency of a dispute; provided, however, that UGAA pays amounts otherwise due to Design-Builder that are, in UGAA's good faith opinion, not reasonably subject to dispute. No such partial payment shall be construed to be an irretrievable voluntary payment by UGAA or waiver of any right held by UGAA to recover that payment.
- E. **Joinder.** Design-Builder waives objection to its being joined in any litigation in which its performance or the Work is directly or indirectly related to the dispute – and shall include a similar express, written waiver in all Subcontracts. In addition to the other indemnification provided herein, shall indemnify, defend, and hold harmless UGAA and UGAA Indemnitees as indicated in ¶ XI(B) (and shall indemnify and hold harmless the State Indemnitees as indicated

in ¶ XI(B)) and pay all costs (including but not limited to attorneys' fees) incurred by UGAA, UGA, the Board of Regents, and the other Indemnitees related to litigation involving Design-Builder or any Subcontractor of any tier who resists or refuses joinder.

- F. **Waiver of consequential damages.** Design-Builder waives any and all claims against UGAA for consequential and indirect damages of any type.
- G. **No agreement to arbitrate.** UGAA does not agree to arbitrate disputes arising out of or relating to this Agreement and the Project, and nothing in this Agreement or any document incorporated herein shall be deemed to impose upon UGAA an obligation to arbitrate disputes or participate in arbitration of the disputes of others.
- H. **Attorneys' fees.** If litigation is required to resolve disputes relating to or arising out of this Agreement or to enforce the terms of this Agreement, and/or if UGAA, UGA, or the Board of Regents obtain relief of any sort against Design-Builder or its Subcontractors of any tier, in any amount, within or without any forum (governmental or otherwise) as a result in whole or in part of enlisting the assistance of an attorney and other consultants or experts in a disputed matter, Design-Builder shall, upon demand, reimburse UGAA, UGA, the Board of Regents, and the other Indemnitees, as applicable, for all Design Professional and Testing Consultant fees and all reasonable attorneys' fees with respect to the dispute. In the alternative, UGAA may, but is not required to, issue a unilateral Change Order deducting those attorneys' fees and other costs incurred with respect to disputes from the GMP and from any amounts owing to Design-Builder.

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ARTICLE X - DEFAULT, SUSPENSION, AND TERMINATION

- A. **Design-Builder default.** When UGAA determines or has reason to believe that one or more of the following conditions of default exists, UGAA may issue a notice of pending default to Design-Builder and its Surety on Performance and Payment Bonds. A nonexclusive list of conditions of default follows:
 - 1. Design-Builder's disregard of its Project safety obligations;
 - 2. Design-Builder's failure to correct Defective Work – or to correct failures to perform in accordance with this Agreement – promptly upon becoming aware of either;
 - 3. Design-Builder's failure to correct Defective Work required pursuant to its warranty obligations – or to perform any other warranty-related obligations hereunder;
 - 4. Multiple or continuing occasions of Design-Builder's provision of Defective Work or Noncompliant Work or failure to perform in accordance with this Agreement;
 - 5. Design-Builder's failure to achieve progress toward Milestone Dates or consistent with the Project Schedule;
 - 6. Design-Builder's failure to prepare designs, drawings, and Construction Documents that can be constructed within the then-current Stated Cost Limitation – or the then-current GMP, once a GMP Change Order is executed.
 - 7. Design-Builder's failure to timely pay Subcontractors (or failure to cause prompt payment of any Subcontractor of any tier);

8. Design-Builder's failure to manage the Work or to supply the Project at all times with an adequate number of appropriately skilled workers and materials as needed to timely and competently perform the Work;
9. Design-Builder's failure to provide and maintain required Payment and Performance Bonds and insurance coverage and to provide verifiable proof thereof, as required in this Agreement;
10. Design-Builder's violation of, or failure to abide by, any governmental statutes, ordinances, regulations or other Laws;
11. Unlawful conduct by Design-Builder, its directors, officers, members, or employees, or its Subcontractors or Subconsultants of any tier involving or relating to the Project, the Property, the Work, or UGAA;
12. Design-Builder's financial insolvency, its inability to provide reasonable assurances of solvency upon UGAA's request, its inability meet its financial obligations as they mature, its making of a general assignment in favor of creditors, its subjection to appointment of a receiver, or the dissolution or downgrading of Design-Builder's business organization;
13. Design-Builder's failure to obtain immediate cancellation or discharge of any lien as required herein;
14. Design-Builder's failure to timely provide, upon request, substantiation and documentary proof of costs, financial records, or its failure to timely satisfy other reporting obligations hereunder;
15. Design-Builder's loss of licensure in Georgia for any reason – or Design-Builder's loss of licensure for cause in any other jurisdiction;
16. Design-Builder's failure to abide by its Open Records Act ("ORA") obligations – or to cooperate with UGAA to the extent necessary for UGAA to fulfill its own ORA obligations;
17. Design-Builder's violation of regulations and other Laws pertaining to the preservation of the environment or safety of workers or the public;
18. Design-Builder's failure to achieve Substantial Completion within the Contract Time;
19. Design-Builder's failure to timely correct and complete Punchlist Work;
20. Design-Builder's failure to timely complete its Closeout Obligations as set forth herein;
21. Design-Builder's breach of an obligation under Article XIV; *or*
22. Any repeated or continuing Design-Builder breach of any other obligation set forth in the Contract Documents or any act, conduct, or omission by Design-Builder that prejudices or adversely affects UGAA's interests with respect to the Project.

B. **Notice of Pending Declaration of Default; opportunity to cure.** As a material obligation of this Agreement, Design-Builder shall cure any safety-related breach of performance immediately and any and all other conditions of default within ten days after the ADR requests correction, rejects defective performance or Defective Work, objects to Design-Builder's untimely performance, or issues Notice of Pending Declaration of Default or issues notice to Design-Builder (by e-mail or otherwise) that one or more conditions of default exist.

1. If it contends that it is not in default and asserts, rather, that its performance complies with this Agreement, Design-Builder shall, within the above-noted cure period, deliver to the ADR a detailed written report, specifying the precise basis for Design-Builder's contentions – and the particular provisions of this Agreement that it contends preclude UGAA's declaration of default and subsequent termination of the Agreement.
 2. If Design-Builder intends to undertake substantial, corrective measures to cure the noted conditions of default within the cure period, it shall deliver to the ADR its detailed written plan for curing the conditions of default, indicating the specific means that Design-Builder will use to do so, and the dates on which each specific cure will be begun and achieved in full. UGAA is under no obligation to recognize, accept, or approve proposed cures that do not timely and completely render performance in accordance with the Contract Documents.
 3. Unless Design-Builder timely delivers one of the two foregoing responses to UGAA's Notice of Pending Default, Design-Builder consents to UGAA's declaration of default and termination of this Agreement at the election of UGAA is presumed.
- C. **UGAA's substituted performance of the Work.** If Design-Builder fails, in whole or in part, upon three days' e-mail notice, to perform its obligations or to correct one or more conditions of default, upon e-mail notice to Design-Builder, UGAA may, but is not required to, perform the Work itself or engage one or more Separate Contractors (or replacement contractors) to perform the Work without delay. UGAA is then entitled to issue a unilateral Change Order reducing the GMP by an amount equal to the sum of UGAA's direct costs to secure substituted performance *plus* the sum of other related damages, costs, losses, administrative costs, attorneys' fees, Design Professional and Testing Consultant fees, *etc.* that it may reasonably expect to incur as a result of Design-Builder's failure to perform (thereby reducing amounts due to Design-Builder accordingly). Termination of this Agreement is not a condition precedent to UGAA's whole or partial elective, substituted performance of the Work; and UGAA's substituted performance of part or all of the Work shall not prevent UGAA from insisting, at any time, that Design-Builder resume performance of remaining Work.
- D. **Right to stop or reject Work.** UGAA may reject any and all Defective Work and Noncompliant Work that is not of good and workmanlike quality, fails to meet and comply with the requirements of the Contract Documents, or is otherwise defective – and may require its replacement at no cost to UGAA. UGAA has the absolute right to stop Work on part or all of the Work in the event of breach or default, during any cure period, or any period thereafter during which Defective Work or Noncompliant Work remains uncorrected. Such Work stoppage shall not be cause for: (1) extension of the Contract Time; (2) additional compensation to Design-Builder; (3) reallocation of Design-Builder Contingency Account funds; or (4) increase of the GMP.
- E. **Termination for cause.** Upon Design-Builder's failure to timely cure a noticed condition of default, or upon Design-Builder's failure to cure any breach hereof, UGAA, without prejudice to any other right or remedy it may have, may (but is not required to) terminate this Agreement for cause, issuing formal notice thereof to Design-Builder and its Surety.

1. Upon its issuance of formal notice of termination, UGAA may take one or more of the following courses of action:
 - a. Order Design-BUILDER to stop Work (and order Design-BUILDER to install post-termination stabilization of the Work and the Project site);
 - b. Suspend all payments to Design-BUILDER until the Project is complete and UGAA has determined what amounts, if any, may be due Design-BUILDER after UGAA recovers all of its costs and expenses (including but not limited to attorneys' fees) related to the default;
 - c. Exclude Design-BUILDER from the Project site, with UGAA assuming: (i) possession and use at-will, as long as needed, of all Work-in-Place as well as tools, property, and equipment on-site; and (ii) permanent possession and use of materials for which UGAA paid Design-BUILDER, whether or not stored on-site;
 - d. Perform the Work itself, or engage others to perform it, deducting the cost of substitute performance (and all other costs incurred by UGAA related thereto, including without limitation security and legal fees) from amounts owed to Design-BUILDER, and, where those amounts are insufficient to cover the cost incurred by UGAA, obtain immediate reimbursement from Design-BUILDER of those costs;
 - e. Exercise UGAA's right to assignment of Subcontracts;
 - f. Insist on Design-BUILDER's Surety's complete performance of the Work; and/or
 - g. Recover its losses and damages (including without limitation attorneys' fees and related costs and expenses) from Design-BUILDER's Surety.
2. In event of termination for any reason, in no case shall Design-BUILDER be entitled to payment of lost or anticipated profits, home and field office overhead, consequential damages and/or indirect damages or costs – or to direct costs or damages that are not justified hereunder or not actually incurred and expended before the day the notice of termination is issued, claims to all of which are hereby waived. Any rebates or refunds of pre-paid costs shall be remitted by Design-BUILDER to UGAA.
3. If UGAA terminates this Agreement for cause, but that cause later be deemed by a court to be unjustified or somehow wrongful, the termination shall then be deemed to be converted to termination for convenience.

F. **Force Majeure.** UGAA may at any time suspend or terminate this Agreement as a consequence of circumstances or events related to acts of God, national emergency, war or terrorism, acts or omissions of government, environmental calamity, or any reasons beyond the control of UGAA, with amounts owing to Design-BUILDER limited to payment for compliant Work-in-Place on the date of the precipitating act or event (in the case of an act of God, war or terrorism, or government) – or, in others cases involving circumstances beyond UGAA's control, on the date that UGAA's notice of invocation of *force majeure* termination or suspension notice is delivered to Design-BUILDER. In either case, amounts owing to Design-BUILDER shall not include lost profits or any compensation for overhead, indirect, or consequential costs, or for direct costs not justified hereunder or not actually expended on the Work on or before the day that notice of invocation of *force majeure* is issued, claims to all of which are hereby waived.

- G. **Labor-related schedule impacts.** Design-Builder shall exercise all lawful means to avoid disruption or interference with the Work or the Project Schedule due to actions by labor unions or their members. If Design-Builder becomes aware of the possibility or occurrence that labor unrest or actions by organized labor unions or their members have, are, or will likely impact the Work or the Project Schedule, Design-Builder shall promptly notify the ADR and cooperate with UGAA in resequencing or otherwise modifying the Work and/or the Project Schedule to minimize the impact of the labor event to the degree possible. Work stoppage due to labor unrest or activities shall not be cause for change of GMP.
- H. **Termination for Convenience.** UGAA may terminate this Agreement at any time for its own convenience, with UGAA issuing notice thereof to Design-Builder and its Surety, with amounts owing to Design-Builder being limited to payment for compliant and completed Work-in-Place on the date of termination, which amounts will not include: (1) lost or anticipated profits; (2) home and field office overhead; (3) consequential damages or indirect damages or costs; or (4) direct costs or damages that are not justified hereunder or not actually incurred and expended before the day the notice of termination is issued – claims to all of which are hereby waived.
- I. **Termination by Design-Builder.** Design-Builder may terminate this Agreement upon thirty days' notice only if: (1) UGAA suspends the Work for more than ninety consecutive days without cause and for reasons exclusively within UGAA's control; or (2) amounts due and owing to Design-Builder remain unpaid (without excuse) sixty days after the due date for payment (subject to UGAA's right to withhold payment as otherwise provided herein). Design-Builder's compensation therefore shall be limited as provided in ¶¶ X(E)(2) and X(H).
- J. **Post-termination protection of Work.** Immediately upon receipt of notice of termination or extended suspension of the Work, Design-Builder shall: (1) discontinue installation of new Work; (2) install protective devices, covers, safety barriers, *etc.* approved by the ADR so as to stabilize and protect the Work-in-Place structurally and otherwise; (3) notify Sureties and insurers of termination or suspension; (4) notify Subcontractors of the termination or suspension; (5) where appropriate, facilitate assignment of Subcontracts to UGAA as then directed by UGAA; and (6) follow such other instructions as are given by UGAA in the notice.
- K. **Rights and remedies cumulative.** UGAA's rights and remedies set forth in this Agreement are cumulative and not exclusive or exhaustive – and they include those available at Law or in equity. UGAA's issuance of Notice of Pending Default and/or Formal Notice of Default or Termination of this Agreement are not conditions precedent to UGAA's exercise of any right or remedy. Either Party may avail itself of one or more of the rights and remedies as its interest may require, without waiving its right to subsequently invoke any other right or remedy to which it is entitled.

ARTICLE XI – INDEMNITY

- A. **Generally.** Design-Builder shall be responsible and liable to UGAA, UGA, the Board of Regents, and the other Indemnites indicated herein for all injury or damages of any kind (including but not limited to consequential damages) resulting from any negligent act or omission or breach, failure, or other default regarding the Work, the Project, and/or this Agreement by Design-Builder, or any of its Subcontractors (of any tier), agents, representatives, employees, or others providing Work at the direction of Design-Builder or on its behalf.

- B. **Indemnification.** Design-Builder hereby agrees to indemnify, defend, and hold harmless the University of Georgia Athletic Association, Inc. and its departments, agencies, and instrumentalities and all of their respective officers, members, employees, and directors (collectively referred to as “UGAA Indemnitees”), and shall indemnify and hold harmless the University of Georgia, the Board of Regents of the University System of Georgia, the State of Georgia, and their respective departments, agencies, and instrumentalities and all of their respective officers, members, employees, and directors (collectively referred to herein as the “State Indemnitees”) from and against any and all claims, demands, liabilities, fines, losses, damages (including but not limited to punitive damages), costs, or expenses, including attorneys’ fees, due to: (1) liability to a third party or parties for any loss due to bodily injury (including death), personal injury, property damage, and for any other harm or loss arising out of or resulting from the performance of this Agreement or any act or omission on the part of Design-Builder, its agents, Subcontractors of any tier, employees, or others working at the direction of Design-Builder or on its behalf; (2) any breach of this Agreement by Design-Builder; or (3) Design-Builder’s misapplication or violation of any pertinent Federal, State or local rule, regulation, or Law. This indemnification extends to and binds the successors and assigns (where permitted hereunder) of the Design-Builder - and it survives the termination of this Agreement and the dissolution or, to the extent allowed by Law, the bankruptcy of Design-Builder. 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”), Design-Builder agrees to reimburse the Funds for such monies paid out by the Funds. This obligation is not avoided or limited by the waiver of subrogation set forth in ¶ XII(J).
- C. **Indemnification limited.** The indemnification obligations set forth herein apply where the Indemnitees are not responsible or are partially responsible for the situation giving rise to the claim, provided however, that this indemnification does not apply to the extent of the negligence of the Indemnitees that are caused by or result from the Indemnitees’ sole negligence or their willful and intentional misconduct or to claims for which the Georgia Tort Claims Act is the exclusive remedy. This indemnification does not extend beyond the scope of this Agreement and the Work undertaken hereunder..
- D. **Fees and costs.** Design-Builder’s duty to indemnify shall apply whether or not disputes are settled before litigation proceedings; and it applies to an Indemnitee’s first costs in defense and all other dispute-related costs, including but not limited to attorneys’ fees, expert fees, and dispute-related Design Professional fees. Each Indemnitee may, in all cases, select legal counsel and experts of its choice; and Design-Builder shall pay the reasonable attorneys’ fees and costs incurred by Indemnitees related thereto. Indemnitees are entitled to recover from Design-Builder all attorneys’ fees incurred in establishing or enforcing their rights to indemnity hereunder.
- E. **Implementation of indemnification.** In addition to any other remedies and rights accruing to UGAA hereunder, and not exclusive of any of them, if UGAA becomes entitled to indemnification hereunder, it may demand and obtain Design-Builder’s immediate payment of indemnity amounts to which UGAA is due, or, in the alternative, at its own election, it may

deduct the amounts to which it is due from any amounts then owing to Design-Builders hereunder and/or reduce the GMP commensurately – by issuing a unilateral Change Order.

ARTICLE XII – INSURANCE

- A. **Insurance required.** Prior to commencement of the Work, Design-Builders shall procure and maintain the insurance coverage specified below or coverage otherwise required by Law (whichever is greater) – and (except with respect to Workers Compensation Insurance) shall list the “**University of Georgia** (and its officers, directors, and employees)” as the Certificate Holders and (except in the case of Professional Liability Insurance and Workers Compensation Insurance) “**the Board of Regents of the University System of Georgia,**” the “**University of Georgia,**” and the “**University of Georgia Athletic Association, Inc.**” as named “Additional Insureds” – and covering their respective officers, members, shareholders, directors, representatives, and employees as Additional Insureds.
- B. **Proof of insurance.** Concurrent with execution of this Agreement, and between thirty and sixty days before the annual renewal date of each policy of insurance during the performance of the Work, and at any other time requested by the ADR, Design-Builders shall provide to the ADR, as a condition precedent to UGAA’s obligation to pay amounts due hereunder: (1) completed certificates of insurances in the form acceptable to the ADR; and (2) a complete copy of each Policy of Insurance (together with copies of all express Additional Insured and all other endorsements attached) – together with proof of renewal thereof. By submitting the certificates of insurance required here, Design-Builders represents that the coverage is in place in the amounts stated and that Design-Builders will take all steps necessary to maintain such coverage throughout the course of its performance of the Work and its obligations hereunder.
- C. **Certificates of insurance.** The certificates of insurance must indicate the following: (1) Name and address of authorized agents; (2) Name and address of insured; (3) Name of insurance company(ies); (4) Description of policies and their coverage; (5) Policy Number(s); (6) Policy Period(s); (7) Limits of liability; (8) Name and address of the University of Georgia (and its officers, directors, and employees) as Certificate Holders (except with respect to Workers Compensation policies) at the address indicated below in this ¶ XII(C) and (except for Professional Liability Insurance and Worker Compensation policies) the Board of Regents of the University System of Georgia, the University of Georgia Athletic Association, Inc., and the University of Georgia (and their officers, directors, and employees) as named “Additional Insureds”; (9) Project name and number (or other Project identification indicated in the information preceding Article I of this Agreement); (10) Signature of authorized agent; (11) Telephone number of authorized agent; and (12) Mandatory thirty-day notice of cancellation or nonrenewal, as required in ¶ XII(D)(1).

Except as otherwise provided herein, on all certificates of insurance, the Certificate Holders shall be identified as follows:

University of Georgia (and its officers, directors, and employees)
c/o Office of the University Architects
382 East Broad Street
Athens, Georgia 30602

- D. **Insurer qualifications, insurance requirements, policy provisions.** The policies of insurance 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 issued by an insurer (or, for qualified self-insureds or group self-insureds, a specific excess insurer providing statutory limits) with 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:

1. The insurance company agrees that the policy shall not be cancelled, changed, allowed to lapse, or allowed to expire until thirty days (ten days in the event of cancellation for nonpayment of premium) after UGAA, UGA, and the Board of Regents have each received written notice thereof (as evidenced by return receipt of notice delivered by Statutory Overnight Delivery or U.S. Certified Mail) or until such time as other insurance coverage providing protection equal to protection called for in this Agreement shall have been provided by Design-Builder and received, accepted, and acknowledged by UGAA, UGA, and the Board of Regents. Such notice shall be valid only as to the Project indicated on page one of this Agreement.
2. The policy shall not be subject to invalidation as to any insured by reason of any act or omission of another insured or any of its officers, directors, members, employees, agents, or other representatives ("Separation of Insureds").
3. Each Insurer is hereby notified that the statutory requirement that the Attorney General of Georgia shall represent and defend the State Indemnitees (*i.e.*, the Board of Regents of the University System of Georgia, the University of Georgia, and the State of Georgia) 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 any of the State Indemnitees must be expressly approved by the Attorney General. UGAA 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 attorneys for UGAA. *See* O.C.G.A. § 45-15-12.
4. All deductibles shall be paid by Design-Builder.
5. Self-insured retention, except for qualified self-insurers, in any policy shall not exceed the amount stated in Article I.

E. **Required insurance coverages.** Design-Builder agrees to purchase and have the authorized agent state on the insurance certificate that the following types of insurance coverages, not inconsistent with the policies and requirements of O.C.G.A. § 50-21-37, have been purchased by Design-Builder. The minimum required coverages and liability limits are as follows:

1. **Workers Compensation.** Design-Builder agrees to provide, at a minimum, Workers' Compensation coverage in accordance with the statutory limits as established by the General Assembly of the State of Georgia. A group-insurer must submit a certificate of authority from the Insurance Commissioner approving the group insurance plan. A self-insurer must submit a certificate from the Georgia Board of Workers' Compensation stating the Design-Builder qualifies to pay its own workers' compensation claims. Design-Builder shall require all Subcontractors performing Work under this Agreement to obtain an insurance certificate showing proof of Workers' Compensation policy coverage and shall submit a certificate on the letterhead of Design-Builder in the following language prior to the commencement of the Work: "*This is to certify that all*

Subcontractors performing Work on the Project are covered by their own workers' compensation insurance or are covered by the Design-Builder's workers' compensation insurance."

2. **Employers' Liability Insurance.** Design-Builder shall also maintain Employers' Liability Insurance Coverage with limits of at least: (a) Bodily Injury by Accident - \$1,000,000 each accident; (b) Bodily Injury by Disease - \$1,000,000 each employee; and (c) Bodily Injury/Disease Aggregate - \$1,000,000 each accident. Design-Builder shall require all Subcontractors performing Work under this Agreement to obtain an insurance certificate showing proof of Employers' Liability Insurance Coverage and shall submit a certificate on the letterhead of the Design-Builder in the following language prior to the commencement of the Work: *"This is to certify that all Subcontractors performing Work pertaining to this Agreement are covered by their own Employers' Liability Insurance or are covered by the Design-Builder's Employers' Liability coverage."*
3. **Commercial General Liability Insurance.** Design-Builder shall provide Commercial General Liability Insurance (1993 ISO Occurrence Form or equivalent) which shall include, but need not be limited to, coverage for personal injury (including death) and advertising liability, fire legal coverage, 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 must provide separate aggregate limits per Project and shall provide at a minimum the following limits:

Coverage	Limit
Premises and Operations:	\$1,000,000 per Occurrence
Products and Completed Operations:	\$1,000,000 per Occurrence
Personal injury and Advertising:	\$1,000,000 per Occurrence
Blasting and Explosion:	\$1,000,000 per Occurrence
Collapse of Structures:	\$1,000,000 per Occurrence
Underground Damage:	\$1,000,000 per Occurrence
Fire Legal:	\$1,000,000 per Occurrence
Contractual:	\$1,000,000 per Occurrence
General Aggregate:	\$2,000,000 per Occurrence

Additional Requirements for Commercial General Liability Insurance:

- a. The policy shall name the University of Georgia (and its officers, directors, and employees) as Certificate Holders, and the University of Georgia, the University of Georgia Athletic Association, Inc., and the Board of Regents of the University System of Georgia (and their respective officers, members, shareholders, directors, representatives, and employees) as named Additional Insureds, but only for such claims for which the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 *et seq.*, is not the exclusive remedy.
- b. The policy or policies must be on an "occurrence" basis.

- c. The policy must include separate aggregate limits for each rented premises and Project.
- 4. **Commercial Business Automobile Liability Insurance.** Design-Builder shall provide Commercial Business Automobile Liability Insurance that 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 Policy shall provide not less than \$1,000,000 Combined Single Limits for each occurrence.

Additional Requirements for Commercial Business Automobile Liability Insurance:

- a. The policy shall name the University of Georgia (and its officers, directors, and employees) as Certificate Holders, and the University of Georgia, the Board of Regents of the University System of Georgia, and the University of Georgia Athletic Association, Inc., (and their respective officers, members, shareholders, directors, representatives, and employees) as named Additional Insureds, but only for such claims for which the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 *et seq.*, is not the exclusive remedy.
 - b. The policy or policies must be on an “occurrence” basis.
 - c. The policy must include separate aggregate limits for each Project.
5. **Builders Risk Insurance.** Design-Builder shall provide a Builders Risk Policy with proceeds to be made payable to the University of Georgia Athletic Association, Inc., the University of Georgia, the Board of Regents of the University System of Georgia, and Design-Builder, as their interests may appear. The policy amount shall be equal to 100% of the GMP (plus, in the event of an renovation or modification of an existing structure, an amount equal to the replacement value of the structure-in-place, as that may be reasonably determined in UGAA’s good faith judgment) written on 1991 Causes of Loss – Special Form (Builder’s Risk “All Risk”), or its equivalent. The policy shall be endorsed as follows:

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

- a. Delivery of furniture and equipment to the insured premises and installation in place ready for use; *and*
- b. Partial or complete occupancy by UGAA, UGA, or the Board of Regents; *and*
- c. Performance of work in connection with construction operations insured by University of Georgia Athletic Association, Inc., by the Board of Regents, by agents or lessees or other contractors of the University of Georgia Athletic Association, Inc. or the Board of Regents.
- d. If the Work involves Design-Builder’s renovation, addition, or modification of an existing structure and Builders Risk Insurance is not available, Design-Builder may supply an Installation Floater Insurance Policy with the above endorsements in lieu of the Builders Risk Insurance Policy. Such a Floater Policy must insure loss to materials and equipment prior to acceptance by UGAA and/or the Board of Regents and must be on an ALL RISK basis with the policy written on a specific job site.

- e. The policy of insurance shall name the University of Georgia (and its officers, directors, and employees) as Certificate Holders.
6. **Professional Liability (Errors and Omissions) Insurance.** Design-Builder and its Design Professional and each of its DPD's shall provide professional liability insurance coverage for its design services with limits of liability not less than the following:
- a. For Projects with a GMP greater than \$30,000,000:
 - i. For Design Professional and DPD's - \$3,000,000 per claim and \$4,000,000 in aggregate coverage;
 - ii. For Subconsultant engineers and architects - \$2,000,000 per claim and \$3,000,000 in aggregate coverage; *and*
 - iii. For other consultants - \$1,000,000 per claim and \$2,000,000 in aggregate coverage.
 - b. For Projects with a GMP between \$20,000,000.01 and \$30,000,000:
 - i. For Design Professional and DPD's - \$2,000,000 per claim and \$3,000,000 in aggregate coverage;
 - ii. For Subconsultant engineers and architects - \$1,000,000 per claim and \$2,000,000 in aggregate coverage; *and*
 - iii. For other consultants - \$1,000,000 per claim and \$1,000,000 in aggregate coverage.
 - c. For Projects with a GMP up to \$20,000,000:
 - i. For Design Professional and DPD's - \$1,000,000 per claim and \$1,000,000 in aggregate coverage;
 - ii. For Subconsultant engineers and architects - \$1,000,000 per claim and \$1,000,000 in aggregate coverage; *and*
 - iii. For other consultants - \$1,000,000 per claim and \$2,000,000 in aggregate coverage.
 - d. Additional requirements for Professional Liability Insurance Policy:
 - i. Defense costs shall be outside the policy limits stated above – *i.e.*, they do not reduce the coverage available to pay claims.
 - ii. The policy shall name the University of Georgia (and its officers, directors, and employees) as Certificate Holders.
 - iii. Design Professional and DPD's shall maintain the same coverage limits stated above, with the same policy requirements stated above.
 - iv. Professional Liability Insurance coverage may be provided by a practice policy or project-specific coverage.
 - v. Professional Liability Insurance shall contain prior acts coverage for design services performed by the Design-Builder for this Project.
 - vi. Regardless of the form of professional liability insurance policy provided, the above-required Professional Liability Insurance coverage shall be

continued in effect for four years following the Date of Final Completion of the Project.

7. **Commercial Umbrella Liability Insurance.** Design-Builder shall provide a Commercial Umbrella Liability Insurance Policy to provide excess coverage above the Commercial General Liability, the Commercial Business Automobile Liability, and the Workers' Compensation, Employers' Liability, and Professional Liability Insurance (if applicable) to satisfy the minimum limits set forth herein. The minimum amount of Umbrella limits required above the coverages and minimum limits stated above in this Article shall be:

<i>If the GMP is less than \$5,000,000:</i>	<i>If the GMP \$5,000,000 or greater:</i>
\$2,000,000 per Occurrence; and	\$2,000,000 per Occurrence; and
\$4,000,000 Aggregate	\$10,000,000 Aggregate
<i>If the Work involves "Hot Work" as indicated in ¶ XV(H)(3), increase the foregoing to:</i>	
\$10,000,000 per Occurrence; and	
\$10,000,000 Aggregate	

Additional Requirements for Commercial Umbrella Liability Insurance:

- i. The policy shall name the University of Georgia (and its officers, directors, and employees) as Certificate Holders, and the University of Georgia, the Board of Regents of the University System of Georgia, and the University of Georgia Athletic Association, Inc. (and their respective officers, members, shareholders, directors, representatives, and employees) as named Additional Insureds, but only for such claims for which the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 *et seq.*, is not the exclusive remedy.
- ii. The policy must be on an "occurrence" basis.

- F. **Insured amounts not determinative of liability limits.** Coverage minimums set forth in this Article shall not be construed to limit Design-Builder's liability.
- G. **Termination of obligation to insure.** Unless otherwise expressly provided hereunder, obligations to insure as provided herein shall not terminate until two years have passed after the Realized Date of Substantial Completion of the Work or termination of this Agreement, whichever comes earlier.
- H. **Failure to insure.** Design-Builder is responsible for any delay and costs, damages, claims, and expenses resulting from failure to furnish proof of proper insurance coverage in the prescribed form. In addition to, and not in lieu of, any other indemnification provided by Design-Builder hereunder, if Design-Builder (or Subcontractors of any tier) fails to provide and maintain the coverage required hereunder or by Law, Design-Builder is deemed to assume all risk of loss to which the Board of Regents, the University of Georgia, and the University of Georgia Athletic Association, Inc. (and the other Indemnitees as indicated in ¶ XI(B)) may be exposed - and shall indemnify, defend, and hold harmless UGAA and UGAA Indemnitees as indicated in ¶ XI(B) (and shall indemnify and hold harmless the State Indemnitees as indicated in ¶ XI(B)) for all resulting Project-related losses, damages, costs, and attorneys' fees. Design-Builder accepts the

affirmative obligation to ascertain that it and its Subcontractors of any tier obtain and maintain policies of insurance with the coverage specified herein.

- I. **Survival.** All rights of the Board of Regents, the University of Georgia, and the University of Georgia Athletic Association, Inc. (and other UGAA and State Indemnities as indicated in ¶ XI(B)) under this Article and all Design-Builder's insurance-related obligations, including the obligation to give notice of lapse, expiration, renewal, non-diminishing coverage amounts, and UGAA's right to provide insurance shall survive termination and/or completion of this Agreement.
- J. **Waiver of subrogation; management of proceeds of insurance.** To the extent a Party to this Agreement suffers a loss, and has, in fact, recovered for that loss by receipt of proceeds of a policy of insurance, that Party and its insurer, waive subrogation of any claims against the other Party (or Parties) or the other Party's (Parties') officers, directors, members, managers, employees, partners, limited partners, shareholders, agents, attorneys, insurers, Sureties, assigns, Design Professionals, DPD's, Subcontractors, other or Separate Contractors, or others providing Work or Services on the Project, their successors and predecessors in interest, and any parent and subsidiary organizations related to any of them, whether or not the loss suffered was caused solely by the negligence of the recovering Party, and whether a duty of indemnity exists. This waiver of subrogation does not reduce or limit the right of the Board of Regents, UGA, and UGAA to indemnification by Design-Builder as otherwise provided hereunder or under Law; nor does it avoid Design-Builder's obligation to reimburse the Funds as provided in Article XI. UGAA shall have the power to adjust and settle claims with insurers. Before Design-Builder can apply any proceeds from policies of insurance for its own purposes, it must remit proceeds of insurance received to UGAA (for UGAA's adjustment and redistribution in accordance with this Agreement); thereafter, before Design-Builder can apply amounts redistributed to it by UGAA or an insurer, it must pay all amounts due to Subcontractors, and it must cause all amounts due to be paid to lower-tier Subcontractors.
- K. **UGAA's right to provide.** In addition to any other remedies the Board of Regents, UGA, and/or UGAA may have, if Design-Builder fails to provide insurance policies and coverage as required herein (or renewals thereof), the Board of Regents, UGA, and/or UGAA may, but are not required to, obtain insurance coverage that Design-Builder has failed to provide. In that event, UGAA, UGA, and/or the Board of Regents may recover the cost of the coverage obtained by UGAA's issuing a deductive unilateral Change Order, reducing the GMP by an amount equal to the sum of the premiums paid by UGAA, UGA, or the Board of Regents for replacement coverage – *plus* other losses and costs (including but not limited to attorneys' fees) incurred by any of them related to or arising out of Design-Builder's failure to provide the requisite coverage.
- L. **Maximum deductible.** No policy of insurance may contain a deductible in excess of \$100,000.00.

ARTICLE XIII - PERFORMANCE AND PAYMENT BONDS

- A. **Performance and Payment Bonds.** Design-Builder shall furnish bonds covering the faithful performance of the Agreement ("Performance Bond") and Design-Builder's payment of obligations hereunder ("Payment Bond"). As a condition precedent to UGAA's obligation to pay, Design-Builder shall deliver to the ADR executed originals and two executed copies of

required Bonds upon execution of this Agreement. The University of Georgia Athletic Association, Inc. shall be Obligee on the Bonds; and the “Board of Regents of the University System of Georgia” and the “University of Georgia” shall be named Additional Obligees on the Bonds. Bonds shall be provided in the forms provided as **Supplement I** or in such other form as may be approved by UGAA. The Performance and Payment Bond Surety shall be obligated to perform all obligations of the Design-Builder, including any and all liquidated damages and indemnity obligations. In addition to its other payment and performance obligations under the Bonds, in the event of Design-Builder default, Surety will be responsible to UGAA, UGA, the Board of Regents, and any other obligees for payment of attorneys’ fees and all other costs arising out of or relating to conditions of default, breach of this Agreement, and/or termination of this Agreement.

- B. **Required qualifications for Sureties.** Sureties and insurance companies must be those acceptable to UGAA and the Board of Regents. Only those Sureties listed in the Department of Treasury’s Listing of Approved Sureties (Department Circular 570) will be acceptable. All Bonds at the time of issuance must be issued by a company authorized by the Insurance Commissioner to transact the business of suretyship in the State of Georgia, and shall have a Best Policyholders Rating of “A-” or better with a financial size rating of Class V or larger. Design-Builder shall require the attorney-in-fact who executes the Bonds on behalf of a Surety to affix thereto a certified and current copy of the power of attorney.
- C. **Penal amount of Bonds.** With respect to Bonds issued before execution of the GMP Change Order, supply Performance and Payment Bonds with penal sums as set forth in ¶ III(L)(1)(e). Design-Builder agrees that each Performance Bond and Payment Bond must, upon execution of the GMP Change Order, be issued with a penal amount equal to at least 100% of the GMP. Accordingly, the Design-Builder warrants and agrees that, for any Change Order increasing the GMP by five percent or more or when the GMP has increased by five percent or more, it shall obtain a written amendment to the Payment Bond and the Performance Bond increasing the penal amount of each Bond to 100% of the GMP, effective as of the date of the Change Order. If the subject Change Order is not the result in whole or in part of Design-Builder’s failure to fully perform its obligations hereunder, the premium increase, if any, may be properly included in the cost of any Change Order (as long as it is expressly denominated as such as part of the Design-Builder Construction Overhead Cost element in the related PCO). Design-Builder’s provision of an amendment increasing the penal sum of the Bonds as a result of such a Change Order is a condition precedent to UGAA’s obligation to pay for the changed Work that is the subject of that Change Order.
- D. **Proof of Bond.** Upon request of any person or entity appearing to be a potential beneficiary of a Payment or Performance Bond, Design-Builder shall promptly furnish a copy of the Bond to the requesting person or entity. Design-Builder shall immediately notify the ADR of the request and its fulfillment, e-mailing a copy thereof to the ADR.
- E. **Failure to purchase or maintain Bonds.** In addition to other indemnification required herein, if UGAA, UGA, the Board of Regents or any other obligees are damaged by Design-Builder’s failure to obtain or maintain the requisite Bonds, Design-Builder shall indemnify, defend, and hold harmless UGAA and UGAA Indemnitees as indicated in ¶ XI(B) (and shall indemnify and hold harmless the State Indemnitees as indicated in ¶ XI(B)) from all claims, damages, costs, expenses, and attorneys’ fees incurred by UGAA, UGA, the Board of Regents, or any other obligee or Indemnatee hereunder or under the Bonds as a result of that failure.

ARTICLE XIV – INTELLECTUAL PROPERTY AND CONFIDENTIALITY

A. License – and assignment and transfer.

1. **License.** Copyrights and other intellectual property rights held by Design-Builder and/or its Subcontractors (including Design Professionals) in materials, images, designs, and drawings created before execution of this Agreement (“Preexisting Material”) shall continue to be held by the Design-Builder and its Subcontractor(s) or Design Professionals as the case may be. To the extent that Preexisting Material is used in the creation of technical drawings, architectural works, and other intellectual property used or related to the Project, Design-Builder, as copyright holder thereto, hereby grants an irrevocable, non-exclusive license to UGAA, UGA, and the Board of Regents to reproduce, modify, display, distribute and make any other prospective use of the Preexisting Material.
2. **Assignment and transfer.** Design-Builder irrevocably assigns ownership of and transfers to UGAA (and such designees as UGAA may duly appoint in writing) all exclusive copyrights, trade dress, and other intellectual property rights in all Project-related text, designs, drawings, specifications, Construction Documents, shop drawings, RFI’s, PCO’s, ASK’s, architectural works, building designs, reports, completed forms, models, computer files, BIM, instruments of service, surveys, or other documents, expression, and other Project Information provided or created by Design-Builder in course of performance of the Work and Design Services (“Expression”), whether produced, prepared, created, fixed, or otherwise used or reproduced in print or digital (electronic) form by Design-Builder or its Subcontractors of any tier, this assignment and transfer being effective upon creation. This assignment and transfer (as well as the license-back indicated below) also applies to all Expression that comprises derivative works created by modifying Preexisting Material and any other Expression.

B. Confirmation of assignment and transfer by Subcontractors to UGAA. Design-Builder will obtain from its Subcontractors, and from all copyright holders and other owners of intellectual property contained or employed in the Expression and in works underlying derivative Expression provided by Design-Builder or its Subcontractors, written licenses or assignments and transfers (as the case may be under ¶ XIV(A) above) to UGAA of all copyrights and other intellectual property rights consistent and coextensive with the license or assignment and transfer provided under ¶ XIV(A).

C. Scope of assignment and transfer. Design-Builder acknowledges and agrees for itself and its Subcontractors that the assignment and transfer of copyrights and other intellectual property rights provided in this Article memorializes an implied and understood agreement to license Preexisting Material and assign and transfer to UGAA all copyrights and other intellectual property rights in Expression previously created for, or provided to, UGAA by Design-Builder or its Subcontractors or Design Professionals of any tier related to this or previous projects for UGAA.

D. Warranty of ownership. Design-Builder warrants for itself and its Subcontractors of any tier that: (1) it holds exclusive copyrights and other intellectual property rights in all Preexisting Material and Expression that it has prepared, created, or provided (or will prepare, create, or provide) for (or has used or will use for) UGAA and this Project or otherwise has the right to

license or assign and transfer to UGAA the rights licensed or assigned and transferred in this Agreement; (2) its use, licensing, assignment, and transfer to UGAA of copyrights and other intellectual property rights will not infringe upon the copyrights or other intellectual property rights of others; (3) Design-Builder is entitled to license or assign and transfer all exclusive copyrights and other intellectual property rights to UGAA in accordance with this Article; and (4) Design-Builder has not licensed, sold, or otherwise conveyed to any other person or entity (by contract or operation of Law) the copyrights or other intellectual property rights assigned and transferred herein.

- E. **Prospective limitations of use.** Design-Builder agrees for itself (and its Subcontractors) that it (and they) will not further reproduce, distribute, display, transmit, or otherwise use the Expression or materials received from UGAA or created for UGAA – except where specifically allowed herein and approved in advance in writing by the ADR or the undersigned representative of UGAA, which approval can be withheld for any reason.
- F. **Conditional, limited, revocable, nonexclusive, License-back to Design-Builder.** Upon assignment and transfer of the copyrights and other intellectual property rights in Project Information and other Expression to UGAA as provided pursuant to ¶ XIV(A)(2) above, UGAA, in turn, grants a revocable, nonexclusive, license-back (“License-back”) to Design-Builder to: (1) reproduce, distribute, and modify Expression as needed to perform Project-related Work for UGAA; (2) retain, in confidence, after Project completion, one complete print and one digital copy of the Expression for its archives; and (3) reproduce and modify for its own use on other projects only those isolated elements or components of the Expression that were originally created by Design-Builder or its Subcontractors that: (a) standing alone, cannot be visually or electronically identified or recognized by persons skilled in such matters as being drawings, specifications, or building designs, models, and/or other Project-related creative Expression or other UGAA-related Project Information (or parts thereof); and (b) are not part or product, in whole or in part, of data, designs, standards, and/or other input or information provided directly or indirectly by UGAA. Determination of the foregoing shall be in the sole discretion of UGAA, acting in good faith.
- G. **Execution of coordinate documents.** Design-Builder agrees to sign documents, upon request, that will give effect to the license or assignment and transfer of intellectual property rights referred to in this Article; and Design-Builder will assist UGAA in the registration, recordation, protection, and enforcement of those rights.
- H. **Royalties, fees, and licenses.** Design-Builder shall pay all royalties, assignment and transfer fees, license fees, and other costs to obtain the necessary licenses, copyrights, trademark rights, patent rights, and other instruments of authority necessary to perform the Work and the Design Services, to give effect to the license or assignment and transfer to UGAA provided in ¶ XIV(A), and to create, prepare, present, reproduce, modify, and distribute the Project Information, the Deliverables, and the Expression.
- I. **Indemnity.** In addition to any other indemnification to which UGAA and other Indemnitees indicated in Article XI are entitled, Design-Builder shall indemnify, defend, and hold harmless UGAA and UGAA Indemnitees as indicated in ¶ XI(B) (and shall indemnify and hold harmless the State Indemnitees as indicated in ¶ XI(B)) from any and all claims, damages, judgments, liens, lawsuits, losses, costs, expenses, including attorneys’ fees, and any other demands of any kind, related to the Work, the Design Services, and this Agreement involving actual or alleged copyright, patent, or other forms of intellectual property infringement, misappropriation of

documents, misdesignation of origin of Design-Builder's Expression (or that of its Subcontractors), Design-Builder's failure to obtain intellectual property rights, or third-party demands for royalties, damages, *etc.*, regardless of whether litigation is involved.

- J. **Return of Project Information.** Upon termination of this Agreement, or otherwise upon request of the ADR, Design-Builder shall deliver to a place designated by the ADR all printed and electronic copies of Project Information, and other Project-related documents, files, and Expression – except that Design-Builder can keep one record set of both printed documents and electronic files (with back-up) for its archival records (but not for further reproduction, modification, or distribution, except as provided in ¶ XIV(F)).
- K. **No implied licenses.** Except for the express License-back permitted in this Article, no other license, license-back, or right to Project-related intellectual property, Project Information, or Expression is expressly or impliedly granted by UGAA to Design-Builder or others.
- L. **No assignment or transfer of UGAA's exclusive rights.** Nothing in this Agreement shall be construed as an assignment or transfer by UGAA of its exclusive copyrights or other intellectual property rights held by UGAA, UGA, or the Board of Regents.
- M. **No sublicenses permitted.** Copyrights licensed back to Design-Builder hereby shall not be sublicensed or transferred to others; and any attempt to do so shall operate to terminate the License-back granted herein.
- N. **License-back terminable.** The License-back granted to Design-Builder in this Article is revocable and terminable by UGAA upon notice to Design-Builder upon an occurrence of Design-Builder default or breach of this Agreement.
- O. **Prohibition on reproduction of UGA-related marks, logos, graphics.** Design-Builder agrees that marks, logos, and graphics related to UGA and UGAA are valuable intellectual property, and that misuse or misappropriation of them will damage UGAA, UGA, the Board of Regents, and/or related entities. Design-Builder agrees that its reproduction, display, distribution, modification, or any other use of UGA or UGAA-related expression, marks, logos, or graphics without the advance, express, written, consent of UGA (and/or UGAA, as the case may be) shall be deemed an infringement of their respective intellectual property rights – and that the same is true if an infringement by others was merely contributed to or enabled by some act of Design-Builder or a Subcontractor of any tier.
 - 1. Design-Builder acknowledges that this Agreement grants no license to Design-Builder or others to reproduce, distribute, modify, display, or otherwise use UGAA and/or UGA-related marks, logos, and graphics – except as strictly limited by the revocable, nonexclusive License-back indicated in this Article.
 - 2. Photographs taken of the Project or the Property shall not reveal or include UGA or UGAA-related marks, logos, or graphics. The only exceptions to this are where: (a) Design-Builder's photographic documentation is required to perform the Work and Design Services (and is distributed solely to UGAA or UGA); or (b) Design-Builder's prepares or obtains photographs of a building or Project for purposes of its own portfolio of work ("Portfolio Images"), use of which is strictly limited to: (i) display only in printed (paper) form; or (ii) in-room non-transmitted projection by Design-Builder. In the case of either (i) or (ii), each Portfolio Image must be approved in advance in writing for each specific use by the person signing below for UGAA (or his or her successor,

duly appointed). UGA's or UGAA's approval of that use may be refused or revoked for any reason, in the discretion of UGAA, UGA, or the Board of Regents.

- P. **Nonparty licenses to UGAA required.** To the extent that photographs, renderings, models, or other images, objects, or other media and vehicles of expression depicting the Project are created at the request of Design-Builder (or Subcontractors of any tier) by nonparties to this Agreement (including but not limited to photographers, model makers, renderers, *etc.*), Design-Builder must provide UGAA with the following: (a) reproducible, maximum fidelity copies of all print and digital images, objects, or other vehicles of expression created or fixed by nonparties pertaining to the Project or the Work; and (b) an irrevocable written license from the nonparty author and/or copyright holder allowing UGAA, UGA, and the Board of Regents to reproduce, distribute, display, modify, or publish those images, objects, or other media and vehicles of expression for their own purposes. The license set forth in *this* paragraph does not contemplate further sublicensing by UGAA, UGA, or the Board of Regents to persons or entities not affiliated with them when that sublicensing would be for purposes and uses other than those of UGAA, UGA, or the Board of Regents.

ARTICLE XV - SPECIAL CLAUSES

- A. **Drug-free Workplace Act.** By signing this Agreement, Design-Builder certifies that Design-Builder and its Subcontractors of any tier will provide a drug-free workplace for their respective employees and will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana in the workplace during performance of the Work. *See O.C.G.A. § 50-24-1 et seq.*
1. In accordance with the Drug-free Workplace Act of 1990, Design-Builder must certify that a drug-free workplace will be provided for Design-Builder's employees and those of its Subcontractors; and persons violating this prohibition will be subject to discipline or dismissal.
 2. Design-Builder must publish a statement notifying its employees and Subcontractors that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Design-Builder's workplaces and those of its Subcontractors; and that persons violating this prohibition will be subject to discipline and dismissal; and that violations of this prohibition may subject Design-Builder and/or Subcontractors to a declaration of Default and Termination for Cause.
 3. Design-Builder must establish, prior to commencement of the Work, a drug-free awareness program to inform its employees about: (a) the dangers of drug abuse in the workplace; (b) Design-Builder's policy of maintaining a drug-free workplace; (c) any available drug counseling, rehabilitation, and employee assistance program; and (d) the penalties that may be imposed upon employees for drug abuse violations.
 4. Design-Builder must provide each employee with a copy of the statement referred to in ¶ XV(A)(2).
 5. Design-Builder must notify each employee in the statement provided for in the immediately preceding subparagraph that, as a condition of employment, the employee shall abide by the terms of the statement and shall notify Design-Builder of a criminal drug statute conviction for a violation occurring in the workplace within five days of the conviction.

6. Design-Builder shall give written formal notice to UGAA within ten days after receiving from an employee or a Subcontractor a notice of conviction or otherwise receiving actual notice of such conviction.
7. Design-Builder shall make a good faith effort on a continuing basis to provide a drug-free workplace for its employees.
8. Design-Builder will include in any agreement or contract with a Subcontractor the Subcontractor's obligation to maintain a drug-free workplace and comply with this ¶ XV(A).
9. This ¶ XV(A) establishes minimum standards for Design-Builder and in no way limits or restrains Design-Builder from implementing additional procedures and policies having the objective of achieving and maintaining a drug-free workplace.

B. **Nondisclosure and confidentiality.** Design-Builder agrees that information received from UGAA, UGA, or the Board of Regents with respect to this Agreement and/or this Project shall be considered confidential, and shall not be disclosed to others except: (1) where disclosure is requested or approved by UGAA, UGA, or the Board of Regents, as applicable, in advance in writing; or (2) where disclosure is required to satisfy an order of a court of competent jurisdiction, a valid subpoena, or other legally valid demand under Law. Design-Builder agrees to immediately inform UGAA of any demands for disclosure, and to assist UGAA, UGA, or the Board of Regents in addressing or refuting those demands where appropriate. Design-Builder shall not contact or communicate in any way with news media or others with respect to the Project, the Work, the Design Services, or this Agreement – and it shall refer all inquiries from the public, journalists, news media, or others to the undersigned representative of UGAA. This provision is binding on Design-Builder, as well as its Subcontractors of any tier, and it shall survive the termination of this Agreement or completion of the Work.

C. **Georgia Open Records Act demands.** Design-Builder acknowledges and agrees that all documents collected or produced by a private person, firm, or corporation pursuant to a contract or other agreement or understanding with or on behalf of UGAA or any governmental entity may be subject to disclosure under the Georgia Open Records Act, O.C.G.A. § 50-18-70 *et seq.* Details and procedures, including permissible exemptions and the means of claiming such exemptions, are contained in the Act. Design-Builder acknowledges that noncompliance with the Act may constitute a criminal act. Design-Builder agrees to notify the ADR in writing within twenty-four hours of Design-Builder's receipt of a request for records based on the Act, and shall assist UGAA, UGA, and/or the Board of Regents, where appropriate, in complying with legitimate requests or resisting illegitimate requests, as the case may be.

D. **Vehicles and roadways.**

1. **Parking.** Parking is not provided to Design-Builder, its Subcontractors, or their employees. When vehicles are needed at or near the Property to perform the Work, it is Design-Builder's sole obligation to obtain day-specific permits from UGA Parking Services. If Design-Builder's presence is needed on an ongoing basis related to the Work, Design-Builder must arrange with UGA Parking Services for a "Contractor Permit," the cost of which is included in the Design-Builder Construction Overhead Costs within the GMP. Designated "laydown" area taken from an existing permitted parking area shall not be used as a "free parking area"; nor shall Design-Builder permit the Project site, the Work Area, or any other area within its control to be used for activities, occupancies, or

parking not directly essential to the Work, except as approved in advance in writing by the ADR. Design-Builder shall be solely responsible for payment of all parking fees – as well as all penalties, fines, tickets, *etc.* incurred due to Design-Builder's failure (or that of its Subcontractors of any tier) to adhere to the requirements of this Agreement.

2. **Roadway and parking lot closings.** If performance of the Work requires temporary excavation of public streets, roads, or other public ways or location of Design-Builder's vehicles or personnel in places that could potentially interfere with pedestrian or vehicular movement or use of UGA facilities, and if that use is, in the opinion of UGAA and UGA, permissible, Design-Builder shall arrange at least five days in advance to procure permits and assistance from authorized representatives of UGA, local public works agencies, and/or governmental entities having jurisdiction over walks, roadways, and the other affected means of pedestrian or vehicular movement or use of UGA or UGAA facilities. All fees and costs associated with obtaining permits for such road and parking lot closures shall be borne by Design-Builder, and included in Design-Builder Construction Overhead Costs within the GMP.
3. **Norfolk-Southern Railroad.** Design-Builder's Work or operations shall not encroach on the right-of-way of the Norfolk-Southern Railroad which passes through UGA campus; nor shall Design-Builder interfere with operations of rail line at any time.

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

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

G. **Hazardous Materials.**

1. **Definition.** The term "Hazardous Materials" shall mean any material or substance within the meaning and definition for "Hazardous Substance" and/or "Hazardous Waste" as those terms are employed and set forth in the Georgia Hazardous Site Response Act and the Comprehensive Environmental Response Compensation and Liability Act as amended, 42 U.S.C. § 6901 *et seq.*, and regulations promulgated thereunder (collectively, "CERCLA") and any corresponding state or local Law or regulation, and also shall include: (a) any Pollutant or Contaminant as those terms are defined in CERCLA; (b) any Solid Waste or Hazardous Constituent as those terms are defined by, or are otherwise identified by, the Resource Conservation and Recovery Act as amended, 42 U.S.C. § 6901 *et seq.*, and regulations promulgated thereunder

(collectively, "RCRA") ; (c) all materials defined as hazardous by all federal, state, and local Laws, rules, regulations, ordinances, programs, permits, guidance, orders, and consents decrees related to health, safety, and environmental matters, including, but not limited to: the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, the Toxic Substances Control Act, as amended, the Clean Water Act, as amended, the Superfund Amendments and Reauthorization Act of 1986, as amended, state and federal superlien and environmental cleanup programs and Laws, and regulations of the U.S. Department of Transportation, and any corresponding state or local Law or regulation; (d) crude oil, petroleum and fractions of distillates thereof and petroleum releases; (e) any other material, substance, or chemical defined, characterized, or regulated as toxic or hazardous under any application Law, regulations, ordinance, directive, or ruling including, but not limited to, asbestos or polychlorinated biphenyl ("PCB"); and (f) any infectious or medical waste or environmental contamination as defined by any applicable federal or state Laws or regulations. The term "Hazardous Materials" does not include those materials that are expressly and specifically required to be installed under the Contract Documents – nor those products and materials that are commonly used in construction and industrial practice so long as they are used in accordance with the manufacturers' instructions or Material Safety Data Sheets ("MSDS") issued for the product or materials.

2. **No UGAA representation on Hazardous Materials limited.** UGAA does not guaranty or represent that the site or facilities affected by the Work are completely free from Hazardous Materials. Therefore, since asbestos and lead-based paint were commonly used in construction materials, asbestos-containing, lead-based-paint-containing, or other materials of a hazardous nature may be encountered during performance of the Work and the Design Services – and Design-Builder and Design Professional shall exercise extreme care when demolishing, repairing, or otherwise disturbing existing structures, systems, and materials.
3. **Notification and safety measures.** Design-Builder shall immediately notify the ADR and Design Professional (orally and in writing) of the presence and location of any physical evidence of, or information regarding, the presence of Hazardous Materials at the Project Site of which Design-Builder becomes aware.
 - a. **Hazardous Materials and Substances used on the Project site.** Products containing Hazardous Materials may be employed in the performance of the Work by the Design-Builder and its Subcontractors as allowed by this paragraph as a means and methods application or as part of its performance of the Work, such as chemical used on the Project site, but only provided that: (i) such products are used in accordance with the manufacturer's instructions and MSDS's; (ii) such products are rendered harmless upon completion of the affected Work; (iii) reasonable precautions can be and are taken to prevent foreseeable bodily injury or death to persons involved in the Work or in its proximity, including the ultimate users of the completed Work; (iv) Design-Builder shall make available to UGAA and the Design Professional copies of MSDS's for any such products used on the Project site; and (v) Design-Builder shall immediately notify UGAA, Design Professional, and appropriate

regulatory agencies if there is a spill or release or misuse of any such product used on the Project site that exceeds state or federal reportable limits.

- b. **Encounter of Hazardous Materials.** If the Design-Builder encounters Hazardous Materials on the Project site, the Design-Builder shall: (i) immediately cease installation of the Work or that portion of the Work affected by or affecting such Hazardous Materials; (ii) secure the contaminated area against intrusion; (iii) not disturb or remove the Hazardous Materials; (iv) not proceed, or allow any Subcontractor to proceed, with any Work or other activities in the area affected until such Hazardous Materials have been properly remediated and until directed in writing by UGAA as to the manner in which to so proceed; and (v) take any other steps necessary to protect life and health and the surrounding environment. Where proper notice is given by the Design-Builder, the Design-Builder shall be entitled to an equitable adjustment of the Contract Time and the GMP as needed to compensate for the impact of any required demolition, rework, shutdown, delay, protection of Work, disruption, and start-up directly attributable to the encountering of Hazardous Materials on the Project site for which Design-Builder is not in whole or in part responsible.
- c. **Products and MSDS's.** Design-Builder shall not select, install, or otherwise incorporate any products or materials containing Hazardous Materials within the Work Area or Project site unless the products and materials are specifically required in the Contract Documents. If Design-Builder (or a Subcontractor of any tier) has knowledge that, or has reason to believe that, an item, material, substance, or accessory within a product or assembly selected by the Design-Builder may unlawfully contain Hazardous Materials (as that term is defined in this ¶ XV(G)), not in accordance with the definition set forth in this paragraph, it is Design-Builder's responsibility to secure a written certification from the manufacturer of any suspected materials which identifies the specific Hazardous Material(s) contained, together with the MSDS's for such materials. A copy of the written certification shall be submitted to UGAA and Design Professional.
- d. **Fill.** No soil found on-site (or transported to the site from remote locations) that contains debris, waste, or Hazardous Materials shall be used for fill, backfill, or landscaping topsoil.
- e. **Subcontractor responsibilities and warranties.** Products that are specified by reference standards or in a descriptive manner without a manufacturer's name, model number, or trade name, to be selected by Design-Builder, shall not contain Hazardous Materials in any form, except as and to the extent permitted in this paragraph. Design-Builder shall require that each Subcontractor of any tier warrant and certify to UGAA that all materials, products, and assemblies (other than those that are specifically and expressly required by the Contract Documents) are free of Hazardous Materials. This warranty and certification shall also cover and include all materials, components, and accessories not specifically enumerated or detailed in the Contract Documents but which are required by performance specifications or recommended by manufacturers for complete installation of materials, products, and assemblies.

- f. **Absolute prohibition against use of asbestos, formaldehyde, or lead-containing products.** Notwithstanding the foregoing, Design-Builder shall not specify or use products that contain asbestos, formaldehyde, or lead on this Project; and shall take all steps necessary to prevent their introduction to the Project, the Project site, and the Work. Design-Builder shall submit to the ADR certifications of adherence to this requirement by Design-Builder, its Subcontractors, and its material suppliers in the form supplied as **Supplement S** (or **S1** as the case may be) as part of Design-Builder's Closeout Materials.

H. **Miscellaneous clauses.** To the extent implicated by the Scope of Work and the Contract Documents, the following clauses will apply:

1. **Fumes.** If Design-Builder is required in the performance of the Work to engage in activities, or to use methods and materials, that result in fumes (including smoke) being generated and dispersed in occupied areas, in addition to complying with all applicable codes, regulations, ordinances, and other Laws, Design-Builder shall perform the Work in a manner that shall minimize or completely eliminate the probability of such an occurrence. However, if fumes of any nature are generated or released by the Design-Builder to occupied portions of a building, such fumes shall be contained and exhausted from the spaces in accordance with previously cited codes, ordinances, and Laws. If any Design-Builder-generated or Design-Builder-released fumes spread to occupied spaces or areas, Design-Builder shall:
 - a. Stop the Work causing fume generation or release;
 - b. Contact the ADR (for the sole purpose of informing the ADR of the occurrence of the event);
 - c. Determine the nature and extent of fume(s) release;
 - d. Purge all areas of these fumes; clean up areas if fumes deposited dirt or particulate matter;
 - e. Change Work methods to eliminate fumes;
 - f. Continue Work only after steps "a" through "e" have been successfully accomplished; *and*
 - g. Notify the ADR in writing within five days of the event regarding its specific details and consequences.
2. **NFPA § 241.** Design-Builder shall comply with all applicable provisions of NFPA Section 241, Standard for Safeguarding Construction, Alteration and Demolition Operations," latest edition, which is incorporated by reference herein, as if set forth fully.
3. **Roofing and Hot Work.** To complement the requirements of NFPA § 241 regarding Design-Builder's duties during the execution of Work, Design-Builder shall comply with the following guidelines for all roofing projects and all other projects which require Hot Work (*i.e.*, Work that includes any construction activity that presents a source of ignition, such as welding, burning/cutting, heating, brazing and soldering). Design-Builder shall, prior to the start of Work at the Project site, develop a documented fire safety plan for all areas included herein. Such plan shall be the result of a complete assessment by Design-Builder to minimize the potential for damage as a result of an

uncontrolled fire, and must be submitted to designated fire safety representatives of UGA for review and approval. The fire safety plan must include, but need not be limited to, the description and documentation of each of the following elements:

a. **Control of combustibles.**

- i. Design-Builder shall visually inspect entire Project location to identify combustible and noncombustible construction. Design-Builder shall identify sealed, inaccessible combustible spaces.
- ii. Design-Builder shall identify and relocate all movable combustibles at least 35 feet horizontally from the Work involved. Where not possible, Design-Builder shall protect such combustibles with flame-proof covers or otherwise shield them with metal fire resistant guards or curtains.

b. **Control of ignition.**

- i. Design-Builder shall comply with the UGA documented Hot Work permit system (*which is incorporated herein*), including the following minimum requirements:
 - (A) Design-Builder shall identify names and locations of fire watches for all Hot Work operations.
 - (B) Design-Builder shall identify timing and duration of all proposed Hot Work. Permits shall be valid for the time specified on permit, as appropriate for the Project needs.
 - (C) Design-Builder shall employ dedicated fire watches, which shall be located in direct visual contact of all areas of Hot Work operations including the underside of combustible attic spaces. If area of proposed Hot Work is not accessible from beneath, Design-Builder shall not under any circumstances use torches or direct flame.
 - (D) Design-Builder shall maintain a daily log of activities, including accurate Project records of all fire watch activities.
 - (E) Design-Builder shall assign responsibility for overseeing fire watches to specific individual(s) whose only duty is to watch for and to prevent fires occurring due to Hot Work. This individual(s) shall be listed on permit as responsible.
 - (F) Each Design-Builder's fire watcher shall employ an operable cellular phone for immediate notification of fire department in the event of a fire.
 - (G) Design-Builder shall be responsible for immediate fire department notification in case of fire.
 - (H) Design-Builder shall continue fire watches for at least one hour after any Hot Work operations are completed.
- ii. Design-Builder shall comply with the following minimum suppression requirements:

- (A) Design-Builder shall provide 10 lb. multi-purpose dry chemical fire extinguishers within 20 feet of the operation.
 - (B) Where Hot Work is necessary in or near attic spaces containing combustible materials, and is approved by UGA's designated fire safety representative, Design-Builder shall provide a charged hose line from building standpipe or hydrant. This requirement shall be coordinated with UGA's fire safety coordinator to insure standpipe or hydrant are available and that person(s) operating the charged hose line is properly trained and qualified to operate the hose.
 - (C) Design-Builder's fire watchers shall keep fire extinguishing equipment readily available, and shall be trained in the proper use of all such equipment; proof of such training shall be included in fire safety plan.
- c. **Fire watch.** If fire watches are required to be employed, Design-Builder shall retain an independent consultant to provide a system of documented audits of compliance with fire watch provisions and NFPA § 241. Approval of Design-Builder's fire safety plan by the UGA's fire safety representative does not relieve Design-Builder from any duty to protect UGAA, UGA, and Board of Regents property during the execution of Work under this Agreement. Design-Builder is solely responsible for minimizing the potential for fire damage while performing all Work under this Agreement. If fire watch is approved by the ADR, Design-Builder shall provide fire watch contact information to the UGA Police Department twenty-four hours in advance of the fire watch. Nothing in this provision shall be construed to waive or release Design-Builder from any other fire watch requirements stated in ¶ III(E)(2) above or elsewhere in this Agreement.

I. **Rock blasting.**

1. Any use of explosives to remove rock must be approved in advance in writing by UGAA, UGA, and applicable governmental public safety officials. All approved blasting operations shall be in accordance with all regulations and other life safety, fire, and building codes and other applicable Law. UGA has jurisdiction governing blasting on property of the Board of Regents. Unified Government of Athens-Clarke County ("ACC") has jurisdiction governing blasting within Athens-Clarke County on property not owned by the Board of Regents. In the event Design-Builder encounters rock that requires blasting, it shall immediately notify the ADR.
2. If Design-Builder is allowed and permitted to remove the rock by blasting which is on public property, it shall first obtain a permit from ACC Fire Department (or other local fire and building authorities of government where applicable). Design-Builder shall be solely responsible for obtaining necessary permits from ACC Fire Department and other governmental agencies having jurisdiction over the Project to include completing forms and paying all fees.
3. If the use of explosives to remove rock is approved by the ADR, then Design-Builder, a minimum of seven days prior to commencing blasting activities shall provide the ADR

with the proposed blasting schedule. Design-Builder shall also complete and submit to the ADR a completed and executed "Blasting Checklist" -as indicated in **Supplement R.**

4. Execution of this Agreement shall be considered conclusive proof that the Design-Builder is familiar with ACC Fire Department regulations and procedures governing blasting on public property. All costs associated with compliance with regulations and other life safety, fire, and building codes or other applicable Law and any fees, permits, monitoring, insurance, furnishing of adequate cover and blasting mats shall be included in the Unit Prices to furnish and install complete in the event of differing site conditions for removal of rock and removal of rock in trench. If a Unit Price for a particular differing site condition is not included in the Contract Documents, the costs associated with corrective Work and compliance shall be deemed to be included in the GMP.

- J. **Work on public water distribution system.** Any Work on the public water distribution system must be approved and inspected by applicable utilities and local government offices and must be performed in accordance with the local governmental regulations. In Athens-Clarke County, most water mains, fire hydrants and water meters are under the jurisdiction of the ACC. All connections to the ACC water distribution system (or that of other utilities, agencies, or authorities where applicable) shall be approved and inspected by the applicable utility, agency, or authority. The current version of the construction specifications published by ACC Public Utilities (available at www.athensclarkecounty.com) regarding water main construction is incorporated by reference into this Agreement. For Projects in Athens-Clarke County, the Design-Builder Subcontractor constructing the water distribution system improvements described in this Agreement shall be on the ACC list of approved contractors. Final approval, acceptance and payment for Work completed on the water distribution system will be contingent on acceptance of the improvements by the ACC Public Utilities (for systems located in Athens-Clarke County) or by the applicable agency, authority, or governmental body (for systems located outside Athens-Clarke County). All costs associated with compliance of the water main construction requirements shall be included in the Cost of the Work within the GMP.
- K. **Backflow preventers.** Any Work on backflow preventers must be approved and inspected by applicable local government authorities and must be performed in accordance with the local governmental regulations. In Athens-Clarke County, the Double-Check Backflow Preventer for the fire main connection and Reduced Pressure Zone (RPZ) Backflow Preventers for the domestic water connections are under the jurisdiction of the ACC. For Projects located in Athens-Clarke County, the current version of the construction specifications published by ACC (available at www.athensclarkecounty.com) regarding cross-connection / back flow is incorporated by reference into this Agreement. In other jurisdictions, the applicable specification regarding cross-connection / back flow is incorporated by reference into this Agreement instead. All costs associated with compliance of the cross-connection / back flow construction requirements shall be included in Cost of the Work within the GMP.
- L. **Work on public sanitary sewer collection system.** Any Work on the public sanitary sewer collection system must be approved and inspected by applicable local government authorities and must be performed in accordance with the local governmental regulations. In Athens-Clarke County, most sanitary sewer mains and man-holes are under the jurisdiction of the ACC. All connections to the ACC wastewater system shall be approved and inspected by ACC Public Utilities. In other jurisdictions, similar approvals and inspections by the local authority or agency in charge of wastewater shall be obtained by Design-Builder. The current version of the

construction specifications published by ACC Public Utilities (available at www.athensclarkecounty.com) regarding wastewater system construction is incorporated by reference into this Agreement. For Work within ACC, the Design-Builder Subcontractor constructing the wastewater system improvements described in this Agreement shall be on the ACC list of approved contractors. Final approval, acceptance and payment for Work completed on the waste water system will be contingent on acceptance of the improvements by the ACC Public Utilities (for systems located in Athens-Clarke County) or by the applicable agency, authority, or governmental body (for systems located outside Athens-Clarke County). All costs associated with compliance of the water main construction requirements shall be included in the Cost of the Work within the GMP.

- M. **No weapons on campus.** Under Georgia Code § 16-11-127.1(b), weapons are not allowed on the UGA campus or educational property owned by the Board of Regents. “Weapon” means and includes any pistol, revolver, or any weapon designed or intended to propel a missile of any kind, or any dirk, bowie knife, switchblade knife, ballistic knife, any other knife having a blade of two or more inches, straight-edge razor, razor blade, spring stick, knuckles, whether made from metal, thermoplastic, wood, or other similar material, blackjack, any bat, club, or other bludgeon-type weapon, or any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain, or any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart, or any weapon of like kind, and any stun gun or taser as defined in subsection (a) of the Georgia Code Section 16-11-106. The possession of a valid firearms permit, or a valid license to carry a concealed weapon, does not exempt a person from the provisions of this or other Laws.
- N. **No conflict of interest.** Design-Builder covenants and represents that: (1) it has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance required under this Agreement; (2) it shall employ no persons with such conflicts; and (3) it has not violated any Laws prohibiting full-time appointive officials and employees of the State of Georgia from engaging in transactions pertaining to this Project or the Property.
- O. **County references.** With respect to UGAA Projects not located in Athens-Clarke County, references *contained in this Article XV* to Athens, ACC, the Unified Government of Athens-Clarke County, or other governmental units in Athens-Clarke County shall be deemed to apply to the corresponding agencies or governmental authorities in the city and/or county in which the Project is located.
- P. **Construction and demolition waste management.**
1. UGAA has implemented strict recycling and waste management policies for all waste materials removed from project sites as a result of construction and demolition activities, including but not limited to: asphalt; concrete, concrete block, concrete masonry units (“CMU’s”), slump stone (decorative concrete block); rocks; brick; paper (including bond, newsprint, cardboard, mixed paper, packing materials, and packaging); cement fiber products (including shingles, panels, and siding); paint; glass; plastics; carpet and pad; beverage containers; gypsum wallboard; ceiling tiles; porcelain plumbing fixtures; fluorescent light tubes (per U.S. Environmental Protection Agency regulations); green materials (*e.g.*, tree trimmings and land clearing debris); metals (ferrous and non-

ferrous) (including, but not limited to, stud trim, ductwork, piping, reinforcing steel (rebar), roofing, other trim, steel, iron, galvanized sheet steel, stainless steel, aluminum, copper, zinc, lead, brass, and bronze); soils; and wood (non-pressure/chemically treated wood) (including, clean dimensional wood, pallet wood, plywood, oriented strand board ("OSB"), and particle board).

2. Design-Builder is required to account for all waste materials removed from the Project, and to recycle, salvage, or reuse, to the maximum practicable extent, all of the materials listed above within 20 miles of the construction site. The ADR may, upon request, provide assistance to Design-Builder in identifying markets for recyclable materials. Design-Builder shall make provision as practical for the ADR to utilize any recycled materials and processed waste materials on campus. If Design-Builder believes that recycling, salvage, or reuse of any of these materials is impracticable, Design-Builder must inform the ADR before commencement of construction, and secure the ADR's written authorization for an alternative means of disposal.
3. Design-Builder will be required to supply to UGAA on or before the preconstruction meeting a Waste Management Plan which documents procedures to recycle, salvage, or reuse the materials listed above, including: (a) separation, hauling and recycling procedures; (b) material recovery facilities and their distance from job site; and (c) markets for each material recovered. This plan must also address training and communications, recordkeeping, and reporting requirements to assure that all waste materials are accounted for properly. On or before the Realized Date of Substantial Completion, the Plan shall be updated and submitted to the ADR with the total quantities of each waste material that was reused, salvaged, recycled, or disposed of, and the markets to which these materials were directed, so that it provides documentation in a single source of waste management performance on the Project.
4. During construction, Design-Builder shall maintain records of: (a) each type of material removed from the job site (including materials that are not recycled); (b) the name(s) of specific end destinations for all materials removed (whether recycled or disposed of); and (c) weights or measures of all types of materials removed. Every load of waste material that leaves the site must be documented (including receipts, pictures or tickets from material hauler or recovery facility) and reported to the ADR on a monthly basis.
5. UGAA retains the right to inspect, and subsequently approve or disapprove any and all recycling end markets, reuse or salvage outlets, and/or waste disposal facilities that are involved in the receipt of recyclables and/or waste materials generated from the Project. Disapproval of such a market or outlet may be based on past or current violations of federal or state environmental, health, or safety laws, improper disposal activities, risk or liability exposure, excessive distance from the job site, or any other reason deemed sufficient by UGAA.
6. Design-Builder shall include administrative and recordkeeping costs associated with Construction and Water Management in the Design-Builder Construction Overhead Cost. All other associated costs shall be included in the Cost of the Work as part of the GMP.

Q. Environment; Clean Water Act; Georgia Water Quality Control Act; Georgia Soil Erosion and Sedimentation Act.

1. In addition to the terms and conditions stated below in this ¶ XV(Q), Design-Builder agrees to serve as steward of air, land, water, plants, animals, and environmental, historical, and cultural resources within its control pursuant to this Agreement; and, as such, agrees to perform all Work in accordance with state, federal, and local environmental Laws, rules, and regulations protecting those resources, including without limitation those requiring sedimentation control and avoidance of erosion during land disturbing activities. Design-Builder represents that it is familiar with federal, state, and local regulations and procedures governing land disturbance activities. The cost of all Work required to comply with local, state and federal Laws and ordinances is included in the Design-Builder Construction Overhead Costs within the GMP.
2. Design-Builder shall cause Design Professional to designate in the Construction Documents wetlands; and shall erect adequate barriers to avoid intrusion into those wetlands and sedimentary runoff or other impact of construction upon them.
3. This Project is located within a watershed that may drain into waters of the United States or the State of Georgia and storm water inlets and storm drainage associated with the Project may drain directly into waters of the United States or the State of Georgia or lands within the State of Georgia. All such waters and lands shall be protected from the discharge of any Pollutant. Design-Builder shall insure that all construction activities conducted on the Project site comply with all applicable provisions of the Clean Water Act, the Georgia Water Quality Control Act, the Georgia Soil Erosion and Sedimentation Act, and any rules, regulations, local ordinances and permits promulgated or issued thereunder. The scope of this Project may require coverage under the NPDES Storm Water Discharges Associated with Construction Activities permit and may require a Land Disturbance Activity permit issued by a Local Issuing Authority.
4. Design-Builder shall develop, implement, and maintain a site-specific spill response plan for the Project that addresses loading and unloading, storage, and usage of containers and materials with the potential for spillage, leakage, or other discharges and a site specific erosion, sedimentation, and pollution control plan. Design-Builder shall maintain environmental spill kits on-site at all times and shall insure that site personnel are properly and adequately trained on the use of the spill kits.
5. Design-Builder shall not conduct any construction activities within a twenty-five foot buffer along the banks of any waters of the State of Georgia, unless a variance for this Project has been issued by the Georgia Environmental Protection Division.
6. Design-Builder shall not conduct any construction activities within a fifty foot buffer along the banks of any waters of the State of Georgia that is classified as trout waters, unless a variance for this Project has been issued by the Georgia Environmental Protection Division.
7. Design-Builder shall employ Best Management Practices ("BMP's") that are consistent with and no less stringent than those practices contained in the most current "Manual for Erosion and Sediment Control in Georgia" published by the State Soil and Water Commission. If BMP's are not functioning as designed, Design-Builder shall

immediately notify the ADR and the DPR by telephone and in writing. If the BMP's required by the Contract Documents are more stringent than those required by the most current "Manual for Erosion and Sediment Control in Georgia," then the requirements of the Contract Documents shall apply. Design-Builder shall comply with local, state and federal soil erosion and sedimentation control Laws in so far as it involves utility trenches and land disturbing activities. Athens-Clarke County (ACC) Public Works has been granted jurisdiction over land disturbance in Athens-Clarke County to include Board of Regents UGA property – and is, for purposes of this ¶ XV(Q), a Local Issuing Authority, for Projects within Athens-Clarke County.

8. Design-Builder's Superintendent must have a current Georgia Soil and Water Conservation Commission Level 1A Certification. An individual with a current Georgia Soil and Water Conservation Commission Level 1A Certification must be on-site at all times that land disturbing activities are being performed.
9. If the Project requires a Land Disturbance Activity Permit, prior to starting any land disturbing activities, Design-Builder shall obtain the necessary Land Disturbing Activity Permit from the Local Issuing Authority and shall identify itself as the twenty-four hour contact. Design-Builder shall comply with all requirements of the Local Issuing Authority.
10. If the Project requires coverage under the NPDES Storm Water Discharges Associated with Construction Activities Permit, Design-Builder shall obtain that permit and shall:
 - a. Sign the NPDES permit Notice of Intent promptly upon request of the ADR and prior to beginning any construction activity on-site. Design-Builder and UGAA shall be joint Primary Permittees. As the entity that has the primary day-to-day operational control of those activities at the construction site necessary to ensure compliance with Erosion, Sedimentation and Pollution Control Plan requirements and permit conditions, Design-Builder shall be the Operator;
 - b. Insure complete implementation of the Erosion Sedimentation & Pollution Control Plan ("Plan");
 - c. Within twenty-four hours of the installation of the initial sediment storage requirements and perimeter control BMP's, Design-Builder shall notify, in writing (email is acceptable), the ADR and the DPR stating that the initial installation is complete and ready for inspection. The Design Professional who prepared the erosion, sedimentation and pollution control plan shall issue by e-mail or other means a letter of compliance or a letter listing deficiencies. Design-Builder shall correct any deficiencies documented within two days of receipt of that letter and shall schedule any follow-up inspections necessary to comply with the requirements of the Permit, and insure that a letter of compliance is received by the ADR from the Design Professional *and* placed in the Project records on-site; *and*
 - d. Insure daily inspections of vehicle entrances and exits and areas where petroleum products are used, stored, or handled are conducted and documented in a daily inspection report by Level 1A certified personnel. Daily Inspection reports must include: (i) name of inspector; (ii) date of inspection; (iii) observations; (iv) corrective actions taken; (v) any incidents of noncompliance;

(vi) signature of certified inspector; (vii) where reports do not identify incidents of noncompliance, a certification that the entrances and exits and areas where petroleum products are used, stored, or handled are in compliance with the Plan and the Permit must be included; and (viii) all daily inspection reports must be retained in the Project records on-site.

11. Contemporaneously maintain a daily rainfall log indicating the amount of rainfall at the site during each twenty-four hour period. The rainfall log must have an entry for each twenty-four hour period from the commencement of construction until Notice of NPDES Permit Termination.
12. Maintain all records required by the Permit on-site. The records shall be up-to-date, in chronological order, and readily available for review. The records shall include at a minimum:
 - a. A field set of as-built documents indicating any revisions to the civil and erosion sedimentation and pollution control drawings. Any revision on the field set of As-Built Construction Documents and shall be signed and dated by the Design Professional serving as engineer of record;
 - b. Completed NOI form with certified mail receipt (request from the ADR if Design-Builder does not have a copy);
 - c. Documentation of fee payment with certified mail receipt (request from the ADR if Design-Builder does not have a copy);
 - d. Seven-day inspection letter of compliance from the Design Professional serving as engineer of record;
 - e. Daily, weekly, and post ½-inch rain event inspection reports generated by Design-Builder and UGAA's Testing Consultants;
 - f. Rainfall data;
 - g. Turbidity sampling results with certified mail receipts issued by UGAA's Testing Consultants (request from the ADR if Design-Builder does not have a copy); and
 - h. Summary reports of inspections and violation records with certified mail receipts (request from the ADR if Design-Builder does not have a copy).
13. Upon signing the Notice of NPDES Permit Termination, provide to the ADR an electronic scanned copy of all records listed in sub-subparagraphs "a" thru "h" of the immediately preceding subparagraph.
14. Sign NPDES General Permit Notice of NPDES Permit Termination promptly after the Design Professional and UGAA's Testing Consultant issue a written statement that the Project site has undergone final stabilization and that all storm water discharges associated with the construction activity that were authorized by the Permit have ceased.
15. **Duty to notify and correct the Work.**
 - a. Design-Builder shall immediately: (i) document in the site records and notify the ADR by telephone and in writing, of the receipt of any warnings, citations, notices of noncompliance, notices of permit violations or deficiencies, and/or

stop Work orders received from the Local Issuing Authority and/or the Georgia Environmental Protection Division and/or the United States Environmental Protection Agency; and (ii) provide copies thereof to the ADR. Within twenty-four hours of receiving any warnings or citations, Design-Builder shall inform the ADR in writing of the corrective actions undertaken and/or planned.

- b. Design-Builder shall complete corrective action within twenty-four hours or prior to any impending rain events, whichever is sooner, of receiving any warnings, citations, letters, emails, or other notices citing violations or deficiencies, from the Local Issuing Authority, the Georgia Environmental Protection Division, the United States Environmental Protection Agency, Design Professional, or the UGAA's Testing Consultant related to the Clean Water Act, the Georgia Water Quality Control Act, the Georgia Soil Erosion and Sedimentation Act, and/or the Land Disturbance Activities Permit or the NPDES Permit, or any other environmental Law or regulation.
 - i. If the appropriate corrective action is beyond the expertise of Design-Builder or will involve a change in design, construction, operation, or maintenance, which has a significant effect on a BMP with a hydraulic component, Design-Builder must immediately notify the ADR and the Design Professional and follow the ADR's direction for implementing the corrective action.
 - ii. If the appropriate corrective action is within the expertise of Design-Builder and does not involve a change in design, construction, operation, or maintenance, which has a significant effect on a BMP with a hydraulic component, Design-Builder shall implement the corrective action, note the change or action taken on the site Plan and have the revision on the site Plan signed and dated by the Design Professional and the ADR on their next visit to the site as being an acceptable and appropriate change or corrective action.
- c. With respect UGAA's right to correct Defective Work (*see* ¶¶ III(M)(12)(d) and X(C)), corrective Work not being completed by Design-Builder within twenty-four hours prior to any impending rain events, whichever is sooner, of receipt of the warning, citation, or other form of documentation with deficiencies:
 - i. Any warning or citation issued by the Local Issuing Authority, the Georgia Environmental Protection Division, the United States Environmental Protection Agency, or a deficiency documented in UGAA's Testing Consultant's report or that of the Design Professional, which may be issued as an email, shall serve as the Notice of Non-Compliant Work.
 - ii. The three-days written notice referred to in ¶¶ III(M)(12)(d) and X(C) shall be reduced to twenty-four hours or prior to any impending rain events, whichever is sooner, after written notice.
- d. After completion of the required corrective actions, Design-Builder shall contact the ADR and the entity that cited the deficiencies and request a re-inspection.

- e. Any fines, penalties, or negotiated settlements resulting from the noncompliance with the Clean Water Act, the Georgia Water Quality Control Act, the Georgia Soil Erosion and Sedimentation Act, Land Disturbance Activities Permit, NPDES Permit, or any rules, regulations, local ordinances and permits promulgated or issued thereunder on the part of Design-Builder or any Subcontractor shall be paid in full by Design-Builder with no cost to UGAA. Design-Builder may not use Design-Builder Contingency Account or charge the Cost of the Work to pay for any fines, penalties or negotiated settlements.

16. Environmentally-related default, stop Work, and termination for cause.

- a. The issuance of a citation or other by other noncompliance notice, United States Environmental Protection Agency, the Georgia Environmental Protection Division, or a Local Issuing Authority related to the Clean Water Act, the Georgia Water Quality Control Act, or the Georgia Soil Erosion and Sedimentation Act, Land Disturbance Activities Permit, NPDES Permit, or any rules, regulations, local ordinances or permits promulgated or issued thereunder, is sufficient cause for UGAA to stop Work for the entire Project at the cost of Design-Builder until the cited deficiencies are remediated to the satisfaction of UGAA. For this situation, in addition to the remedies available to UGAA under Article X, the following shall apply: "UGAA reserves the right, upon the issuance of a citation or other noncompliance notice, United States Environmental Protection Agency, the Georgia Environmental Protection Division, or a Local Issuing Authority, to immediately stop the Work of the entire Project by oral direction, at UGAA's or the ADR's sole discretion, in conjunction with written notice provided to Design-Builder within forty-eight hours thereafter. Design-Builder shall be solely responsible for all costs incurred in connection with the stop Work order, including without limitation any overtime or other expenses required to modify the Project Schedule and progress of the Work in order to achieve the Contractual Date of Substantial Completion. Design-Builder may not use Design-Builder Contingency Account to offset any costs related to the stop Work order. Design-Builder will not be granted a time extension for Work time lost to a stop Work order due to any such citation or other noncompliance notice."
- b. Noncompliance with any applicable portion of the Clean Water Act, the Georgia Water Quality Control Act, the Georgia Soil Erosion and Sedimentation Act, the Land Disturbance Activities Permit, the NPDES Permit, or any rules, regulations, local ordinances or permits promulgated or issued thereunder or any other Law, - or to correct noncompliance within twenty-four hours of notice thereof - is sufficient cause for UGAA to terminate this Agreement for cause as set forth in ¶ X(E) above - or to constitute a condition of Design-Builder Default as contemplated in ¶ X(A) above.

R. Georgia Environmental Policy Act: Whether or not an evaluation of the Project was required or has been made under the Georgia Environmental Policy Act ("GEPA"), Design-Builder and Design Professional, in undertaking this Work and the Design Services, become stewards of air, land, water, plants, animals, and environmental, historical, and cultural resources. As such, they shall perform all Work and Design Services in accordance with local, state, and federal rules, regulations, and other Law governing the protection of these resources.

ARTICLE XVI – DESIGN SERVICES

- A. **Design obligation imposed on Design-Builder.** Throughout this Article and elsewhere herein, language is used requiring performance of tasks and Design Services by Design Professional and imposing upon Design Professional certain obligations and responsibilities. This Agreement, however, contemplates that all such performance, obligations, and responsibilities are to be performed and fulfilled by Design-Builder, using a licensed, competent, and appropriately experienced Design Professional approved by UGAA. That said, professional conduct, provision of Design Services, representations, certifications, and other duties and obligations that must, by Law or this Agreement, be performed by licensed design professionals, are deemed here to be personal to Design Professional (as are duties to report and present) and shall be provided by Design Professional, which provision shall not relieve Design-Builder of any obligations hereunder. No contractual relationship, shared ownership, or any other relationship between Design-Builder and Design Professional shall prevent or excuse Design Professional from fully performing its professional duties and obligations with objectivity, professionalism, and without compromising the Design Professional Standard of Care set forth in this Article.
- B. **Basic Design Services.** In the absence of express terms to the contrary herein, and as may be further indicated or described in ¶ I(A)(2)(d) and in **Supplement A**, the Design Services, during preconstruction phase, and with respect to each Component Change Order and the GMP Change Order, shall be iterative, phased, and performed in accordance with the following:
1. **Investigation and programming.** Design Professional shall investigate the Project site, review available site surveys and geotechnical reports where provided by UGAA, examine, inspect, and measure any existing structures involved in the Project and the Services, review any existing UGAA programming, predesign studies, and preliminary studies, and shall prepare comments expressing its professional opinion as the adequacy, reasonableness, constructability, and other aspects of that programming, the site, and those studies. Design Professional shall be entitled to rely on the correctness of functional program information supplied by UGAA. If Design Professional has reason to believe that UGAA has (or must provide) information not otherwise indicated in the foregoing studies, surveys, and geotechnical reports, and that information is essential to Design Professional's competent performance of the Services, Design Professional shall, through the Design-Builder, request the additionally needed information from the ADR in writing before execution of this Agreement or at the earliest possible time thereafter, but in no case before it performs Design Services required under ¶ I(A)(2)(d). The absence of such a request shall be deemed to indicate the Design Professional's representation that it already possesses sufficient information to competently and completely perform the Design Services. Any programming shall be performed so as to enable the Project to achieve the sustainability certification, if any, indicated in ¶ I(Z) above.
 2. **Conceptual and Preliminary Design.** Design Professional shall review UGAA's programming information and prepare conceptual and preliminary designs, indicating functional relationships within the building(s) and the site, fundamental form analysis, narrative structural and mechanical systems description and calculations, sustainability, energy-efficiency, life safety, and design load calculations, narrative of design

calculations and assumptions, narrative of non-quantitative acoustical requirements of spaces and materials, and other information of a basic nature. Conceptual and Preliminary Design Phase Design Services shall be performed so as to enable the Project to achieve the sustainability certification, if any, indicated in ¶ I(Z) above. Presentation of designs shall be on rigid board and using PowerPoint, and each element shall be submitted to UGAA in both print and digital forms. Renderings shall be provided in accordance with [Supplement A](#). Narratives shall be updated with each subsequent phase of Design Services, and supplemented with further narrative as development of the design warrants and as may be requested by the ADR.

3. **Schematic Design Phase.** Design Professional shall prepare Schematic Design, including site and building plans (where applicable) showing the relative scale and relationship of building components, an outline specification describing in narrative form the major building environmental systems, structural and enclosure assemblies, and construction materials.
 - a. If a Stated Cost Limitation is indicated in information preceding Article I, or if UGAA subsequently issues one, Design Professional shall represent to UGAA in writing that, in its professional opinion (and based upon cost information exchanged with the Design-Builder): (i) the Work depicted in the Schematic Phase design presented can be built within the then-current Stated Cost Limitation (or the then-current GMP, if a GMP Change Order has been executed); and (ii) the design presented conforms to UGAA's needs as set forth then-current, approved Project Program.
 - b. Design Professional shall advise the ADR in writing as to the need, if any, for: (i) additional geotechnical survey and investigation to be performed or supplemented to reflect the current state of the design, building locations, foundation conditions, *etc.*; or (ii) any additional nonparty testing or analysis of existing structure(s) that are involved in the Project in order to determine its(their) suitability, capacity, *etc.* for acceptance of new Work or modification. This duty is ongoing.
 - c. As part of the Basic Design Services, and when requested by the ADR, and before preparing its final Schematic Design presentation, Design Professional shall make a preliminary presentation to UGAA of no fewer than three conceptual alternatives showing preliminary schematic designs, submitted for UGAA comment and review.
 - d. Presentation of Schematic Design shall include rigid color presentation boards, sample boards containing key materials, color diagrams, massing digital models, floor plans, site plans, elevations, representative building sections and wall sections, and schedules of materials, as well as updated narratives and calculations, PowerPoint presentation of the foregoing, and all presented to UGAA in both print and digital format. Renderings shall be provided in accordance with the [Supplement A](#).
 - e. Design Professional shall present a report to the ADR, examining the sustainability and energy aspects of the design and the Project – and expressly describing alternatives for the ADR's prospective consideration for all major design elements and building systems from the standpoints of acoustics,

sustainability, and energy-efficiency. Schematic Design Phase Services shall be performed so as to enable the Project to achieve the sustainability certification, if any, indicated in ¶ I(Z) above. At this, and at each subsequent stage of design, Design Professional shall conscientiously employ best industry practices for the consideration in the design process for prioritization of sustainability and energy-efficiency in the design.

- f. As part of the Basic Services, Design Professional shall develop and revise as many of the alternative preliminary schematic designs as needed to provide to the ADR a satisfactory and acceptable final Schematic Design.
4. **Design Development Phase.** Upon receiving UGAA's written approval of Schematic Phase design materials, Design Professional shall prepare Design Development Phase designs, showing (at each level or story) scaled site development and site utility plans; building floor plans; enlarged restroom, kitchen, and other complex space plans; roof plans; exterior elevations; interior elevations; general building sections at all significant design conditions; wall sections at all major significant design conditions; representative design and construction details, room finish schedules listed finish materials in each space to be constructed; a board to which swatches and samples of significant materials contemplated in the design are attached; an exterior rendered presentation showing a three-dimensional exterior view; a scaled layout of all major mechanical and structural systems; and detailed narrative technical specification describing all major building environmental systems, structural and enclosure assemblies, and construction materials.
- a. Design Professional shall represent to UGAA in writing that, in its professional opinion (and based upon cost information supplied by Design-Builder): (i) the Work depicted in the Design Development Phase design presented can be built within the then-current Stated Cost Limitation (or the then-current GMP, if a GMP Change Order has been executed); and (ii) the design presented conforms to UGAA's needs as set forth then-current, approved Project Program.
 - b. At approximately 50% completion of Design Development Phase Services, Design Professional shall make a preliminary presentation to UGAA for review and comment before preparing its final Design Development documents.
 - c. Design Professional shall prepare and present a study examining the sustainability options to be considered in the design. Where required in **Supplement A**, the study shall include separate model and analysis of energy use and design.
 - d. Presentation of Design Development shall include a digital model with fly-through viewing capability (if required pursuant to **Supplement A**), rigid color presentation boards, color diagrams, floor plans, site plans, elevations, all significant building sections and wall sections, interior color perspective renderings in all key spaces depicting form and volume, materials, and acoustical measures addressed in the design, and detailed color exterior renderings showing siting and materials and detailed building form, and schedules of materials, as well as updated narratives and calculations, PowerPoint presentation of the foregoing, and all presented to UGAA in both print and digital format. Renderings shall be provided in accordance with **Supplement A**.

- e. Design Professional shall develop and revise preliminary Design Development Phase Designs (and presentations) as often as needed to timely provide to the ADR a satisfactory final Design Development Phase Design.
 - f. Design Development Phase Services shall be performed so as to enable the Project to achieve the sustainability certification, if any, indicated in ¶ I(Z) above.
5. **Construction Documents Phase.** Upon receiving UGAA's written approval of Design Development Phase design materials, Design Professional shall prepare scaled drawings, textual specifications, and other Construction Documents indicating and describing in precisely detailed and technical terms the Scope of Work to be constructed by the Design-Builder.
- a. Design Professional will seek and obtain from the ADR other documents, *e.g.*, Design-Builder Agreement, waivers, affidavits, *etc.*, that UGAA intends for Design Professional to incorporate in the Contract Documents for purposes of bidding, negotiation, permitting, and construction.
 - b. Unless another format is approved by the ADR, specifications shall be bound in 8.5 x 11 inch volumes, organized and numbered consistent with the most recently promulgated six-digit section format developed by the Construction Specifications Institute.
 - c. In addition to other coordination required hereunder, Design Professional shall coordinate the Construction Documents with the requirements in the Design-Builder Agreement so as to require Design-Builder to provide adequate types and quantities of items required therein (*e.g.*, attic stock, copies of submittals, *etc.*).
 - d. Construction Documents shall specify in detail all tests to be performed on the Work or on the Project incidental to the Work, including but not limited to testing to be performed by UGAA's Testing Consultants.
 - e. Unless another format is approved by the ADR, Construction Document drawings are to be prepared on 24" x 36" black-and-white format, with each drawing numbered, dated, and indicative of source.
 - f. Design Professional shall, at times requested by the ADR, submit intermediate phase (in-progress) Construction Documents for UGAA review and comment, and shall modify the Construction Documents accordingly to reflect UGAA comments. To the extent that presentation of updated designs and drawings is requested by ADR during Construction Documents Phase, presentation shall include rigid color presentation boards, color diagrams, detailed digital models, PowerPoint presentation of the foregoing, and all presented to UGAA in both print and digital format. Updated renderings shall be provided in accordance with **Supplement A**.
 - g. Design Professional shall assure in its Construction Documents that the Work indicated, if built as drawn, will allow all pipes passing through floors, walls, and ceilings to be installed with sufficient space between them to permit installation of pipe insulation as well as floor, wall, ceiling, and other components without compromise or cutting of insulation or other components.

Roughed-in dimensions shall be indicated to accomplish this requirement. The design shall anticipate and locate all equipment that must be serviced, operated, or maintained in fully accessible positions. This provision includes but is not limited to valves, traps, cleanouts, motor, controllers, switchgear, panel boxes, drain points, filters, access doors, and fire dampers. If spaces, dimensions, or other design conditions do not permit compliance with this paragraph, Design Professional shall modify the design and Construction Documents accordingly.

- h. All Construction Documents shall bear detailed notation, designation (by bubble or cloud), date, and source of revisions as they are developed. This process shall continue throughout the course of the Project – and as part of the preparation of the Conformed Set of Construction Documents.
- i. To the extent that building information modeling (“BIM”) and/or computer-aided design and drafting (“CADD”) is/are employed as a means of preparing or using Construction Documents, Design Professional shall at all times retain control of the model and CADD drawings and supervise any contributions or modifications to them. DPR shall, at all times, retain responsibility for model integrity and for professional quality of the information and data comprising the model or CADD files. This responsibility, and duties related to it, are nondelegable; and they are absolute, with no neglect or abdication thereof being permitted. By applying his or her name and professional seal to paper or CADD documents or a digital model used for construction, DPR represents that the contents comply with all requirements for Construction Documents set forth herein, and that the Design Services performed in preparing them meet or exceed the requisite Design Professional Standard of Care set forth herein. Electronic seals and signatures of Design Professional that are applied to Construction Documents shall be applied in a way that they self-destruct and/or deny access to the file if data are modified or changed without direct authority of the DPR.
- j. Construction Documents Phase Services shall be performed so as to enable the Project to achieve the sustainability certification, if any, indicated in ¶ I(Z) above.
- k. When Construction Documents are 50% complete, Design Professional shall deliver to the ADR: (i) complete digital and print copies of progress sets of Construction Documents; (ii) an updated study examining the sustainability options considered in the design that (when indicated in **Supplement A**) includes a separate model and analysis of energy use and design; (iii) boards containing samples and swatches of materials and finishes; (iv) a report on progress of sustainability certification and applications (if required under Article I); (v) updated renderings (provided in accordance with **Supplement A**) reflecting the design depicted in the in-progress Construction Documents; and (vi) a report (and draft specifications) for all aspects of the design for which delegation is anticipated under ¶ XVI(C).
- l. When Construction Documents are 80% complete, Design-Builder shall submit a written report to UGAA, stating its estimation of Cost of the Work plus Construction Overhead Costs, and describing how that compares with the then-current Stated Cost Limitation (or the then-current GMP, if a GMP Change Order

has been executed), and updating, in detail, its sustainability and energy-efficiency report, as well as the Construction Documents, commensurately.

- m. When Construction Documents are 80% complete, Design Professional shall deliver to the ADR: (i) an updated set of all HVAC, life safety, and structural engineering calculations; (ii) a statement indicating that, in Design Professional's opinion, the design and Work depicted in the Construction Documents satisfies all applicable codes, ordinances, and other Laws, (iii) a complete copy of its notes and research of applicable building and fire codes (a requirement not satisfied by Design Professional's mere provision of copies of building, fire, or other applicable code pages); (iv) updated materials and finishes sample boards and an initial three-ring Finishes Binder containing anticipated finish materials contemplated in the Construction Documents; (v) updated energy models and sustainability and energy-efficiency reports; (vi) detailed analysis of projected energy consumption of the built Project; and (vii) updated renderings of the final design. The foregoing shall be provided sufficiently in advance of the due date to allow two weeks for UGAA review and comment and sufficient time for Design Professional to modify the Construction Documents accordingly.
- n. When the Construction Documents are 100% complete, Design Professional shall: (i) deliver to the ADR two complete sets of FOR CONSTRUCTION Construction Documents (designated as such, and dated and signed by the DPR, and bearing the DPR's professional seal); (ii) provide UGAA with updated cost, code, and other information and data created or assembled during performance of the Construction Documents Phase Services; (iii) indicate that (based upon cost information supplied by the Design-Builder) Work depicted in the 100% Construction Documents can be built within the then-current Stated Cost Limitation (or the then-current GMP, if a GMP Change Order has been executed); (iv) present a final energy model (if required under [Supplement A](#)) and reports on sustainability and energy-efficiency of the design; and (v) certify that the design indicated in the Construction Documents conforms to UGAA's needs as set forth then-current Project Program and with all applicable codes, ordinances, and other Laws. The foregoing shall be provided sufficiently in advance of the due date to allow two weeks for UGAA review and comment and sufficient time for Design Professional to modify the Construction Documents accordingly for timely release. At this stage of completion, Design Professional shall, to the extent possible, submit documents for review, comment, and approval by the State Fire Marshal (or UGA Fire Safety Division officials, where authority therefor has been delegated by the State Fire Marshal) and other permitting agencies of government having jurisdiction over the Project.
- o. Once FOR CONSTRUCTION Construction Documents are issued and accepted by UGAA for a Component Change Order or for the overall GMP Change Order, each subsequent Change Order modification of FOR CONSTRUCTION Construction Documents shall bear a notation, designating (by bubble or cloud or other approved graphic device) date, scope, and source of revisions as they are developed or revised. This process shall continue throughout the course of the Project – and as part of the preparation of the Conformed Set of Construction Documents. The Work indicated in prior Component Change Order FOR

CONSTRUCTION Construction Documents may be indicated in GMP Construction Documents (and subsequent Change Orders thereto) without distinguishing bubble, cloud, or other distinguishing graphic device

- p. The foregoing Services shall be supplied, as appropriate and upon request by the ADR, for each Component of the Work in anticipation of Component Change Orders as well as the GMP Change Order.
 - q. As a condition precedent to UGAA's obligation to pay: (i) DPR shall manually apply his or her professional seal and hand-written signature to each sheet of drawings and to the cover of each bound volume of drawings and specifications; and (ii) Construction Documents prepared by professional Subconsultants shall similarly bear the Subconsultants' professional seals and hand-written dated signatures on each sheet of drawings and on the cover of bound volumes containing specifications pertaining to the Services provided by the Subconsultant(s). The provisions above in this paragraph for electronic seals on BIM models and CADD drawings notwithstanding, Design Professional shall also submit to the ADR at least two completed print sets of all FOR CONSTRUCTION Construction Documents, hand sealed and signed by DPR.
6. **Design-related Preconstruction Services.** As part of the Basic Design Services, Design Professional shall perform the following:
- a. **Permit applications.** Prepare and submit application(s) for Land Disturbance and National Pollution Discharge Elimination System ("NPDES") Permits, building permits, health department permits, and any other governmental permits on the overall Project, as well as on applicable Component Change Orders and the GMP Change Order, with application fees being reimbursed to Design-Builder at-cost upon proper and timely substantiation and invoicing.
 - b. **Bid packages; fast track construction.** Advise UGAA and Design-Builder regarding the strategic segregation, preparation, and issuance of multiple and/or separate bid packages related to Work to be performed by Subcontractors and Lead-Time Items (*i.e.*, those requiring advance procurement to adhere to Project Schedule) – and prepare and issue such packages in conjunction with Design-Builder. Such packages shall, at the request of the ADR, be configured so that phased or "fast-track" construction can be used – *i.e.*, where certain components of the Work are constructed before Construction Documents are complete for other components of the Work. As part of the Basic Design Services Fee, Design Professional shall prepare Component Construction Documents, GMP Change Order documents, and other documents required or requested to implement fast-track, phased, or otherwise segmented construction within the then-current Stated Cost Limitation (or the then-current GMP, once the GMP Change Order is executed). Design Professional will make such iterative, substantive revisions, modifications, adjustments, and clarifications as are needed throughout the design and construction process in order to indicate in the then-current Construction Documents the whole Work, and to accurately reflect those portions of the Work in-progress or completed before subsequent portions are established in Construction Documents.

- c. **Procurement assistance.** Assist UGAA in evaluation and selection of potential Subcontractors. Participation by DPR or DP Project Manager and Design Professional's Subconsultants shall include attendance at interviews or other procurement-related meetings, the number of which is not limited.
 - d. **Facilitating Design-BUILDER's performance of Preconstruction Services.** Communicate and coordinate with Design-BUILDER, providing copies of the most recent designs, models, drawings, and specifications and other Project Information for Design-BUILDER's use in preparing a Preconstruction Budget and, ultimately, a GMP Change Order.
 - e. **Evaluation of alternatives.** Evaluate alternatives products and materials proposed by Design-BUILDER.
 - f. **Preconstruction meetings.** DPR and/or DP Project Manager shall attend preconstruction meetings as requested by the ADR, the number of which is not limited herein. Design Professional will assure attendance by those Subconsultants whose Services (or Work related to them) will likely be discussed in the meetings, the number of which is not limited.
 - g. **Cost analysis.** Assist UGAA in the review and analysis of Preconstruction Schedule of Values and Preconstruction Budget prepared by Design-BUILDER.
 - h. **Continual updating of the design and documents.** At all times during the course of the Services, Design Professional shall, as part of the Basic Services, continually modify the designs, drawings, specifications, Construction Documents, and other Deliverables to reflect the comments, input, direction, or other requests by UGAA, which updates shall be presented to UGAA as often as needed until UGAA is satisfied, and which satisfaction is a condition precedent to Design Professional's continuation of the Design Services.
 - i. **Other professional Services.** Provide such other professional design-related Preconstruction Services as UGAA may request to implement the Design-BUILDER Agreement, and as may be listed in **Supplement A**.
7. **Professional Construction Administration Phase Services ("CA Services").** As part of the Basic Design Services, and as a condition precedent to UGAA's obligation to pay, Design Professional shall: (i) visit the Project site biweekly or more often where requested by the ADR, and, in all cases, as often as necessary in order for Design Professional to be thoroughly familiar with the progress of the Work and the Work-in-Place and to determine whether the Work-in-place conforms with requirements of the Contract Documents; and (ii) attend Periodic Project Meetings when, or as often as requested, by the ADR.
- a. **Construction observation.** Design Professional shall submit to the ADR, within three days of each Project-site visit, a consecutively numbered construction observation report ("COR"), describing the Work-in-place observed (and, when requested by the ADR, materials stored off-site), indicating the conditions on the job site, the Work being performed, the progress achieved, and issues raised and addressed, specifying each instance in which Work-in-Place that fails to conform to requirements of the Contract Documents, and noting points of challenge or disagreement with local building and other governmental officials.

- i. Design Professional shall indicate in writing to the ADR each defective or noncompliant element of Work-in-place that should be rejected, condemned, and/or corrected.
 - ii. Design Professional shall describe in detail all questions and issues raised requiring clarification, resolution, or potential modification of the Contract Documents or the Work – whether or not the issue was resolved at the time of the COR.
 - iii. At the time of Substantial Completion of the Work, Design Professional shall inspect the Project with Design-Builder and shall: (A) prepare a Punchlist of defective or incomplete Work remaining; (B) issue copies to the ADR and Design-Builder; and (C) re-inspect the Work, updating the Punchlist as corrective progress of the Work justifies.
 - iv. In addition to any other indemnification required hereunder, Design-Builder and Design Professional shall indemnify UGAA, UGA, and the Board of Regents for all actions, controversies, debts, claims, damages, judgments, executions, orders, and demands of any kind in whole or in part arising out of or related to Design-Professional's failure to timely and fully satisfy the requirements of this ¶ XVI(B)(7).
 - v. Design Professional's timely satisfaction of the foregoing requirements of this ¶ XVI(B)(7) is a condition precedent to UGAA's obligation to pay amount due to Design-Builder under this Agreement.
- b. **Shop drawings and other Submittals.** Design Professional shall examine shop drawings and other Submittals to determine the compliance of the Work indicated therein with the requirements of the Contract Documents, and shall specifically note discrepancies or deviations, if any, between Submittals and the requirements of the Contract Documents.
- i. Design Professional shall, within fourteen days, review, comment, approve (if appropriate), and return shop drawings, samples, and other submittals (collectively, "Submittals") issued by Design-Builder. Design Professional shall process Submittals in fewer than fourteen days if requested by the ADR in order to serve progress of the Work.
 - ii. Design Professional shall not be responsible for confirming quantities and dimensions noted in shop drawings and other Submittals; but shall, upon becoming aware of errors or likely errors in dimensions or quantities, immediately bring those errors or likely errors to the attention of the Design-Builder in writing. If Design-Builder subsequently fails to correct them, Design Professional shall report the errors to the ADR, as well.
 - iii. Shop drawings are not Contract Documents; they are merely components of Design-Builder's exercise of its duties to manage the means and methods of construction. Design Professional shall not use Shop Drawing or Submittal review and approval process to effect a change in the Design-Builder's Scope of Work; and, in the absence of a duly executed, change-specific Change Order, no modifications suggested or required by comment or notation to the shop drawings or other Submittals shall be

deemed to change the requirements of the Contract Documents. Design Professional shall thereafter report any uncorrected errors to the ADR.

- iv. Design Professional shall keep a record set of shop drawings and other Submittals (including intermediate and final versions) and will make all or any of them available to the ADR upon request. Design Professional shall deliver the complete set of shop drawings and other Submittals to the ADR upon request and at Substantial Completion of the Work. Where shop drawings are supplied in electronic form, all Design Professional comments shall be digitally integrated and highlighted as such; and Design Professional shall preserve the data intact so that a record is kept distinguishing between those data that are provided by Design-Builder and those comments and review responses that are applied by Design Professional. If shop drawings are supplied in print form, and Design Professional's comments are applied to prints, Design Professional shall scan the final results to create an electronic .pdf for submittal to the ADR, upon request, and at the conclusion of Services. Where marks or notations are made in color, Design Professional will provide color scans to the ADR.
- v. Where Design Professional's final comments on shop drawings or other Submittals state "rejected," "approved as noted," "exceptions noted," or other comments that indicate that the shop drawings or other Submittals were not complete or not completely compliant in the form submitted, Design Professional shall inform the ADR in writing, before the subject Work is installed, of the noncompliant status and/or deviations that remain to be corrected before installation of the Work – or confirm to the ADR that installation was consistent with the requirements of the Contract Documents or with Design Professional's comments on Submittals.
- c. **Change Orders.** Design Professional shall analyze PCO's received from the ADR or Design-Builder, and shall, within five days, respond in writing thereto to the ADR. Design Professional shall review and report to the ADR all requests for Change Orders and other claims made during the course of construction; when requested, Design Professional shall assist the ADR in preparation of Change Orders.
- d. **RFI's; ASK's.** Design Professional shall promptly review all RFI's, and shall, within five days, provide sequentially numbered responses, copied concurrently to the ADR and Design-Builder. If Design Professional contends that the answer to the RFI is set forth in the Construction Documents, it shall specify the precise specification or drawing within the Construction Documents containing the answer. If an answer to an RFI can be best be given in drawing form, or if a drawing will serve to clarify (not change) a design, ASK's can be issued by Design Professional to the ADR and Design-Builder. Each page of ASK's and answers to RFI's shall be signed by the DPR or the DP Project Manager.
- e. **Payment Application review.** As part of the CA Services, Design Professional shall review Design-Builder's draft Payment Applications and, within five days,

recommend to the ADR whether the amounts applied for are proper and whether the Work on which those amounts are based appears to have progressed sufficiently to justify the Application and complies with the Contract Documents. If Design Professional recommends withholding part or all of an amount applied for, Design Professional shall provide the ADR with written indication of the specific grounds for withholding. Where justified by progress of the Work, Design Professional shall certify submitted Interim Payment Applications in the place provided for professional certification on form AIA G702. Design Professional shall perform this obligation with appropriate professionalism and consistent with the Design Professional Standard of Care set forth herein without regard to whether Design Professional is engaged by Design-Builder as a Subcontractor or whether Design Services are provided by Design-Builder in-house.

- f. **Evaluation of proposed substitutions.** At all times during the course of the Project, upon request of the ADR or Design-Builder, Design Professional shall evaluate and report in writing to the ADR regarding the merits of proposed substitutions of alternative products or systems for those indicated or specified.
- g. **Duty to report flaws in design and documents.** If Design Professional knows, or has reason to believe, that the Work indicated in the Contract Documents is, or may be, at variance with applicable ordinances, codes, rules, regulations, or other Laws, or with known interpretation of those Laws by governmental officials having jurisdiction over the Project, it shall promptly notify the ADR in writing of such flaws. If Design Professional fails to inform the ADR when it learns, or has reason to learn, that the Work depicted in Construction Documents does not comply with applicable ordinances, codes, rules, regulations, or other Laws, and the noncompliant Work is performed and/or UGAA incurs costs as a result of the Design Professional's failure to give prompt written notice to UGAA of that noncompliance, Design Professional shall bear all costs relating to or arising out of that performance and the requisite correction that follows – and shall indemnify the Indemnitees therefor.
- h. **Closeout and commissioning.**
 - i. As part of its Basic Design Services, Design Professional shall collect, review, and assemble (and, to the degree necessary, obtain from Design-Builder) all Closeout Materials required in the Contract Documents. Once Design Professional has reviewed the Closeout Materials and approves them as complete and accurate, it shall deliver them (in the number and format required hereunder and in this Design-Builder Agreement) to the ADR. Design Professional shall also make inspections necessary to determine that all remaining incomplete or defective Work, and any Punchlist Work, is completed in accordance with the Contract Documents, reporting the results of such inspections to the ADR. Commissioning-related Services shall be provided by Design Professional in the manner requested by the ADR.
 - ii. **Updated Finishes Binders.** During the course of the construction, and at the conclusion of CA Services, Design Professional shall submit to the

ADR, upon request, a three-ring binder(s) containing samples and swatches of all finish materials used in the Work (“Finishes Binders”). Products and materials contained in Finishes Binders shall be fully labeled and shall bear identification of the product or material using the same finish tags, labels, and specification numbers used to indicate the product or material in the Construction Documents. As part of the Basic Services, Design Professional shall revise and update the samples, swatches, materials in the Finishes Binders during the course of construction to contain and reflect with the materials actually approved, supplied, or installed by Design-Builder.

- iii. **Conformed Construction Documents.** At the Realized Date of Substantial Completion of the Work (or more often if requested by the ADR), Design Professional shall prepare and update a Conformed Set of Construction Documents, reflecting all Changes, clarifications, ASK’s, answers to RFI’s, and pertinent As-Built information, in accordance with Article III herein.

- 8. **Coordination with Separate Consultants.** UGAA may from time-to-time engage separate and independent consultants, suppliers, and vendors (“Separate Consultants”) to perform services related to the Project. As part of its Basic Services, Design Professional shall coordinate its Design Services with those of the Separate Consultants. Design Professional shall coordinate the design and Construction Documents with UGAA in order to accommodate the separate installation of UGAA-specific equipment, devices, furnishings, conduit, wiring, supporting devices, or other Project-related elements (“UGAA Equipment”) – whether or not procurement or installation of actual UGAA Equipment is included in the Work indicated in the Contract Documents.
- 9. **Completion inspections; eleventh-month inspection.** In addition to other inspections and observations required hereunder, Design Professional shall, as part of the Basic Services: (a) inspect the Work as often as necessary at the time of Realized Substantial Completion and Final Completion; and (b) conduct with Design-Builder an inspection eleven months following the Realized Date of Substantial Completion; in each instance reviewing, commenting upon, and (where appropriate) approving the Design-Builder’s report of the findings.

- C. **Limited delegation of professional responsibility.** Except for Design Professional’s engagement of Subconsultants in accordance with Article VII, Design Professional shall not delegate professional responsibility for the Project or its responsibility to provide complete detailed designs, drawings, and specifications indicating and describing the Work to be performed by Design-Builder. That said, Design Professional may, upon written notice to the ADR, delegate to Design-Builder design responsibility for the following systems and assemblies: (a) fire suppression systems design; (b) fire alarm systems design; (c) light-gage metal framing design; (d) safety netting design; (e) curtain wall design; and (f) elevator design. In those cases, (and otherwise where express written consent to delegation is given by UGAA), Design Professional shall identify in detail the standards of performance and regulations to be satisfied by Design-Builder in its performance of the delegated design and its installation of the related Work, and it shall require Design-Builder to engage a Georgia-licensed Design Professional or other Georgia-licensed provider of such services as a Subcontractor (“Delegated Professional Designer” or “DPD”), to sign and seal the design and construction documents with

respect to those discrete and approved portions of the Work. Permitted delegation shall not relieve Design Professional of its obligation to properly specify detailed performance standards and to carefully review resulting Submittals and other documents or Project Information provided by Design-Builder or its DPD for compliance with the requirements of the Contract Documents; and Design Professional shall reject those shop drawings and other Submittals or documents that do not comply to the requirements of the Contract Documents or do not bear appropriate certifications, signatures, and professional seals. The mere requirement that shop drawings or other Submittals bear the seal and signature of a licensed professional shall not, in and of itself, indicate delegation of design obligations for the Work depicted in the Construction Documents or Component Construction Documents; nor does it indicate delegation of design responsibility for those Construction Documents or Component Construction Documents to the Subcontractor or Design-Builder, which delegations, to be permitted at all, must be express in those Contract Documents.

- D. **Adherence to Law; Design Professional Standard of Care.** Design Professional's performance of the Design Services, and the Deliverables resulting therefrom, shall conform to all applicable Laws. By signing this Agreement, Design-Builder agrees and represents to UGAA that Design Professional possesses that degree of care, learning, skill, experience, and ability which is ordinarily possessed by members of its profession performing professional services in similar circumstances and further agrees that, in the performance of the duties set forth herein, it will require and cause Design Professional to exercise such degree of care, learning, skill, and ability as is ordinarily employed by licensed professionals under similar conditions and like circumstances and shall perform such duties without neglect ("Design Professional Standard of Care"). No act, directive, or communication from UGAA, Design-Builder, or any other person or entity shall relieve Design Professional of this obligation. Design-Builder agrees that it will allow or permit Design Professional to take no calculated risks in the design of the Work and that budgetary or time limitations are not justification for breach of sound principles of professional design and service or of proper exercise of professional judgment. Design Professional shall perform all obligations required of it in this Agreement with appropriate professionalism and consistent with the Design Professional Standard of Care set forth herein without regard to whether Design Professional is engaged by Design-Builder as a Subcontractor or whether Design Services are provided by Design-Builder in-house.
- E. **Design Professional's representations and warranties.** In addition to other representations and warranties provided by Design Professional herein, and as an inducement to UGAA to enter this Agreement, Design-Builder and Design Professional jointly and severally warrant and represent the following:
1. **Competence.** Design Professional: (a) is sufficiently qualified and experienced to competently and efficiently perform its obligations under this Agreement in accordance with the requisite Design Professional Standard of Care; (b) is a sophisticated business entity, experienced and regularly involved in the application of skill and knowledge to provide Design Services of the type required on this Project; (c) will, at all times, supply an appropriate number of skilled and experienced licensed professionals and other personnel so as to proficiently and timely perform the Design Services in a manner that complies with all applicable Laws and this Agreement; and (d) will impose and enforce its obligations to UGAA hereunder upon its Subconsultants for their respective parts of the Design Services.

2. **Licensing.** Design Professional possesses all licenses, certifications, tax bonds, Services-specific bonds, and authorities (required by governmental authorities having jurisdiction over the Property, the Services, or the Project) to perform the Design Services – and that Design-Builder will assure that Design Professional maintains them throughout the performance of the Design Services.
3. **Insurance.** Design Professional has provided, and will continue to provide, insurance coverage as required in Article XII and by Law, and will substantiate that provision by supplying to the ADR the requisite documentary proof of coverage: (a) upon execution of this Agreement; (b) between thirty and sixty days in advance of each policy's renewal date; and (c) at other times when requested by the ADR.
4. **Acceptance of site conditions.** Design Professional: (a) has visited the site; (b) has thoroughly reviewed the Scope of Work sought by UGAA and the existing conditions on-site; (c) has visited and inspected existing structure(s) (if any) to be modified, renovated, or otherwise affected as part of the Work; (d) is aware of the conditions and limitations relevant to the Project and the site; and (e) has determined that the above-noted Design Period and Contract Time are sufficient to allow its diligent, conscientious, timely, and complete performance of Design Services in accordance with the terms of this Agreement and consistent with the above-stated Design Professional Standard of Care.
5. **Design-related warranties.** Design-Builder and Design Professional jointly and severally warrant to UGAA that the design and the Design Services provided hereunder will reasonably meet the intent of UGAA's program, are consistent with sound principles commonly used by Design Professionals under similar circumstances, and the resulting designs and Construction Documents will indicate Work that is constructible by a qualified Design-Builder using appropriate and reasonably economical construction methods. Design Professional further warrants to UGAA that the technical specifications of equipment specified by Design Professional will meet or exceed industry standards and that designs and Construction Documents will permit installation in a useable configuration with appropriate and available utilities. Design-Builder and Design Professional jointly and severally further warrant that, if the Work is constructed in accordance with the Contract Documents, it will comport with the intended use of UGAA (as set forth herein and in **Supplement A** and in the Project Program and as reasonably inferable therefrom) – and will comport with the Laws and requirements of governmental authorities having jurisdiction over the Project; and that:
 - a. Where the Work involves new construction, Design Professional has an absolute nondelegable duty to assure that the Work, as designed, is capable of stability and support – and is incapable of, and unsusceptible to, design-attributable collapse, fire, or other damage if constructed as designed.
 - b. Where the Work involves renovations or other modifications of existing structure(s), Design Professional has an absolute nondelegable duty (and sole responsibility) to assure that both the existing structure(s) to remain and the new Work are capable of stability and support as designed, and that both are incapable of, and unsusceptible to, design-attributable collapse, fire, or other damage if constructed as designed. Portions of existing structure(s) to remain

shall be examined by Design Professional, and measures to achieve the foregoing are a key part of the Design Services.

- c. Nothing in this warranty shall limit or diminish Design Professional's obligations and responsibilities set forth elsewhere herein or under Law; nor shall this warranty be construed to limit Design Professionals liability for intentional or negligent acts or conduct inconsistent with the requirements of this Agreement or Law.

- 6. **Materiality of representations.** Design-Builder acknowledges and agrees that its satisfaction (and that of Design Professional) of each of the preceding representations and warranties is a material obligation of Design-Builder under this Agreement.

- F. **Responsibility for planning and professionally executing the Services.** Design-Builder and Design Professional shall be responsible for the means, methods, techniques, sequences, and procedures for performing the Design Services and for coordinating those Design Services with others. No act, communication, or representation of UGAA, the ADR, or any other person or entity shall relieve Design-Builder or Design Professional of their respective obligations to competently and timely perform the Design Services according to this Agreement, the applicable Design Professional Standard of Care, and applicable Laws. Design Professional shall supervise and direct the Design Services, using appropriate skill and attention.
- G. **Design Professional's Closeout Materials.** Concurrent with Design-Builder's submittal of its Final Payment Application, Design Professional shall, as condition precedent to UGAA's obligation to pay, provide the ADR with the following:
 - 1. **Design Professional Waiver & Release Upon Final Payment** in the form supplied herewith as **Supplement G1**; and
 - 2. **Design Professional Final Affidavit** in the form supplied herewith as **Supplement H1**.
- H. **Incidental certifications.** Design Professional shall sign and certify appropriately prepared and executed copies of document forms supplied to Design-Builder within the various **Supplements**. In addition to those and other required certifications, Design-Builder will obtain for UGAA from Design Professional such additional certifications requested by UGAA pertaining to the Project, the Design Services, Subconsultants, or others related to the Project as may be requested by the ADR. Certifications requested may be relied upon by UGAA and nonparties, including but not limited to Separate Contractors, lenders, and units of government. Design Professional will not be required to certify facts of which Design Professional has no knowledge or those that cannot be determined by Design Professional upon diligent review or inquiry. With respect to certifications of Design-Builder Payment Applications, Design Professional shall endeavor to reasonably estimate progress of the Work relative to then-current Schedules of Values approved by UGAA.
- I. **Design Professional's payments to Subconsultants.** Before Design Professional may allocate funds received from Design-Builder (or from UGAA, in those cases where Design Services are provided in-house by Design-Builder) for Design Professional's own use, it must first disburse amounts received from Design-Builder to those Subconsultants whose Design Services were invoiced to (and paid by) Design-Builder (and/or UGAA, as the case may be). By submitting an Invoice for Services, Design Professional represents that all Subconsultants have been fully paid out of funds previously paid to Design Professional by Design-Builder, and that no amounts included in the submitted Invoice for Services for a Subconsultant's Design Services will, upon

Design Professional's receipt of payment, be withheld from that Subconsultant. Timely payment to Subconsultants is among the material elements of Design Professional's performance. Design-Builder's enforcement of this provision is among the material elements of its performance.

- J. **Timing of provision of Design Services.** Design Professional shall begin performing the Design Services within the time specified in ¶ I(B) - and shall continue performing expeditiously and without interruption until the Design Services required of it hereunder are complete and accepted by UGAA. The design and Construction Documents shall be completed and delivered to UGAA and Design-Professional in accordance with the foregoing on or before the dates required in the Project Schedule. Design Professional shall also meet interim milestone dates set forth the provision of Design Services in the Project Schedule.
- K. **Professional seals.** The dated signature and professional seal shall appear on each sheet of FOR CONSTRUCTION Construction Documents (and on the cover of each bound volume of Specifications) in which any product of Design Professional is contained or reproduced; and the same applies to Subconsultant's Design Services.
- L. **Design development or fast-track process.** Basic Design Services include, but are not limited to, the development of designs and documents, response to UGAA comments and request or modification of designs and Construction Documents such that the Work indicated in them can be performed and constructed within the Stated Cost Limitation (or the GMP, once the GMP Change Order is executed), and implementing and facilitating fast-track and/or staged (or phased) design and construction. Those activities, therefore, shall not be the subject of Additional Design Services compensation; nor shall they be the object of a Change Order.
- M. **Evaluation of substitutions.** At all times during the course of the Project, upon request of the ADR or Design-Builder, Design Professional shall evaluate and report in writing to the ADR regarding the merits of proposed substitutions of alternative products or systems for those indicated or specified.

ARTICLE XVII - NOTICES AND REPRESENTATIVES

- A. **Notices.** Formal notices, objections, and demands ("formal notice") issued by Design-Builder shall be delivered to the ADR by Statutory Overnight Delivery and shall be signed by the person signing below for the Design-Builder. Except where issuance of "formal notice" is expressly required of UGAA herein, demands and notices issued by UGAA may be delivered to Design-Builder by e-mail, U.S. Mail, Statutory Overnight Delivery, personal delivery, or any other means deemed reliable by UGAA. Formal notices issued hereunder by UGAA shall be delivered to the attention of the person signing below at the address for Design-Builder stated in the information preceding Article I by Statutory Overnight Delivery and shall be signed by the ADR or the person signing below for UGAA (or its designated representative). Except for PCO's (notice of which can be effective if their receipt is acknowledged by "reply" e-mail from the ADR containing a copy of the PCO acknowledged), electronic delivery alone of required notices from Design-Builder that potentially affect the Scope of Work, Project Schedule, GMP, or Contract Time is insufficient to satisfy this requirement. Design-Builder shall, upon receipt, electronically transmit to the ADR a scanned copy and concurrently send to the ADR (by Statutory Overnight Delivery and within twenty-four hours of its receipt), all original copies (including delivery envelopes or packages) of any formal notices, claims, citations, or demands of any kind that it receives from governmental authorities or other nonparties related to this

Agreement, the Work, the Project, or the Property in which risk to the interest, funds, Project, or Property of UGAA, UGA, or the Board of Regents is possible – indicating in each case in writing how the notice, demand, or claim was received, when, and from whom. Within five days of that receipt, Design-Builder shall supplement the information sent by delivering to the ADR Design-Builder’s own initial written assessment of the notice, demand, or claim received and detailed facts of which Design-Builder is aware concerning that notice, demand, or claim.

- B. **Limited use of electronic signatures.** Electronic signatures may not be used to execute Change Orders, affidavits, certifications, Payment Applications, or other documents of material significance – originals of each of which must bear original signatures. ITC’s, PCO’s, answers to RFI’s, ASK’s, and informal requests and communications can be signed electronically, *i.e.*, with the author’s name, title, and organization expressly indicated in the transmission. The ADR will keep original versions of Change Orders; and may distribute copies thereof electronically. Design-Builder shall have access to originally signed versions of Change Orders upon request.
- C. **Authority of the ADR and UGAA’s undersigned representative.** The ADR is authorized to administer this Agreement on behalf of UGAA with respect to day-to-day Project-specific matters, as described herein. Although the ADR may execute UGAA-generated ITC’s and Change Orders with a value not-to-exceed value of \$10,000.00 (that do not extend the Contract Time), only the authorized representative signing below for UGAA (or the Director of Athletics or another person expressly appointed in writing by UGAA) shall have the authority to modify this Agreement by signing larger Change Orders and those that extend the Contract Time. No other person or entity is authorized to execute Change Orders or otherwise bind UGAA or act in UGAA’s behalf in modifying the terms of this Agreement, the Scope of Work, the then-current approved Project Schedule, GMP, or Contract Time. Things sent to or by the ADR shall be deemed to be sent to or by UGAA.
- D. **Authority of Design-Builder’s Representative.** The person signing below for Design-Builder, the designated Project Superintendent and Project Manager, and other persons as may be subsequently designated in writing by Design-Builder are authorized to act on behalf of Design-Builder with respect to day-to-day matters relating to this Agreement and Project. Change Orders modifying the GMP, Contract Time, the then-current approved Project Schedule, or Scope of Services must be signed in writing by the person signing below on behalf of Design-Builder (or someone expressly appointed by Design-Builder in writing as its authorized designee of Design-Builder).
- E. **Authority to execute this Agreement.** The persons signing below represent that they are authorized to represent and bind their respective Party to this Agreement, and that their doing so will not violate any obligation of corporate governance, delegation of authority, by-law, or other applicable Law or regulation.

—

SO AGREED by the Parties:

<div><div></div><div><i>Design-Builder's legal name</i></div><div><div></div><div><i>signature of authorized representative</i></div><div><div></div><div><i>representative's printed name</i></div><div><i>title</i></div></div><div><div></div><div><i>Design-Builder's federal tax identification number</i></div></div><div><div></div><div><i>date signed</i></div></div></div></div>	<div>University of Georgia Athletic Association, Inc.</div> <div><div></div><div><i>signature of authorized representative</i></div></div> <div><div></div><div><i>date signed</i></div></div>
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UGAA/Design-Builder Agreement - Supplement A
Scope of Basic Design Services

All terms, conditions, and obligations set forth herein and in the underlying Agreement to which this is attached, and in which this is incorporated, apply to Design Services performed hereunder.

- A. Basic Design Services.** Design Professional shall fully and completely provide the following professional Basic Design Services as appropriate to the phase of services applicable in accordance ¶ I(A)(2)(d) in the underlying Agreement: *(select those that apply)*
1. ☐ pre-design investigation and programming assistance to UGAA;
 2. ☐ measured drawings of existing structure;
 3. ☐ site evaluation;
 4. ☐ site planning;
 5. ☐ architectural design and documents;
 6. ☐ structural design and engineering;
 7. ☐ mechanical and heating, ventilating, and air conditioning ("HVAC") design and engineering;
 8. ☐ plumbing design and engineering;
 9. ☐ electrical design and engineering;
 10. ☐ civil design and engineering;
 11. ☐ life safety design;
 12. ☐ fire suppression system design and engineering;
 13. ☐ fire alarm system;
 14. ☐ communications systems design and engineering;
 15. ☐ security systems design and engineering;
 16. ☐ landscape architecture and design;
 17. ☐ lighting design;
 18. ☐ acoustical calculations, engineering, and specification of special acoustically absorptive or reflective materials;
 19. ☐ detailed cost estimates;
 20. ☐ food service design and engineering;
 21. ☐ building information modeling ("BIM");
 22. ☐ energy modeling and analysis;
 23. ☐ coordinate sustainability certification;
 24. ☐ professional photography of exterior and interiors;
 25. ☐ professional Construction Administration-phase Services;

26. [] other design and engineering pertaining to [].

B. In addition to the Services indicated in the information preceding Article I and in Article I of the Agreement, the Scope of Basic Design Services shall also include the following:

[].

C. **Renderings:** For purposes of this Agreement, and unless other specific provisions modify them, renderings are color perspective drawings (proportionately presented) of the interior and exterior of the Project, based upon the following classifications:

Class I: Basic forms, colors, and shapes of structure and its surfaces, with some basic depiction of the significant features of the site;

Class II: Detailed building forms and site feature, surfaces presented with representative materials, some expression of landscaping, furniture, vehicles, use, and occupants;

Class III: Moderately abstracted or artistic – with detailed building forms, shade and shadow expressed, surfaces accurately abstracted, furniture, vehicles, occupant-scale figures depicted, glass indicative of specified reflectivity, landscaping and hardscaping accurately portrayed;

Class IV: Near-photographic, lifelike, non-abstract expression – with detailed building forms, shade and shadows detailed; surfaces shown, furniture, vehicles, and occupant-scale figures life-like, glass appropriately transparent and/or reflective indicating daylight and environmental conditions.

Design Professional to supply the following renderings: *(Select those that apply.)*

	Class I	Class II	Class III	Class IV
Conceptual & Preliminary Design Phase				
Schematic Design Phase				
Design Development Phase (day rendering)				
Design Development Phase (night rendering)				
50% Construction Documents Phase (day rendering)				
50% Construction Documents Phase (night rendering)				
100% Construction Documents Phase (day rendering)				
100% Construction Documents Phase (night rendering)				

UGAA/Design-Builder Agreement - Supplement A1
Contract Documents

The Contract Documents include the following:

Document		Dated
	<i>Other Contract Documents as follows:</i>	
	Geotechnical Report	_____, 201____
	Hazardous Materials Report	_____, 201____
		_____, 201____
	END OF LIST	

Component Change Order No. _____

Project: _____

The Component Change Order pertains to the Agreement between University of Georgia Athletic Association, Inc. ("UGAA") and _____ (insert Design-Builder's legal name) ("Design-Builder"), having an effective date of the _____ day of _____, 201____ ("UGAA/Design-Builder Agreement").

The UGAA/Design-Builder Agreement is hereby amended as follows:

The Scope of Work is modified to include: _____ (insert general description of change) as further described in the Component Construction Documents listed in the attached **Supplement A1**, which is dated the _____ day of _____, 2023.

The Project Schedule applicable upon execution of this Component Change Order is attached hereto, and dated the _____ day of _____, 2023.

The Contract Time is unchanged [] reduced [] extended [] (select one) by _____ (insert) calendar days, resulting in an adjusted Contractual Date of Substantial Completion on the _____ day of _____, 201____.

The **not-to-exceed price** (Component Change Order Sum) for this Component Change Order is \$ _____, in accordance with ¶ III(L)(1)(d) of the UGAA/Design-Builder Agreement.

The Schedule of Values applicable upon execution of this Component Change Order by UGAA is attached herein and incorporated hereto, is dated the _____ day of _____, 2023.

All costs, fees, profits, overhead, and any other compensation of any kind accruing hereunder to Design-Builder for Component Change Order Work shall ultimately be included in the Cost of the Work, Design-Builder Construction Fee, or Design-Builder Construction Overhead Costs, as the case may be – and shall not be deemed part of either the Design-Builder Preconstruction Fee or Design-Builder Preconstruction Overhead Costs.

The foregoing amounts stated are inclusive, covering all Design-Builder's labor, materials, supervision, and administration costs, profit, overhead, Bond and insurance costs, fees, expenses, and time required to provide the Component Scope of Work and Design Services in accordance with Article VIII. Therefore, upon execution of this Component Change Order, Design-Builder waives any and all claims related to the change set forth here and all outstanding or pending claims with the exception of those individually listed as follows: _____.

This Change Order effective on the date accompanying the signature below of UGAA's authorized representative.

[signature of following page]

SO AGREED by the Parties:

<div>_____ <i>Design-Builder's legal name</i></div> <div>_____</div> <div><i>signature of authorized representative</i></div> <div>_____, _____</div> <div><i>representative's printed name</i> <i>title</i></div> <div>_____</div> <div><i>date signed</i></div>	<div>University of Georgia Athletic Association, Inc.</div> <div>_____</div> <div><i>signature of authorized representative</i></div> <div>_____</div> <div><i>date signed</i></div>
<div>Approved: _____ (<i>Design Professional's legal name</i>)</div> <div>_____</div> <div><i>signature of authorized representative</i></div> <div>_____, _____</div> <div><i>representative's printed name</i> <i>title</i></div> <div>_____</div> <div><i>date signed</i></div>	<div>Reviewed by: _____</div> <div>(<i>ADR signature</i>)</div> <div>_____, 201____</div>

Project: _____

This GMP Change Order pertains to the Agreement between University of Georgia Athletic Association, Inc. ("UGAA") and _____ (*insert Design-Builder's legal name*) ("Design-Builder"), having an effective date of the _____ day of _____, 201____ ("UGAA/Design-Builder Agreement").

The UGAA/Design-Builder Agreement is hereby amended as follows:

The Scope of Work and/or Design Services is modified to include the entire Project generally described in the information preceding Article I of the UGAA/Design-Builder Agreement – as indicated in the Contract Documents listed in the attached completed version of **Supplement A1**, which is dated the _____ day of _____, 2023.

The Project Schedule applicable upon execution of the GMP Change Order is attached hereto, and dated the _____ day of _____, 2023.

The Contract Time is unchanged [] reduced [] extended [] (*select one*) by [] (*insert*) calendar days by this GMP Change Order, resulting in an adjusted Contractual Date of Substantial Completion on the _____ day of _____, 201____.

The Guaranteed Maximum Price ("GMP") is established by this GMP Change Order to be \$_____. That GMP is based upon the following elements:

- a. Estimated Cost of the Work: \$_____ (as established in ¶¶ II(C)(2)(c) and V(B)(2)(a)), which includes \$_____ in funds for the Design-Builder Contingency Account (as established in ¶¶ II(C)(2)(f) and V(B)(2)(a));
- b. Design-Builder Construction Fee: \$_____ (as defined in ¶ II(C)(2)(d)); *and*
- c. Maximum Design-Builder Construction Overhead Costs: \$_____ (as defined in ¶ II(C)(2)(e)).

The Schedule of Values applicable upon execution of this Change Order by UGAA is attached herein and incorporated hereto, is dated the _____ day of _____, 2023.

The GMP is exclusive of Design-Builder Preconstruction Fee and Design-Builder Preconstruction Overhead Costs. Accrual of Design-Builder Preconstruction Fee and Design-Builder Preconstruction Overhead Costs (except those Design Costs incurred in performance of preconstruction Design Services) shall cease upon execution of this GMP Change Order by UGAA. The GMP includes amounts paid (or due and owing) for Component Change Order Work duly and timely performed at the time of execution of this GMP Change Order by UGAA.

The foregoing amounts stated are inclusive, covering all Design-Builder's labor, materials, supervision, and administration costs, profit, overhead, Bond and insurance costs, fees, expenses, and time required to provide the changed Scope of Work and Design Services in accordance with Article VIII. Therefore, upon execution of this Change Order, Design-Builder waives any and all claims related to the change set forth here and all outstanding or pending claims with the exception of those individually listed as follows: _____.

This Change Order effective on the date accompanying the signature below of UGAA's authorized representative.

SO AGREED by the Parties:

<div><div>_____</div><div><i>Design-Builder's legal name</i></div><div>_____ signature</div><div><i>of authorized representative</i></div><div>_____/ _____</div><div><i>representative's printed name</i> <i>title</i></div><div>_____</div><div><i>date signed</i></div></div>	<div><div>University of Georgia Athletic Association, Inc.</div><div>_____</div><div><i>signature of authorized representative</i></div><div>_____</div><div><i>date signed</i></div></div>
<div><div>Reviewed: _____ (<i>Design Professional's legal name</i>)</div><div>_____</div><div><i>signature of authorized representative</i></div><div>_____/ _____</div><div><i>representative's printed name</i> <i>title</i></div><div>_____</div><div><i>date signed</i></div></div>	<div><div>Reviewed by: _____ (<i>ADR</i>)</div><div>dated _____, 201__</div></div>

Change Order No. _____

Project: _____

This Change Order pertains to the Agreement between University of Georgia Athletic Association, Inc. ("UGAA") and _____ (*insert Design-Builder's legal name*) ("Design-Builder"), having an effective date of the _____ day of _____, 201____ ("UGAA/Design-Builder Agreement").

The UGAA/Design-Builder Agreement is hereby amended as follows:

The Scope of Work and/or Design Services is modified to generally include: _____ (*insert description of change*) as further indicated in _____ (*insert list of documents indicating the change in Scope of Work or Design Services*) attached hereto, dated the _____ day of _____, 2023.

The Project Schedule applicable upon execution of this Change Order is attached hereto, and dated the _____ day of _____, 2023.

The Contract Time is unchanged [] reduced [] extended [] (*select one*) by _____ (*insert*) calendar days by this Change Order, resulting in an adjusted Contractual Date of Substantial Completion on the _____ day of _____, 201____.

The Guaranteed Maximum Price ("GMP") is unchanged [] increased [] decreased [] (*select one*) by this Change Order in the amount of \$ _____, resulting in an adjusted GMP of \$ _____.

The Schedule of Values applicable upon execution of this Change Order by UGAA is attached herein and incorporated hereto, is dated the _____ day of _____, 2023.

The foregoing amounts are inclusive, covering all Design-Builder's labor, materials, supervision, and administration costs, profit, overhead, Bond and insurance costs, fees, expenses, and time required to provide the changed Scope of Work and Design Services in accordance with Article VIII. Therefore, upon execution of this Change Order, Design-Builder waives any and all claims related to the change set forth here and all outstanding or pending claims with the exception of those individually listed as follows: _____.

This Change Order effective on the date accompanying the signature below of UGAA's authorized representative.

SO AGREED by the Parties:

<div style="border-bottom: 1px solid black; margin-bottom: 5px;">_____</div> <div style="display: flex; justify-content: space-between;"> <i>Design-Builder's legal name</i> <i>signature</i> </div> <div style="border-bottom: 1px solid black; margin-bottom: 5px;">_____</div> <div style="display: flex; justify-content: space-between;"> <i>of authorized representative</i> <i>signature of authorized representative</i> </div> <div style="display: flex; justify-content: space-between; margin-bottom: 5px;"> <div style="border-bottom: 1px solid black; width: 60%;">_____</div> <div style="border-bottom: 1px solid black; width: 35%;">_____</div> </div> <div style="display: flex; justify-content: space-between;"> <i>representative's printed name</i> <i>title</i> </div> <div style="border-bottom: 1px solid black; margin-bottom: 5px;">_____</div> <div style="display: flex; justify-content: space-between;"> <i>date signed</i> <i>date signed</i> </div>	<p>University of Georgia Athletic Association, Inc.</p> <div style="border-bottom: 1px solid black; margin-bottom: 5px;">_____</div> <div style="display: flex; justify-content: space-between;"> <i>signature of authorized representative</i> <i>signature of authorized representative</i> </div> <div style="border-bottom: 1px solid black; margin-bottom: 5px;">_____</div> <div style="display: flex; justify-content: space-between;"> <i>date signed</i> <i>date signed</i> </div>
<p>Reviewed: _____ (<i>Design Professional's legal name</i>)</p> <div style="border-bottom: 1px solid black; margin-top: 5px;">_____</div>	<p>Witness: _____ (<i>ADR</i>)</p> <p>dated _____, 201____</p>

<i>signature of authorized representative</i> _____ <i>representative's printed name</i> <i>title</i> _____ <i>date signed</i>	
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Conversion Change Order

Project: _____

This Conversion Change Order pertains to the Agreement between University of Georgia Athletic Association, Inc. ("UGAA") and _____ (*insert Design-Builder's legal name*) ("Design-Builder"), having an effective date of the _____ day of _____, 201____ ("UGAA/Design-Builder Agreement").

The UGAA/Design-Builder Agreement is hereby amended as follows:

The UGAA/Design-Builder Agreement is hereby converted to a fixed Contract Price in accordance with ¶ V(N) of that Agreement.

The initial fixed Contract Price is \$ _____ (*insert*), which equates to the current GMP immediately preceding this conversion – minus amounts in the Design-Builder Contingency Account that remain unallocated *and* minus Design-Builder Construction Overhead Costs (unexpended to-date and based on *pro rata* allocation determined by completion of the Work at the time of conversion).

All amounts paid by UGAA (exclusive of Design-Builder Preconstruction Fees and Design-Builder Preconstruction Overhead Costs) shall be fully credited to UGAA as payment under the Contract Price.

Attached hereto, and incorporated herein as **Exhibit A**, is the resultant Schedule of Values containing constituent line-items for various components of the Costs of the Work, as well as the adjusted Design-Builder Construction Fee, and adjusted Design-Builder Construction Overhead Costs, which are now included as components of the Contract Price.

Henceforth, payments under the Contract Price format are strictly limited to the *pro rata* completion of the Work on a line-item basis. Amounts paid for line-items containing converted Design-Builder Construction Overhead and Design-Builder Construction Fee shall also be limited to *pro rata* completion of the overall Work.

The Project Schedule applicable upon execution of this Change Order is attached hereto as **Exhibit B**, and dated the _____ day of _____, 2023.

Changes hereafter will be addressed consistent with the provisions for change with respect to the GMP as set forth in Article VIII of the UGAA/Design-Builder Agreement, and will be set forth in Post-Conversion Change Orders.

The Contract Time is unchanged [] reduced [] extended [] (*select one*) by _____ (*insert*) calendar days by this Change Order, resulting in an adjusted Contractual Date of Substantial Completion on the _____ day of _____, 201____.

This Conversion Change Order is effective on the date accompanying the signature below of UGAA's authorized representative.

[signatures on following page]

SO AGREED by the Parties:

<div><div>_____</div><div><i>Design-Builder's legal name</i></div><div>_____ signature</div><div><i>of authorized representative</i></div><div>_____ / _____</div><div><i>representative's printed name</i> <i>title</i></div><div>_____</div><div><i>date signed</i></div></div>	<div>University of Georgia Athletic Association, Inc.</div> <div>_____</div> <div><i>signature of authorized representative</i></div> <div>_____</div> <div><i>date signed</i></div>
<div>Reviewed: _____ (<i>Design Professional's legal name</i>)</div> <div>_____</div> <div><i>signature of authorized representative</i></div> <div>_____ / _____</div> <div><i>representative's printed name</i> <i>title</i></div> <div>_____</div> <div><i>date signed</i></div>	<div>Reviewed by: _____ (<i>ADR</i>)</div> <div>dated _____, 201__</div>

UGAA/Design-Builder Agreement - Supplement B4**Post-Conversion Change Order****Post-Conversion Change Order No.** _____**Project:** _____

This Post-Conversion Change Order pertains to the Agreement between University of Georgia Athletic Association, Inc. ("UGAA") and _____ (*insert Design-Builder's legal name*) ("Design-Builder"), having an effective date of the _____ day of _____, 201____ ("UGAA/Design-Builder Agreement").

The UGAA/Design-Builder Agreement is hereby amended as follows:

The Scope of Work and/or Design Services is modified to generally include: _____ (*insert description of change*) as further indicated in _____ (*insert list of documents indicating the change in Scope of Work or Design Services*) attached hereto, dated the _____ day of _____, 2023.

The Project Schedule applicable upon execution of this Change Order is attached hereto, and dated the _____ day of _____, 201____, and initialed by the Parties.

The Contract Time is unchanged [] reduced [] extended [] (*select one*) by _____ (*insert*) calendar days by this Change Order, resulting in an adjusted Contractual Date of Substantial Completion on the _____ day of _____, 201____.

The Contract Price is unchanged [], increased [], or decreased [] (*select one*) by this Change Order in the amount of \$_____, resulting in an adjusted Contract Price of \$_____.

The Schedule of Values applicable upon execution of this Change Order by UGAA is attached herein and incorporated hereto, and is dated the _____ day of _____, 2023.

The foregoing amounts are inclusive, covering all Design-Builder's labor, materials, supervision, and administration costs, profit, overhead, Bond and insurance costs, fees, expenses, and time required to provide the changed Scope of Work and Design Services in accordance with Article VIII. Therefore, upon execution of this Change Order, Design-Builder waives any and all claims related to the change set forth here and all outstanding or pending claims with the exception of those individually listed and detailed as follows: _____.

This Change Order effective on the date accompanying the signature below of UGAA's authorized representative.

SO AGREED by the Parties:

_____ <i>Design-Builder's legal name</i> _____ <i>signature</i> <i>of authorized representative</i> _____ <i>representative's printed name</i> <i>title</i> _____ <i>date signed</i>	University of Georgia Athletic Association, Inc. _____ <i>signature of authorized representative</i> _____ <i>date signed</i>
Reviewed: _____ (<i>Design Professional's legal name</i>)	Reviewed: _____ (<i>ADR</i>) dated _____, 201____

<div><div>_____</div><div><i>signature of authorized representative</i></div><div>_____</div><div><i>representative's printed name</i> <i>title</i></div><div>_____</div><div><i>date signed</i></div></div>	
---	--

UGAA/Design-Builder Agreement - Supplement C
Unit Prices

The following Unit Prices are to be applied in accordance with the UGAA/Design-Builder Agreement:

SAMPLE SAMPLE SAMPLE SAMPLE

Unit Price G-1	Rippable Rock SAMPLE	\$xx.00 per cubic yard
Unit Price G-2	Mass Rock	\$xx.00 per cubic yard
Unit Price G-3	Trench Rock	\$xx.00 per cubic yard
Unit Price G-4	Caisson Rock	\$xx.00 per cubic yard
Unit Price G-5	Additional soil imported and compacted	\$xx.00 per cubic yard
Unit Price G-6	Additional soil excavation (exported)	\$xx.00 per cubic yard
Unit Price G-7	Curb and gutter	\$xx.00 per lineal foot
Unit Price G-8	Stormwater management measures	type and lineal foot
	Duplex electrical receptacle	\$xx.00 per receptacle
END OF LIST OF UNIT PRICES		

Definitions of Rock

For purposes of pricing rock removal, rock is classified and defined as follows:

- A. **Rippable Rock.** Rippable Rock is defined as any material that can be ripped with a single-tooth hydraulic ripper drawn by a crawler tractor having a minimum draw bar pull rated at not less than 56,000 pounds (Caterpillar D-8K or equivalent) and occupies an original volume of at least one cubic yard.
- B. **Mass Rock.** Mass Rock is defined as any material that cannot be ripped with a single-tooth hydraulic ripper drawn by a crawler tractor having a minimum draw bar pull rated at not less than 56,000 pounds (Caterpillar D-8K or equivalent) and occupies an original volume of at least one cubic yard. For purposes of this **Supplement C**, Mass Rock does not include material that falls within the definitions below for Trench Rock or Caisson Rock.
- C. **Trench Rock.** Trench Rock is defined as any material that must be removed from a trench that cannot be excavated with a hydraulic excavator having a bucket curling force rated at not less than 18,300 pounds (Caterpillar Model 215 or equivalent) and occupies an original volume of at least one-half cubic yard.
- D. **Caisson Rock.** Caisson Rock is defined as material that must be removed from a shaft which cannot be penetrated faster than two feet per hour (fifteen minute minimum) using a rock auger with bullet-shaped hardened steel teeth (Kennametal bits or equivalent), and the drilling equipment should have the capacity to produce a continuous torque of at least 1,000,000 inch pounds and downward force of at least 50,000 pounds (a Hughes LLDH in good working condition) for piers up to seventy two inches in diameter. Use of equipment with greater torque or downward forced modifies the definition of refusal to be the point at which the equipment cannot penetrate faster than two feet per hour (fifteen minute minimum). In rare cases, refusal may occur on a rock seam or boulder above the general massive rock surface. The compensation

for Caisson Rock should include only material that cannot be penetrated by the rock auger at the specified rate.

Pricing for Compensable Rock. All compensable rock shall be priced by the Unit Prices stated above in this **Supplement C** upon volume prior to removal and shall be calculated by survey and engineering calculations. No rock shall be priced by truckload, bucket load, or other similar pricing methods. Unit Prices shall be inclusive of: (a) excavation and removal of all rubble; (b) addition and removal of overburden for blasting; (c) excavation of all blast rubble; (d) replacement of suitable soils in areas of overblasting or over removal; (e) all costs of labor, equipment, supplies, blasting materials, safety requirements, drayage, haulage, and disposal, including off-site disposal costs; and (f) all profit and overhead. Therefore, no additional markup by Design-Builder on Cost of the Work (based upon Unit Price) is permitted. No other damages, compensation, or remedies will be awarded pertaining to rock removal; and the limitations and waivers set forth in ¶ VIII(F) the Agreement apply.

UGAA/Design-Builder Agreement - Supplement D

DESIGN-BUILDER INTERIM WAIVER AND RELEASE UPON PAYMENT

STATE OF GEORGIA

COUNTY OF _____

THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN ("DESIGN-BUILDER") HAS BEEN EMPLOYED BY THE UNIVERSITY OF GEORGIA ATHLETIC ASSOCIATION, INC. ("UGAA") TO FURNISH LABOR, MATERIAL, AND SERVICES FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS _____ (*insert title of the Project or building*) WHICH IS LOCATED IN OR NEAR THE CITY OF _____ COUNTY OF _____, ON REAL PROPERTY OWNED BY THE BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA AND LEASED TO UGAA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: _____

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT) ("THE PROPERTY").

UPON THE RECEIPT OF THE SUM OF \$_____ (*insert amount applied for*), DESIGN-BUILDER WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND THROUGH THE _____ DAY OF _____, 201____ AND EXCEPTING THOSE RIGHTS AND LIENS THAT THE DESIGN-BUILDER MIGHT HAVE IN ANY RETAINED AMOUNTS, ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF UGAA FOR SAID BUILDING OR PREMISES.

GIVEN UNDER HAND AND SEAL THIS _____ DAY OF _____, 201____.

Witness: <p style="text-align: center;"><u>NOTARY</u></p> <p>Sworn and subscribed before me by _____ on this ____ day of _____, 201____, who is:</p> <p>personally known to me [____], or who produced _____ (<i>identify document</i>) as identification.</p> <p>_____ NOTARY PUBLIC (SEAL)</p> <p>My commission expires on _____ (<i>date</i>).</p>	Design-Builder: _____ (<i>insert</i>) By: _____ <i>Signature of Design-Builder's authorized representative</i> _____ <i>Representative's printed name and title</i> _____ <i>(SEAL)</i> <i>Design-Builder's Legal Name</i> _____ <i>Address</i> _____ <i>City</i> _____ <i>State</i> _____ <i>Zip</i> _____
---	---

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER O.C.G.A. SECTION 44-14-366.

UGAA/Design Professional Agreement - Supplement D1

DESIGN PROFESSIONAL INTERIM WAIVER AND RELEASE UPON PAYMENT

STATE OF GEORGIA

COUNTY OF _____

THE UNDERSIGNED DESIGN PROFESSIONAL _____ ("DESIGN PROFESSIONAL") HAS BEEN EMPLOYED BY _____ ("DESIGN-BUILDER"), WHO HAS IN TURN BEEN EMPLOYED BY THE UNIVERSITY OF GEORGIA ATHLETIC ASSOCIATION, INC. (HEREINAFTER "UGAA"), TO FURNISH PROFESSIONAL DESIGN SERVICES RELATED TO THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS _____ (insert title of the Project) WHICH IS LOCATED IN THE CITY OF _____, COUNTY OF _____, ON REAL PROPERTY OWNED BY THE BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA AND LEASED TO UGAA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT) ("THE PROPERTY").

UPON THE RECEIPT OF THE SUM OF \$_____ (insert amount invoiced), DESIGN PROFESSIONAL WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR/MATERIAL BOND THROUGH THE _____ DAY OF _____, 201____ AND EXCEPTING THOSE RIGHTS AND LIENS THAT DESIGN PROFESSIONAL MIGHT HAVE IN ANY RETAINED AMOUNTS, ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR IN ACCOUNT OF SAID UGAA FOR SAID BUILDING AND PREMISES.

GIVEN UNDER HAND AND SEAL THIS _____ DAY OF _____, 201____.

NOTARY	
Sworn and subscribed before me by _____ on this _____ day of _____, 201____, who is:	Design Professional: _____ (insert legal name)
personally known to me [____], or who produced _____ (identify document) as identification.	By: _____ Signature of Design Professional's authorized representative
	Representative's printed name and _____ title (Seal)
	Design Professional's Legal Name
NOTARY PUBLIC (SEAL)	Address
My commission expires on _____ (date).	City _____ State _____ Zip _____

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF

**THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A
WAIVER AND RELEASE UNDER O.C.G.A. SECTION 44-14-366.**

UGAA/Design-Builder Agreement - Supplement E
DESIGN-BUILDER INTERIM AFFIDAVIT

STATE OF GEORGIA

COUNTY OF _____

I, the undersigned, _____ (*insert name*), being first duly sworn, depose and state as follows:

- A. I am over twenty-one years of age, and I am competent to make this Affidavit;
- B. I am employed in the position of _____ (*insert title*) by _____, (*insert legal name of Design-Builder*) ("Design-Builder") which has been employed pursuant to a contract with an effective date of the ____ day of _____, 201____ (the "UGAA/Design-Builder Agreement") by the **University of Georgia Athletic Association, Inc. ("UGAA")** to provide labor, materials, and services pertaining to _____ (the "Project") located on or near _____ (*insert street address, city*), in the county of _____, **Georgia** on real property ("the Property"), which is owned by the **Board of Regents of the University System of Georgia** and leased to UGAA;
- C. I make this Affidavit on the basis of my own personal knowledge and upon proper investigation;
- D. I make this Affidavit understanding that my statements and representations in it, and in the Interim Payment Application to which this Affidavit is attached, will be relied upon by UGAA in making payments to Design-Builder with respect to the Project;
- E. The Work for which Design-Builder seeks payment from UGAA complies with the Contract Documents and with Design-Builder's obligations under the UGAA/Design-Builder Agreement, subject only to confirmatory testing and minor corrections;
- F. The Work provided is free of claims of liens, unsatisfied demands for payment related to the Project, demands on bonds of any kind, and all other demands and encumbrances of any type;
- G. Design-Builder has fully, timely, and lawfully allocated, disbursed, and distributed all funds previously paid to it by UGAA to each Subcontractor and vendor of any tier, each of which has been fully paid in accordance with the UGAA/Design-Builder Agreement and the respective Subcontracts – except that I attach to this Affidavit a list of unpaid Subcontractors, supplying with respect to each the amount unpaid and the reason for not paying;¹
- H. No outstanding demands or claims have been made related to the Work or the Project, except for those requests for payment for Work for which payment is applied for in the Payment Application to which this Affidavit is attached;
- I. No lien or claim of lien exists, is known to have been filed, or can be filed with validity (against the Property, UGAA, the University of Georgia, the Board of Regents of the University System of Georgia, or the Project) by Design-Builder or by any Subcontractor or vendor of any tier for whose Work UGAA has previously paid Design-Builder – and no statutory Affidavits of Nonpayment are known to have been filed by Subcontractors or

¹ Absence of such a list shall be deemed a sworn representation by Affiant that all Subcontractors have been fully and timely paid.

vendors of any tier on the Project – that have also not been cancelled and discharged as a matter of record with the clerk of the Superior Court in the county in which a lien was filed and/or the Property is located;

- J. No claim or demand exists, has been asserted, or can be asserted with validity against the Payment Bond provided by Design-Builder on the Project;
- K. Within ten days of Design-Builder's receipt of the payment applied for, Design-Builder will pay Subcontractors all amounts due in full, withholding from payment only that retainage that continues to be withheld from Design-Builder by UGAA;
- L. No amounts applied for by Design-Builder in the Interim Payment Application to which this Affidavit is attached will be withheld from the Subcontractors for whose Work Design-Builder now applies for payment;
- M. No statement contained in the Interim Payment Application to which this Affidavit is attached shall be construed to modify the certifications or to limit, nullify, or abrogate waivers and releases previously given by Design-Builder or its Subcontractors;
- N. The licensing information, insurance coverage, and tax identification numbers that have been most-recently supplied to UGAA are accurate and correct; *and*
- O. Design-Builder hereby releases UGAA, the University of Georgia, and the Board of Regents of the University System of Georgia, and their respective employees, directors, officers, shareholders, members, agents, insurers, and affiliated representatives from all claims of lien, demands, claims against bonds of any kind, and claims of any kind through the date of this Affidavit – except as individually and specifically listed and detailed as follows: none.
- P. I am authorized by Design-Builder to make this Affidavit, and Design-Builder has approved the statements made herein.

FURTHER AFFIANT SAYETH NOT.

<p>Design-Builder: _____ (<i>insert name</i>)</p> <p>_____ <i>Signature of Design-Builder's authorized representative and Affiant here</i></p> <p>_____ <i>Representative's printed name</i> <i>title</i></p> <p>_____ <i>Design-Builder's Legal Name</i> (Seal)</p> <p>_____ <i>Address</i></p> <p>_____ <i>City</i> <i>State</i> <i>Zip</i></p>	<p>Witness:</p> <p style="text-align: center;"><u>NOTARY</u></p> <p>Sworn and subscribed before me by _____ on this ____ day of ____, 201__, who is:</p> <p>personally known to me [], <i>or</i> who produced _____ (<i>identify document</i>) as identification.</p> <p>_____ NOTARY PUBLIC (SEAL) My commission expires on _____ (date).</p>
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UGAA/Design-Builder Agreement - Supplement F

SUBCONTRACTOR INTERIM WAIVER AND RELEASE UPON PAYMENT

STATE OF GEORGIA

COUNTY OF _____

THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN ("SUBCONTRACTOR") HAS BEEN EMPLOYED BY _____ ("DESIGN-BUILDER") TO FURNISH _____ (insert scope of Subcontract Work) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS _____ (insert title of the Project or building) WHICH IS LOCATED IN OR NEAR THE CITY OF _____ COUNTY OF _____, ON REAL PROPERTY OWNED BY THE BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA AND LEASED TO UNIVERSITY OF GEORGIA ATHLETIC ASSOCIATION, INC., AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: _____

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT) ("THE PROPERTY").

UPON THE RECEIPT OF THE SUM OF \$ _____ (insert amount applied for), SUBCONTRACTOR WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND THROUGH THE _____ DAY OF _____, 201____, AND EXCEPTING THOSE RIGHTS AND LIENS THAT THE SUBCONTRACTOR MIGHT HAVE IN ANY RETAINED AMOUNTS, ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID DESIGN-BUILDER FOR SAID BUILDING OR PREMISES.

GIVEN UNDER HAND AND SEAL THIS _____ DAY OF _____, 201____.

Witness: <u>NOTARY</u> Sworn and subscribed before me by _____ on this ____ day of _____, 201____, who is: personally known to me [], or who produced _____ (identify document) as identification. _____ NOTARY PUBLIC (SEAL) My commission expires on _____ (date).	SUBCONTRACTOR: _____ (insert) By: _____ Signature of Subcontractor's authorized representative _____ Representative's printed name and title _____ (SEAL) Subcontractor's Legal Name _____ Address _____ City _____ State _____ Zip _____
---	---

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF

**THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A
WAIVER AND RELEASE UNDER O.C.G.A. SECTION 44-14-366.**

UGAA/Design-Builder Agreement - Supplement G

DESIGN-BUILDER WAIVER AND RELEASE UPON FINAL PAYMENT

STATE OF GEORGIA

COUNTY OF _____

THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN ("DESIGN-BUILDER") HAS BEEN EMPLOYED BY THE UNIVERSITY OF GEORGIA ATHLETIC ASSOCIATION, INC. ("UGAA") TO FURNISH LABOR, MATERIALS, AND SERVICES FOR THE DESIGN AND THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS _____ (insert title of the Project or building) WHICH IS LOCATED IN OR NEAR THE CITY OF _____ COUNTY OF _____, ON REAL PROPERTY THAT IS OWNED BY THE BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA AND LEASED TO UGAA, AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS: _____

(DESCRIBE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES & BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF PROJECT) ("THE PROPERTY").

UPON THE RECEIPT OF THE SUM OF \$ _____, DESIGN-BUILDER WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID DESIGN-BUILDER FOR SAID PROPERTY.

GIVEN UNDER HAND AND SEAL THIS _____ DAY OF _____, 201____.

Design-Builder: _____ (insert Design-Builder's legal name) (SEAL) _____ Signature of Design-Builder's authorized representative _____ Representative's printed name and title _____ (Design-Builder's address) _____ (Design-Builder's city, state, zip code)	Witness: <u>NOTARY</u> Sworn and subscribed before me by _____ on this _____ day of _____, 201____, who is: personally known to me [], or who produced _____ (identify document) as identification. _____ NOTARY PUBLIC (SEAL) My commission expires on _____ (date).
--	---

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER O.C.G.A. § 44-14-366.

UGAA/Design Professional Agreement - Supplement G1

DESIGN PROFESSIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

STATE OF GEORGIA

COUNTY OF _____

THE UNDERSIGNED DESIGN PROFESSIONAL _____ ("DESIGN PROFESSIONAL") HAS BEEN EMPLOYED BY _____ ("DESIGN-BUILDER"), WHO, IN TURN, HAS BEEN EMPLOYED BY THE UNIVERSITY OF GEORGIA ATHLETIC ASSOCIATION, INC. (HEREINAFTER "UGAA"), TO FURNISH PROFESSIONAL DESIGN SERVICES RELATED TO THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS _____ (insert title of the Project) WHICH IS LOCATED IN THE CITY OF _____, COUNTY OF _____, ON REAL PROPERTY OWNED BY THE BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA AND LEASED TO UGAA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: _____.

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT) ("THE PROPERTY").

UPON THE RECEIPT OF THE SUM OF \$_____, DESIGN PROFESSIONAL WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR OR MATERIAL BOND ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID UGAA FOR SAID PROPERTY.

GIVEN UNDER HAND AND SEAL THIS _____ DAY OF _____, 201____.

<p>Design Professional: _____ (insert legal name) (SEAL)</p> <p>_____ <i>Signature of Design Professional's authorized representative</i></p> <p>_____ <i>Representative's printed name and title</i></p> <p>_____ <i>(Design Professional's address)</i></p> <p>_____ <i>(Design Professional's city, state, zip code)</i></p>	<p>NOTARY</p> <p>Sworn and subscribed before me by _____ on this _____ day of _____, 201____, who is:</p> <p>personally known to me [____], or who produced _____ (identify document) as identification.</p> <p>_____ NOTARY PUBLIC (SEAL)</p> <p>My commission expires on _____ (date).</p>
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NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF

**THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A
WAIVER AND RELEASE UNDER O.C.G.A. § 44-14-366.**

UGAA/Design-Builder Agreement - Supplement H

Design-Builder Final Affidavit

STATE OF GEORGIA

COUNTY OF _____

I, the undersigned, _____ (*insert name*), being first duly sworn, depose and state as follows:

- A. I am over twenty-one years of age, and I am competent to make this Affidavit;
- B. I am employed in the position of _____ (*insert title*) by _____, (*insert legal name of Design-Builder*) ("Design-Builder") which has been employed pursuant to a contract with an effective date of the ____ day of _____, 201____ (the "UGAA/Design-Builder Agreement") by the **University of Georgia Athletic Association, Inc.** ("UGAA") to provide labor, materials, and services pertaining to _____ (the "Project") located on or near _____ (*insert street address*), in the county of _____, **Georgia**, on real property ("the Property"), which is owned by the **Board of Regents of the University System of Georgia** and leased to UGAA;
- C. I make this Affidavit on the basis of my own personal knowledge and upon proper investigation;
- D. I make this Affidavit understanding that my statements and representations in it, and in the Final Payment Application to which this Affidavit is attached, will be relied upon by UGAA in making payments to Design-Builder with respect to the Project;
- E. The Work for which Design-Builder seeks payment from UGAA is complete; complies with the Contract Documents; and satisfies with the Design-Builder's obligations under the UGAA/Design-Builder Agreement;
- F. The Work provided is free of claims of liens, unsatisfied demands for payment related to the Project, demands on bonds of any kind, and all other demands and encumbrances of any type;
- G. Design-Builder has fully, timely, and lawfully allocated, disbursed, and distributed funds paid to it by UGAA to each Subcontractor and vendor of any tier, each of which has been fully paid (or will, within five days of Design-Builder's receipt, be fully paid out of the funds released by the final payment of Design-Builder by UGAA);
- H. No outstanding demands or claims have been made related to the Work or the Project, except for those requests for payment for Work for which payment is applied for in the Final Payment Application to which this Affidavit is attached;
- I. No lien or claim of lien exists, has been filed, or can be filed with validity (against the Property, UGAA, the University of Georgia, the Board of Regents of the University System of Georgia, or the Project) by any Subcontractor or vendor of any tier for whose Work UGAA has previously paid Design-Builder – and no statutory Affidavits of Nonpayment have been filed by Subcontractors or vendors of any tier on the Project – that

have also not been cancelled and discharged as a matter of record with the clerk of the Superior Court in the county in which the lien was filed and/or the Property is located;

- J. No claim or demand exists, has been asserted, or can be asserted with validity against the Performance and Payment Bonds provided by Design-Builder on the Project;
- K. Within five days of Design-Builder's receipt of the payment applied for, Design-Builder will pay Subcontractors all amounts due in full;
- L. No amounts applied for by Design-Builder in the Final Payment Application to which this Affidavit is attached will be withheld from the Subcontractors for whose Work Design-Builder has applied or now applies for payment;
- M. All costs, charges, invoices, and claims and demands of any kind made upon UGAA by Design-Builder on the Project are, and have been, accurate and truthful;
- N. No statement contained in the Final Payment Application to which this Affidavit is attached shall be construed to modify the certifications or to limit, nullify, or abrogate waivers and releases previously given by Design-Builder or its Subcontractors; *and*
- O. Design-Builder hereby releases UGAA, the University of Georgia, and the Board of Regents of the University System of Georgia, and their respective employees, representatives, officers, shareholders, and affiliated representatives from all claims of lien, demands, claims against bonds of any kind, and claims of any kind.
- P. I am authorized by Design-Builder to make this Affidavit, and Design-Builder has approved the statements made herein.

FURTHER AFFIANT SAYETH NOT.

<p>Design-Builder: _____ (<i>insert</i>)</p> <p>_____</p> <p><i>Signature of Design-Builder's authorized representative and Affiant here</i></p> <p>_____</p> <p><i>Representative's printed name title</i></p> <p>_____ (Seal)</p> <p><i>Design-Builder's Legal Name</i></p> <p>_____</p> <p><i>Address</i></p> <p>_____</p> <p><i>City State Zip</i></p>	<p>Witness:</p> <p style="text-align: center;"><u>NOTARY</u></p> <p>Sworn and subscribed before me by _____ on this ____ day of ____, 201__, who is:</p> <p>personally known to me [], <i>or</i> who produced _____ (<i>identify document</i>) as identification.</p> <p>_____</p> <p>NOTARY PUBLIC (SEAL)</p> <p>My commission expires on _____ (<i>date</i>).</p>
--	--

STATE OF GEORGIA

COUNTY OF _____

I, the undersigned, _____ (*insert name*), being first duly sworn, depose and state as follows:

- A. I am over twenty-one years of age, and I am competent to make this Affidavit;
- B. I am employed in the position of _____ (*insert title*) by _____, (*insert legal name of Design Professional*) ("Design Professional") which has been employed to provide professional design services (the "Services") pursuant to a subcontract with an effective date of the ____ day of _____, 201____ (the "Agreement") by _____ ("Design-Builder") which was, itself, engaged by the **University of Georgia Athletic Association, Inc. ("UGAA")** to provide labor, materials, and services pertaining to _____ (the "Project") located on or near _____ (*insert street address*), in the county of _____, **Georgia**, on real property ("the Property"), which is owned by the **Board of Regents of the University System of Georgia** and leased to UGAA;
- C. I make this Affidavit on the basis of my own personal knowledge and upon proper investigation;
- D. I make this Affidavit understanding that my statements and representations in it, and in the Final Invoice for Services to which this Affidavit is attached, will be relied upon by UGAA in making payments to Design-Builder with respect to the Project;
- E. The Services of Design Professional for which Design-Builder seeks payment from UGAA are complete; comply with the Contract Documents; and satisfy with the professional design obligations of Design-Builder under its contract with UGAA (the "UGAA/Design-Builder Agreement");
- F. The Services provided by Design Professional (and its Subconsultants of any tier) are free of claims of liens, unsatisfied demands for payment related to the Project, demands on bonds of any kind, and all other demands and encumbrances of any type;
- G. Design Professional has fully, timely, and lawfully allocated, disbursed, and distributed funds paid to Design Professional by Design-Builder on this Project to each Subconsultant of any tier;
- H. No outstanding demands or claims have been made related to the Services, except for those requests for payment for Services for which payment is applied for in the Invoice for Services to which this Affidavit is attached;
- I. No lien or claim of lien exists, has been filed, or can be filed with validity (against the Property, UGAA, the University of Georgia, the Board of Regents of the University System of Georgia, or the Project) by any Subconsultant of Design Professional of any tier for whose Services Design-Builder has previously paid Design Professional – and no statutory Affidavits of Nonpayment have been filed by Design Professional's

Subconsultants of any tier on the Project – that have also not been cancelled and discharged as a matter of record with the clerk of the Superior Court in the county in which the lien was filed and/or the Property is located;

- J. Upon Design Professional's receipt of the amount invoiced, no claim or demand exists, has been asserted, or can be asserted by Design Professional or its Subconsultants of any tier with validity against the Performance and Payment Bonds provided by Design-Builder on the Project;
- K. Within five days of Design Professional's receipt of the amount invoiced, Design Professional will pay Subconsultants all amounts due in full;
- L. No amounts invoiced by Design Professional in the Invoice for Services to which this Affidavit is attached will be withheld from the Subconsultants for whose Services Design Professional is now applying for payment;
- M. All costs, charges, invoices, and claims and demands of any kind made upon Design-Builder by Design Professional on the Project are, and have been, accurate and truthful;
- N. No statement contained in the Final Invoice for Services to which this Affidavit is attached shall be construed to modify the certifications or to limit, nullify, or abrogate waivers and releases previously given by Design Professional or its Subconsultants; *and*
- O. Design Professional hereby releases UGAA, the University of Georgia, and the Board of Regents of the University System of Georgia, and their respective employees, representatives, officers, shareholders, and affiliated representatives from all claims of lien, demands, claims against bonds of any kind, and claims of any kind.
- P. I am authorized by Design Professional to make this Affidavit, and Design Professional has approved the statements made herein.

FURTHER AFFIANT SAYETH NOT.

<p>Design Professional: _____ (<i>insert</i>)</p> <p>_____ <i>Signature of Design Professional's authorized representative and Affiant here</i></p> <p>_____ <i>Representative's printed name</i> <i>title</i></p> <p>_____ <i>(Seal)</i></p> <p>_____ <i>Design Professional's Legal Name</i></p> <p>_____ <i>Address</i></p> <p>_____ <i>City</i> <i>State</i> <i>Zip</i></p>	<p>Witness:</p> <p style="text-align: center;"><u>NOTARY</u></p> <p>Sworn and subscribed before me by _____ on this ____ day of ____, 201__, who is:</p> <p>personally known to me [], or who produced _____ (<i>identify document</i>) as identification.</p> <p>_____ NOTARY PUBLIC (SEAL) My commission expires on _____ (<i>date</i>).</p>
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UGAA/Design-Builder Agreement - Supplement I

SUBCONTRACTOR WAIVER AND RELEASE UPON FINAL PAYMENT

STATE OF GEORGIA

COUNTY OF _____

THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN ("SUBCONTRACTOR") HAS BEEN EMPLOYED BY _____ ("DESIGN-BUILDER") TO FURNISH _____ (describe materials and/or labor provided) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS _____ (insert name of Project or building), WHICH IS LOCATED IN OR NEAR THE CITY OF _____ COUNTY OF _____, ON REAL PROPERTY THAT IS OWNED BY THE BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA AND LEASED TO UNIVERSITY OF GEORGIA ATHLETIC ASSOCIATION, INC., WHICH PROPERTY IS MORE PARTICULARLY DESCRIBED AS FOLLOWS: _____.

(DESCRIBE THE PROPERTY UPON WHICH IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT) ("THE PROPERTY").

UPON THE RECEIPT OF THE SUM OF \$_____, SUBCONTRACTOR WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID DESIGN-BUILDER FOR SAID PROPERTY.

GIVEN UNDER HAND AND SEAL THIS _____ DAY OF _____, 201_____.

<p>Subcontractor: _____ (insert Subcontractor's legal name) (SEAL)</p> <p>_____ Signature of Subcontractor's authorized representative</p> <p>_____ Representative's printed name and title</p> <p>_____ (Subcontractor's address)</p> <p>_____ (Subcontractor's city, state, zip code)</p>	<p>Witness:</p> <p style="text-align: center;"><u>NOTARY</u></p> <p>Sworn and subscribed before me by _____ on this _____ day of _____, 201_____, who is: personally known to me [], or who produced _____ (identify document) as identification.</p> <p>_____ NOTARY PUBLIC (SEAL)</p> <p>My commission expires on _____ (date).</p>
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NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER O.C.G.A. § 44-14-366.

UGAA/Design-Builder Agreement - Supplement J

PERFORMANCE BOND

Bond No. _____

Project No. or Name and Location _____

KNOW ALL MEN BY THESE PRESENTS:

That _____ (*insert legal name and address of the Design-Builder*) as principal (hereinafter referred to as "Design-Builder"), and _____ (*insert legal name and address of the Surety*) as surety (hereinafter referred to as "Surety"), are held and firmly bound unto the **University of Georgia Athletic Association, Inc.** (hereinafter referred to as "**UGAA**") as Obligee and the **University of Georgia** (hereinafter referred to as "UGA") and the **Board of Regents of the University System of Georgia** (hereinafter referred to as "BOR") as Additional Obligees in the amount of _____ DOLLARS (\$) (*insert Stated Cost Limitation set forth preceding Article I of the UGAA/Design-Builder Agreement, to be replaced by the GMP when a GMP Change Order is executed by UGAA, to be replaced by the fixed Contract Price in the event that UGAA elects to invoke the conversion provided for in ¶ V(N) of the UGAA/Design-Builder Agreement*), to which payment Design-Builder and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bounden Principal has entered into a contract with **UGAA** with an Effective Date of the ____ day of _____, 201____ for: _____ (*insert name of Work*) in accordance with the drawings and specifications prepared by: _____ (*insert name, firm, title, and address of Design-Professional*) which said contract is incorporated herein by reference and made a part hereof, and is hereinafter referred to as "the Contract" or "**the UGAA/Design-Builder Agreement.**"

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Design-Builder shall promptly and faithfully perform and comply with the terms and conditions of said Contract; and shall indemnify and save harmless **UGAA, UGA, and BOR** against and from all cost, expenses, damages, injury, or loss to which said **UGAA, UGA, and BOR** may be subjected by reason of any wrongdoing, including patent infringement, misconduct, want of care or skill, default or failure of performance on the part of said Principal, his agents, subcontractors, or employees, in the execution or performance of said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

- (1) The said Surety to this bond, for value received, hereby stipulates and agrees that no change or changes, extension of time or extensions of time, alteration or alterations, or addition or additions to the terms of the Contract, or to the Work to be performed thereunder, or the specifications or drawings accompanying same, or the exercise of **UGAA's** right to do Work pursuant to the **UGAA/Design-Builder Agreement** shall in any way affect its obligation on this bond, and it does hereby waive notice of any change or changes, extension of time or extensions of time, alteration or alterations, or addition or additions to the terms of the Contract or to the Work or to the specifications or drawings. In addition, the Surety to this bond, for value received, hereby agrees to the provisions of **¶ XIII(C)** of the **UGAA/Design-Builder Agreement** requiring increases in the penal amount of this bond, and waives notice from the **UGAA, UGA, or BOR** of any such changes.
- (2) If pursuant to the Contract Documents the Design-Builder shall be declared in default by **UGAA** under the aforesaid **UGAA/Design-Builder Agreement** and **UGAA** has terminated the Design-Builder's right to complete the **UGAA/Design Builder Agreement**, the Surety shall promptly perform this bond agreement in accordance with its terms and conditions. If Surety chooses to investigate, **UGAA** shall cooperate with the Surety in its investigation and shall make all public project records available for inspection by Surety at no cost to **UGAA**. It shall be the duty of the Surety to give an unequivocal notice in writing to **UGAA, UGA, and to BOR** within twenty-five (25) days after receipt of such a declaration of default, of the Surety's election to either remedy the default or defaults promptly or to perform the

UGAA/Design-Builder Agreement promptly, time being of the essence. In said notice of election, the Surety shall indicate the date on which the remedy or performance will commence, and it shall then be the duty of the Surety to give prompt notice in writing to **UGAA, UGA, and BOR** immediately upon completion of (a) the remedy and/or correction of each default, (b) the remedy and/or correction of each item of condemned Work, (c) the furnishing of each omitted item of Work, and (d) the performance of the **UGAA/Design-Builder Agreement**. The Surety shall not assert its Principal as justification for its failure to give notice of election or for its failure to promptly remedy the default or defaults or perform the **UGAA/Design-Builder Agreement**.

- (3) It is expressly agreed by the Principal and the Surety that **UGAA, UGA, or BOR**, if it (they) desire(s) to do so, is (are) at liberty to make inquiries at any time of subcontractors, laborers, materialmen, or other parties concerning the status of payments for labor, materials, or services furnished in the prosecution of the Work.
- (4) No right of action shall accrue on this bond to or for the use of any person or corporation other than **UGAA, UGA, and BOR**, or the legal successors of either.
- (5) For the purposes of this bond, the name and address of the **responsible official of the Surety's claims department** to whom correspondence and telecommunications may be addressed and/or with whom business concerning this bond may be conducted will be as follows:

NAME _____
 TITLE _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP CODE _____
 TELEPHONE _____

- (6) Further, where applicable, this bond shall be the Performance Bond furnished under O.C.G.A. §§ 13-10-2, 13-10-20 and shall be subject to increase in the penal amount of the bond pursuant to such statutes and ¶ XIII(C) of the **UGAA/Design-Builder Agreement**.
- (7) No action can be instituted on this bond after one year from the date of Final Completion as determined pursuant to the **UGAA/Design-Builder Agreement**.

SIGNED AND SEALED THIS _____ DAY OF _____, 201____.

ATTEST:

(NAME OF DESIGN-BUILDER)

By _____

Secretary(*)

CEO or President

 (SURETY) (*) (*)

 (TITLE)

(*) Please apply seal of Corporation over Secretary's Signature.

(*)(*) Please apply seal of Surety and arrange for countersignature by a "Georgia Licensed Agent" of Surety pursuant to O.C.G.A. §33-23-5. Kindly show title of the aforesaid agent as "Georgia Licensed Agent."

(*) Attach Power of Attorney

UGAA/Design-Builder Agreement - Supplement J cont.

PAYMENT BOND

Bond No. _____
Project No. or Name or Location _____

KNOW ALL MEN BY THESE PRESENTS:

That _____ (insert legal name and address of the Design-Builder) as principal (hereinafter referred to as the "Principal") and _____ (insert legal name and address of the Surety) as Surety (hereinafter referred to as "Surety"), are held and firmly bound unto the **University of Georgia Athletic Association, Inc.** (hereinafter referred to as "**UGAA**") as Obligee and the **University of Georgia** (hereinafter referred to as "**UGA**") and the **Board of Regents of the University System of Georgia** (hereinafter referred to as "**BOR**") as Additional Obligees for the use and benefit of claimants defined, hereinafter in the amount of: _____ DOLLARS (\$_____) (insert Stated Cost Limitation set forth preceding Article I of the UGAA/Design-Builder Agreement, to be replaced by the GMP when a GMP Change Order is executed by UGAA, to be replaced by the fixed Contract Price in the event that UGAA elects to invoke the conversion provided for in ¶ V(N) of the UGAA/Design-Builder Agreement) to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents.

WHEREAS, the above bounden Principal has entered into a contract with **UGAA** with an Effective Date of the _____ day of _____, 201_____ for _____ (insert name of Work) in accordance with the drawings and specifications prepared by: _____ (insert name, firm, title, and address of Design Professional) which contract is incorporated herein by reference and made a part hereof, and is hereinafter referred to as the Contract or the "**UGAA/Design-Builder Agreement.**"

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and materials supplied in the prosecution of the Work provided for in said **UGAA/Design-Builder Agreement**, then this obligation shall be void, otherwise it shall remain in full force and effect subject, however, to the following conditions:

- (1) The said Surety to this bond, for value received, hereby stipulates and agrees that no change or changes, extension of time or extensions of time, alteration or alterations, or addition or additions to the terms of the **UGAA/Design-Builder Agreement** or to the Work to be performed thereunder, or the specifications or drawings accompanying same, or the exercise of **UGAA's** right to do Work pursuant to the **UGAA/Design-Builder Agreement** shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change or changes, extension of time or extensions of time, alteration or alterations, or addition or additions to the terms of the **UGAA/Design-Builder Agreement** or to the Work or to the specifications or drawings. In addition, the Surety to this bond, for value received, hereby agrees to the provisions of ¶ XIII(C) of the **UGAA/Design-Builder Agreement**, requiring increases in the penal amount of this bond and waives notice from **UGAA**, **UGA**, or **BOR** of any such changes.
- (2) A claimant is defined as any subcontractor and any person supplying labor, materials, machinery, or equipment in the prosecution of the Work provided for in said **UGAA/Design-Builder Agreement.**
- (3) Every person entitled to the protection hereunder and who has not been paid in full for labor or materials furnished in the prosecution of the Work referred to in said bond before the expiration of a period of ninety (90) days after the day on which the last of the labor was done or performed by him, or materials or equipment or machinery was furnished or supplied by him for which claim is made, shall have the right to sue on such payment bond for the amount, or the balance thereof, unpaid at the time of the commencement of such action and to prosecute such action to final execution and judgment for the sum or sums due

him, provided, however, that any person having direct contractual relationship with a subcontractor, but no contractual relationship express or implied with the Design-Builder furnishing said payment bond shall have (a) given written notice to said Design-Builder within ninety (90) days from the day on which such person did or performed the last of the labor, or furnished the last of the materials or machinery or equipment for which such claim is made stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished or supplied or for whom the labor was performed or done; and (b) if Design-Builder has filed a Notice of Commencement in accordance with the requirements of the **UGAA/Design-Builder Agreement** given to said Design-Builder a written Notice to Contractor within 30 days from the filing of the Notice of Commencement or 30 days following the first delivery of labor, materials, machinery, or equipment, whichever is later, setting forth:

- A) The name, address, and telephone number of the person providing labor, material, machinery, or equipment;
- B) The name and address of each person at whose instance the labor, material, machinery or equipment is being furnished;
- C) The name and the location of the Project; and
- D) A description of the labor, material, machinery, or equipment being provided and, if known, the Contract Price or anticipated value of the labor, material, machinery, or equipment to be provided or the amount claimed to be due, if any.

It is provided further that nothing contained herein shall limit the right of action to said 90-day period. Notice may be served by the depositing of a notice, certified mail, postage paid, duly addressed to Design-Builder at any place he maintains an office or conducts his business, or his residence, in any post office or branch post office or any letter box under the control of the Post Office Department or notice may be served by statutory mail pursuant to O.C.G.A. § 9-10-12 or in any manner in which the sheriffs of Georgia are authorized by law to serve summons or process. Every suit instituted under this section shall be brought in the name of the claimant without **UGAA**, **UGA**, or **BOR** being made a party thereof. The official who has custody of said bond is authorized and directed to furnish, to any person making application thereof who submits an affidavit that he has supplied labor or materials for such Work and payment therefore has not been made, or that he is being sued on any such bond, a copy of such bond and the **UGAA/Design-Builder Agreement** for which it was given, certified, by the official who has custody of said bond and **UGAA/Design-Builder Agreement** shall be admitted in evidence without further proof. Applicants shall pay for such certified statements and such fees as the official fixes to cover the cost of preparation thereof, but in no case shall the fixed fee exceed the fees that the clerks of the superior courts are permitted to charge for similar copies.

- (4) It is expressly agreed by the Principal and the Surety that **UGAA**, **UGA**, or **BOR**, if it (they) desire(s) to do so, is (are) at liberty to make inquiries at any time of subcontractors, laborers, materialmen, or other parties concerning the status of payments for labor, materials, or services furnished in the prosecution of the Work.
- (5) For the purposes of this bond, the name and address of the **responsible official of the Surety's claims department**, to whom correspondence and telecommunications may be addressed and/or with whom business concerning this bond may be conducted will be as follows:

NAME _____

TITLE _____

ADDRESS _____

CITY _____ STATE _____ ZIP CODE _____

TELEPHONE _____

- (6) Further, where applicable, this bond shall be the Payment Bond furnished under O.C.G.A. §§ 13-10-1, 13-10-60 *et seq.* and shall be subject to increase in the penal amount of the bond pursuant to such statutes and ¶ XIII(C) of the **UGAA/Design-Builder Agreement**.
- (7) No action can be instituted on this bond after one year from the date of Final Completion as determined pursuant the **UGAA/Design-Builder Agreement**.

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

ATTEST:

(NAME OF Design-Builder)

Secretary(*)

By _____
CEO or President

(SURETY) (*) (*)

(TITLE)

(*) Please apply seal of Corporation over Secretary's Signature.

(*)(*) Please apply seal of Surety and arrange for countersignature by a "Georgia Licensed Agent" of Surety pursuant to O.C.G.A. §33-23-5. Kindly show title of the aforesaid agent as "Georgia Licensed Agent."

(*) Attach Power of Attorney

UGAA/Design-Builder Agreement - Supplement K

Notice of Commencement

TO: CLERK OF SUPERIOR COURT OF _____ COUNTY, GEORGIA

Pursuant to O.C.G.A. §§ 10-7-31(b) and 44-14-361.5(b), not later than fifteen (15) days after physically commencing work on the property, the undersigned gives Notice of Commencement of improvements to property including the following information:

- A. Name, address and telephone number of Design-Builder ("Design-Builder"): _____ .
- B. Name and location of the Project being constructed: _____ .
- C. Legal description of the Property upon which the improvements are to be made: **Legal Description is attached as Exhibit A to this Notice of Commencement and is incorporated by reference in it.**
- D. Name and address of person or entities who truly owns the Property upon which improvements are to be made: **Board of Regents of the University System of Georgia, 270 Washington Street SW, Atlanta, Georgia 30334.**
- E. Name and address of the person upon whose instance the improvements are to be made: **University of Georgia Athletic Association, Inc., Butts-Mehre Heritage Hall, 1 Selig Circle, Athens, Georgia 30603.**
- F. Name and address of the Surety for the Payment and Performance Bonds: _____ .
- G. Name and address of the construction lender, if any: n/a _____ .

signature, printed name, and title of Design-Builder's representative

THIS DOCUMENT MUST BE FILED WITH THE CLERK OF THE SUPERIOR COURT FOR THE COUNTY IN WHICH THE PROJECT IS LOCATED AND A COPY OF THIS DOCUMENT MUST BE POSTED AT THE PROJECT SITE NOT LATER THAN FIFTEEN (15) DAYS AFTER DESIGN-BUILDER PHYSICALLY COMMENCES WORK ON THE PROPERTY.

WITHIN TEN (10) CALENDAR DAYS OF THE RECEIPT OF A WRITTEN REQUEST, DELIVER A COPY OF THIS NOTICE OF COMMENCEMENT TO ANY SUBCONTRACTOR, MATERIALMAN, OR OTHER PERSON OR ENTITY MAKING THE REQUEST.

[Exhibit A follows consisting of _____ pages]

Exhibit A to Notice of Commencement

[legal or other definitive and accurate description of property improved attached]

UGAA/Design-Builder Agreement - Supplement L
Certificate of Substantial Completion

Effective Date of UGAA/Design-Builder Agreement:	The _____ day of _____, 201____
Realized Date of Substantial Completion:	The _____ day of _____, 201____
Design-Builder’s Customer:	The University of Georgia Athletic Association, Inc.
Design-Builder (“Design-Builder”):	_____ (<i>insert legal name of Design-Builder</i>)
Project:	_____
Project location:	in or near the city of _____, County, Georgia

Design-Builder certifies that:

- A. Except for Punchlist Work described below, all Work performed (including that performed by Subcontractors, materialmen, and suppliers) is complete and complies with the Contract Documents, and the Project may be used in the manner intended by the University of Georgia Athletic Association, Inc. (“UGAA”);
- B. UGAA receives clear title to all Work performed and materials supplied; and all labor, materials, and Services provided are free of claims of liens, unsatisfied demands for payment related to the Project, claims against bonds, and all other forms of encumbrance;
- C. All testing and inspections have been completed with results indicating compliance with the requirements indicated in the Contract Documents;
- D. The Work and the site have been cleaned as required by the Contract Documents;
- E. All amounts due to utilities have been paid, and upon acceptance and execution of this Certificate by UGAA, responsibility for utility accounts will be transferred to UGAA or UGAA’s designee;
- F. Design-Builder has notified its Surety (if any) of the validity of this proposed Certificate of Substantial Completion as a substantive matter;
- G. Design-Builder has fully, timely, and lawfully allocated, disbursed, and distributed all funds previously paid to Design-Builder by UGAA to each of Subcontractor, supplier, mechanic, materialman, and design professional who has provided labor, materials, Services, or Work of any kind for the improvement of the Property and the Project;
- H. No lien or claim of lien exists, has been filed, or can be filed with validity against the Property, UGAA, the University of Georgia (“UGA”), the Project, or the Board of Regents of the University System of Georgia (“Board of Regents”) by any Subcontractor, supplier, mechanic, materialman, or design professional for whose labor, materials, or Services Design-Builder has previously been paid by UGAA;
- I. No claim or demand exists, has been asserted, or can be asserted with validity against the Performance and Payment Bonds provided by Design-Builder on the Project;
- J. Upon Design-Builder’s receipt of Final Payment, Design-Builder will, within five days, pay Subcontractors all amounts due them that are included in that Payment;
- K. No amounts are withheld from the Subcontractors for whose Work Design-Builder has been paid;
- L. Design-Builder will comply with the Closeout Obligations, as set forth in the UGAA/Design-Builder Agreement; and all required Closeout Materials and information will be timely submitted to UGAA;

- M. Design-Builder has submitted in writing, in accordance with Article VIII of the UGAA/Design-Builder Agreement, all claims, proposed Change Orders, liens, or demands of any kind that it has or may have against UGAA, UGA, the Board of Regents, and their insurers and sureties in the manner required under the Agreement – or they are hereby waived and released;
- N. Building, fire, or other governmental authorities having jurisdiction over the Project and authorization to issue a Certificate of Occupancy (or similar written authorization to occupy) have issued such a document(s); and it is (they are) attached hereto;
- O. Nothing in this Certificate of Substantial Completion shall be construed to limit, modify, nullify, or abrogate waivers and releases previously given by Design-Builder and Subcontractors;
- P. The only Work that is incomplete or non-compliant is contained in the attached Punchlist, dated _____, 201____, consisting of _____ (insert number) items, completion and correction of which have a combined value of \$_____ - and Design-Builder will complete or correct remaining incomplete, defective, or deficient Work and all Punchlist Work within fourteen calendar days of the Realized Date of Substantial Completion as indicated in this certificate; and
- Q. Transfer of responsibility for permanent utilities was effective at _____ a.m./p.m. on the _____ day of _____, 201____.

Commencement of Warranty Periods. Unless otherwise expressly provided to the contrary in the Contract Documents, and subject to the express provisions of the Agreement governing Design-Builder's warranty of completed Work, the warranty period for all systems, materials, and assemblies begins on the below-noted Realized Date of Certificate of Substantial Completion (as approved or designated by UGAA and indicated as such below on this Certificate). Where Work is incomplete, defective, or otherwise non-compliant on the Realized Date of Substantial Completion set forth below, warranty periods applicable to that Work and the assemblies of which it is a component, shall begin on the date on which that incomplete, defective, or non-compliant Work is brought into compliance and is accepted as such in writing by UGAA and shall continue for the full term thereafter.

Partial occupancy. If this Certificate covers only part of the Work, an attachment describing the scope of Work to which it applies – and which is to be occupied by UGAA – is attached to this Certificate, and signed by Design-Builder.

The statements made above in this Certificate are based upon my personal knowledge and are true and correct; and UGAA is entitled to rely upon their completeness and veracity in making subsequent payments and conducting its subsequent affairs with respect to this Project and Design-Builder.

SO SWORN and CERTIFIED by Design-Builder:

<p>Design-Builder: _____ (insert) (SEAL)</p> <p>_____ <i>Signature of Design-Builder's authorized representative and Affiant here</i></p> <p>_____ <i>Representative's printed name</i> <i>title</i></p> <p>_____ <i>Design-Builder's address</i></p> <p>_____ <i>City</i> <i>State</i> <i>Zip</i></p>	<p>Witness:</p> <p style="text-align: center;"><u>NOTARY</u></p> <p>Sworn and subscribed before me by _____ on this ____ day of ____, 201__, who is:</p> <p>personally known to me [], or who produced _____ (identify document) as identification.</p> <p>_____ NOTARY PUBLIC (SEAL) My commission expires on _____ (date).</p>
--	--

Date of Substantial Completion

Original Contractual Date of Substantial Completion:	_____, 201____
Days added by previous executed Change Orders:	_____ calendar days
Days added by previous unilateral Change Orders issued by UGAA:	_____ calendar days
Modified Contractual Date of Substantial Completion:	_____, 201____

The Realized Date of Substantial Completion is _____, 201____ at ____: ____ ET (*insert time*).

ACCEPTED BY:

University of Georgia Athletic Association, Inc.

signature of authorized representative

date

_____ E.T.
time

<p>Approved: _____ (<i>Design Professional's legal name</i>)</p> <p>_____ <i>signature of authorized representative</i></p> <p>_____, _____ <i>representative's printed name title</i></p> <p>_____ <i>date signed</i></p>	<p>Witness: _____ (<i>ADR signature</i>)</p> <p>_____, 201____</p>
---	---

UGAA/Design-Builder Agreement - Supplement M

Warranty on Walls

STATE OF GEORGIA

COUNTY

- V. Know all men by these presents that the undersigned Design-Builder ("Design-Builder") is held and firmly bound unto the University of Georgia Athletic Association, Inc. ("UGAA"), as well as the University of Georgia ("UGA") and the Board of Regents of the University System of Georgia ("Board of Regents") as third-party beneficiaries, for the warranty of the walls described herein. Design-Builder hereby binds itself and its successors and assigns by these presents.
- W. The condition of the above obligation is such that whereas Design-Builder and UGAA have entered into certain agreement for design and construction with UGAA, with an Effect Date of the ____ day of _____, 201____ ("Agreement" or "UGAA/Design-Builder Agreement") for the design and construction of _____ (*insert the name of the Project from page one of the Agreement*).
- X. Design-Builder hereby warrants for a period of five years from the date of written acceptance of the Certificate of Substantial Completion by the representative of UGAA, the walls of the building constructed or renovated as part of the Project, including, but not limited to, vertical and/or horizontal expansion joints, below and/or above-grade waterproofing, below and/or above-grade damp proofing, thru-wall flashing, damp course flashing and waterproofing of joints at openings in walls, including but not limited to door jambs, windows, vents, and pipe openings shall be absolutely watertight and free from all leaks, seepage, or dampness. At no expense to UGAA, UGA, or the Board of Regents, Design-Builder will repair any defects that may develop in the Work, in a manner compatible to the system and acceptable under industry standards and in accordance with the requirements of the Contract Documents, provided, however, that the following are excluded from this warranty:
1. Defects or failures resulting solely from abuse by UGAA; and
 2. Damage caused by fire (not involving performance of the Work), tornado, hail, hurricane, acts of God, wars, riots, and civil commotion.
- Y. Any other provisions of this warranty to the contrary notwithstanding, Design-Builder shall not be required to remedy any unsuitable or inadequate design of others not employed or engaged by Design-Builder – unless Design-Builder was aware, or should have been aware, of its unsuitability or inadequacy before installation of the Work and failed to notify UGAA of that unsuitability or inadequacy at the earliest possible time.
- Z. Design-Builder hereby agrees that, should any leaks or defects occur in the walls of the building constructed as part of the Project, Design-Builder shall promptly remedy the said leaks or defects and pay for any damage caused to any other portion of the Project or its contents resulting therefrom.

IN WITNESS WHEREOF, Design-Builder has caused this instrument to be executed on this ____ day of _____, 201____.

SO SWORN and CERTIFIED by Design-Builder:

<p>Design-Builder: _____ (insert) (SEAL)</p> <p>_____ <i>Signature of Design-Builder's authorized representative and affiant here</i></p> <p>_____ <i>Representative's printed name</i> <i>title</i></p> <p>_____ <i>Design-Builder's address</i></p> <p>_____ <i>City</i> <i>State</i> <i>Zip</i></p>	<p>Witness: <u>NOTARY</u></p> <p>Sworn and subscribed before me by _____ on this ____ day of ____, 201__, who is:</p> <p>personally known to me [], or who produced _____ (<i>identify document</i>) as identification.</p> <p>_____ NOTARY PUBLIC (SEAL) My commission expires on _____ (<i>date</i>).</p>
--	--

STATE OF GEORGIA

COUNTY

- A. Know all men by these presents that the undersigned Design-Builder ("Design-Builder") is held and firmly bound unto the University of Georgia Athletic Association, Inc. ("UGAA"), as well as the University of Georgia ("UGA") and the Board of Regents of the University System of Georgia ("Board of Regents") as third-party beneficiaries, for the warranty of the roof described herein. Design-Builder hereby binds itself and its successors and assigns by these presents.
- B. The condition of the above obligation is such that whereas Design-Builder and UGAA have entered into certain agreement for design and construction with UGAA, with an Effect Date of the ____ day of _____, 201____ ("Agreement" or "UGAA/Design-Builder Agreement") for the design and construction of _____ (*insert the name of the Project from page one of the Agreement*).
- C. Design-Builder hereby warrants for a period of five years from the date of written acceptance of the Certificate of Substantial Completion by the representative of UGAA, the roof of the building constructed or renovated as part of the Project and roofs of covered passages, including, but not limited to, material used as a roof base or insulation over which the roof is applied, roofing materials, promenade decks, or any other Work on the surface of the roof, flashing, base flashing, counter flashing, metal work, gravel stops, liquid waterproofing, coping, or roof expansion joints and vent or pipe penetrations shall be absolutely watertight and free from all leaks. At no expense to UGAA, UGA, or the Board of Regents, Design-Builder will repair any defects that may develop in the Work, including but not limited to: blisters, exposed felts, ridges, wrinkles, splits, warped insulation and loose flashing, in a manner compatible to the system and acceptable under industry standards and in accordance with the requirements of the Contract Documents, provided, however, that the following are excluded from this warranty:
1. Defects or failures resulting solely from abuse by UGAA; *and*
 2. Damage caused by fire (not involving performance of the Work), tornado, hail, hurricane, acts of God, wars, riots, and civil commotion.
- D. Any other provisions of this warranty to the contrary notwithstanding, Design-Builder shall not be required to remedy any unsuitable or inadequate design of others not employed or engaged by Design-Builder – unless Design-Builder was aware, or should have been aware, of its unsuitability or inadequacy before installation of the Work and failed to notify UGAA of that unsuitability or inadequacy at the earliest possible time.
- E. Design-Builder hereby agrees that, should any leaks or defects occur in the roof of the building constructed or renovated as part of the Project, Design-Builder shall promptly remedy the said leaks or defects and pay for any damage caused to any other portion of the Project or its contents resulting therefrom.

IN WITNESS WHEREOF, Design-Builder has caused this instrument to be executed on this ____ day of _____, 201____.

SO SWORN and CERTIFIED by Design-Builder:

<p>Design-Builder: _____ (insert) (SEAL)</p> <p>_____ <i>Signature of Design-Builder's authorized representative and affiant here</i></p> <p>_____ <i>Representative's printed name</i> <i>title</i></p> <p>_____ <i>Design-Builder's address</i></p> <p>_____ <i>City</i> <i>State</i> <i>Zip</i></p>	<p>Witness: <u>NOTARY</u></p> <p>Sworn and subscribed before me by _____ on this ____ day of ____, 201__, who is:</p> <p>personally known to me [____], or who produced _____ (identify document) as identification.</p> <p>_____ NOTARY PUBLIC (SEAL) My commission expires on _____ (date).</p>
--	---

UGAA/Design-Builder Agreement - Supplement N
Design-Builder Preconstruction Overhead Costs

The following is an all-inclusive list of items that may, if incurred, be charged toward "Design-Builder Preconstruction Overhead Costs." None of these items will be allowed to be charged to "Cost of the Work." Provide resumes of designated personnel for UGAA advance approval. Limiting values (if any) for the items listed shall be attached to this **Supplement N** in the pages that follow.

A.	Preconstruction Supervision & Management		
1	Senior Project Manager (<i>identify</i>)	Key	
2	Project Manager (<i>identify</i>)	Key	
3	Preconstruction Manager (<i>identify</i>)	Key	
4	Project Superintendent (<i>identify</i>)	Key	
5	Cost Control		
6	Scheduling		
7	Secretary/ Administrative Assistant		
8	Consultant (<i>identify</i>)	Key	
9	Design Costs		
9a	Investigation and Programming Services	Specify	
9b	Conceptual and Preliminary Design Phase Services	Specify	
9c	Schematic Design Phase Services	Specify	
9d	Design Development Phase 50% Services	Specify	
9e	Design Development Phase 51-100% Services	Specify	
9f	Construction Document 50% Phase Services	Specify	
9g	Construction Document 51-100% Phase Services	Specify	
9h	Preconstruction Services	Specify	
	Design-related Costs subtotal	Specify	
10	Other (<i>identify</i>)		
	Subtotal		
B.	Preconstruction-Miscellaneous		
10	Office supplies		
11	Postage and shipping		
12	Blueprint/Photostat		
13	Phone charges		
14	Phone charges - long distance		
15	Courier Service		
16	Travel expense		
17	Other (<i>identify</i>)		
	Subtotal		
	Total of Design-Builder Preconstruction Overhead Costs		

UGAA/Design-Builder Agreement - Supplement O
Design-Builder Construction Overhead Costs

The following is an all-inclusive list of items that may, if incurred, be charged toward the “General Conditions” / “Design-Builder Construction Overhead Costs” line-item within the GMP. None of these items will be allowed to be charged to “Cost of the Work.” Provide resumes of designated personnel for UGAA advance approval. Limiting values for the items listed shall be attached to this **Supplement O** in the pages that follow.

	Site Supervision and Management		
1	Senior Project Manager (<i>identify</i>)	Key	
2	Project Manager (<i>identify</i>)	Key	
3	Project Superintendent (<i>identify</i>)	Key	
4	Assistant Project Manager (<i>identify</i>)		
5	Area Superintendent (<i>identify</i>)		
6	Secretary (Administrative Assistant)		
7	Project Engineer (<i>identify</i>)		
8	Project Engineer II (<i>identify</i>)		
9	Engineering or Engineering Company (<i>identify</i>)	Key	
10	Office Engineer (<i>identify</i>)		
11	Rodman (<i>identify</i>)		
12	Cost Control		
13	Safety Engineer (<i>identify</i>)	Key	
14	Scheduling		
15	Purchasing		
16	Project Accountant (<i>identify</i>)		
17	Design Professional Construction Administration Costs	Specify	
18	Other (<i>identify</i>)		
	Site Office Expense		
19	Job-site office trailer rent		
20	Jobsite Office build out		
21	Jobsite Office set-up		
22	Temporary construction trailer / storage		
23	Job-site office furniture (<i>identify</i>)		
24	Job-site office machines and equipment (<i>identify</i>)		
25	Copy machines and maintenance (<i>identify</i>)		
26	Job-site office supplies		
27	Job-site office Janitor and sanitation supplies		
28	Postage and shipping		
29	First-aid, medical treatment (<i>identify</i>)		
30	Job sign		
31	Progress photos		
32	Extra copies of Construction Documents		
33	Blueprints and photocopies		
34	Job-site telephone system		
35	Job-site telephone installation		
36	Job-site telephone charges		
37	Job-site long-distance charges		

38	Job-site radio communications (<i>specify</i>)		
39	Job-site radio maintenance (<i>specify</i>)		
40	Others		
	Safety and Security		
41	n/a		
42	Sidewalk barricades		
43	Safety railings		
44	Opening closures and gates		
45	Weather protection		
46	Temporary ladders and stairs		
47	Watchman and security guard (<i>specify</i>)		
48	Temporary site fencing		
49	Traffic control		
50	Fire Protection, extinguishers, barrels, etc.		
51	Safety equipment (<i>specify</i>)		
52	Rainwear and Hardhats		
53	Others (<i>specify</i>)		
	Cleaning		
54	Daily cleaning		
55	Final cleaning		
56	Window and skylight cleaning		
57	Trash bin rental and hauling		
58	Trash chutes and hoppers		
59	Dump fees and hauling fees		
60	Dust / temporary barricades		
61	Others (<i>specify</i>)		
	Temporary utilities and miscellaneous job-site items		
62	Temporary electricity for job-site office		
63	Security for job-site office		
64	Project temporary power		
65	Job-site office water		
66	Water coolers		
67	Water barrels		
68	Job-site office ice machine		
69	Ice and cups		
70	Temporary toilets (installation)		
71	Temporary toilets (rental and maintenance)		
72	Cold weather protection		
73	Project temporary heat		
74	Drug testing		
75	Computer - PCS (<i>specify</i>)		
76	Computers (<i>specify</i>)		
77	Software (<i>specify</i>)		
78	MIS Charges (<i>specify</i>)		
79	Parking permits (<i>specify</i>)		
80	Living expenses (<i>specify</i>)		
81	Executive travel (<i>specify</i>)		

82	Air fare (<i>specify</i>)		
83	Car rental (<i>specify</i>)		
84	Hotel (<i>specify</i>)		
85	Meals (<i>specify</i>)		
86	Ceremony expenses		
87	Other (<i>specify</i>)		
	General equipment		
88	Automobiles (<i>specify</i>)		
89	Pick-up trucks (<i>specify</i>)		
90	Temporary packing (<i>specify</i>)		
91	Small tools/expendables		
92	Survey equipment (<i>specify</i>)		
93	Hoist operator		
94	Hoist service		
95	Erect, maintain, and dismantle hoist		
96	Tower crane service		
97	Erect, maintain, and dismantle tower crane		
98	Crane rental/operator		
99	Temporary elevator and operator		
100	Erect, maintain, and dismantle temporary elevator		
101	Protect permanent elevator		
102	On-site consumption by on-site equipment of fuel, oil, and grease		
103	Vehicle repairs and maintenance		
104	Other (<i>specify</i>)		
	Bonds and insurance		
105	Performance and payment bond premium		
106	Workers Compensation insurance		
107	Builders Risk insurance		
108	Liability insurance		
109	Other (<i>specify</i>)		
110			
111			

UGAA/Design-Builder Agreement - Supplement P

Mold Certification

STATE OF GEORGIA

COUNTY OF _____

I, the undersigned, _____ (insert name), being first duly sworn, depose and state as follows:

- A. I am over twenty-one years of age, and I am competent to make this Affidavit;
- B. I am employed in the position of _____ (insert title) by _____, (insert legal name of Design-Builder) ("Design-Builder") which has been employed pursuant to a contract with an effective date of the ____ day of _____, 201____ (the "UGAA/Design-Builder Agreement") by the **University of Georgia Athletic Association, Inc. ("UGAA")** to provide labor, materials, and services pertaining to _____ (the "Project") located on or near _____ (insert street address), in the county of _____, **Georgia**, on real property ("the Property"), which is owned by the **Board of Regents of the University System of Georgia** and leased to UGAA;
- C. I make this Certification Affidavit on the basis of my own personal knowledge and upon proper investigation;
- D. I make this Certification Affidavit understanding that my statements and representations in it, and in the Final Payment Application to which this Affidavit is attached, will be relied upon by UGAA in making payments to Design-Builder with respect to the Project;
- E. I certify that structures enclosed as part of the Work are free of mold, mildew, and bacterial and fungal infestation, that no Work was covered unless the substrate or Work to be covered was examined for dryness, absence of water or visible moisture in cavities and on the Work to be covered, and that materials and assemblies delivered to the Project site were tested as required for adherence to standards of dryness set forth in the Construction Documents before acceptance and incorporation in the Work; and
- F. I am authorized by Design-Builder to make this Affidavit, and Design-Builder has approved the statements made herein, which are true and correct.

FURTHER AFFIANT SAYETH NOT.

<p>Design-Builder: _____ (insert)</p> <p>_____ <i>Signature of Design-Builder's authorized representative and Affiant here</i></p> <p>_____ <i>Representative's printed name</i> <i>title</i></p> <p>_____ <i>(Seal)</i></p> <p>_____ <i>Design-Builder's Legal Name</i></p> <p>_____ <i>Address</i></p> <p>_____ <i>City</i> <i>State</i> <i>Zip</i></p>	<p>Witness:</p> <p><u>NOTARY</u></p> <p>Sworn and subscribed before me by _____ on this ____ day of ____, 201__, who is:</p> <p>personally known to me [], or who produced _____ (identify document) as identification.</p> <p>_____ NOTARY PUBLIC (SEAL)</p> <p>My commission expires on _____ (date).</p>
---	---

UGAA/Design-Builder Agreement - Supplement Q

Instruction to Change

ITC No. _____

Project: _____

This Instruction to Change pertains to the Agreement between University of Georgia Athletic Association, Inc. ("UGAA") and _____ (*insert Design-Builder's legal name*) ("Design-Builder") Design-Builder, having an effective date of the _____ day of _____, 201____ ("UGAA/Design-Builder Agreement").

Design-Builder is directed to perform in accordance with the following Instruction to Change ("ITC"):

The Scope of Work and/or Design Services is modified to include: _____ (*insert general description of change*) as described in _____ (*insert documents indicating the change in Scope of Work and/or Design Services*) attached hereto.

The Contract Time not extended by this ITC; and the Project Schedule remains unchanged as a result of this ITC.

Select which one of the following applies:

- ☐ No additional cost or increase of the GMP is involved in the above-noted change in the Work and/or Design Services;
- ☐ Design-Builder shall perform the Work and/or Design Services described above in this ITC for an amount calculated in accordance with the Pricing of Adjustments provision in Art. VIII of the Design-Builder Agreement. A Change Order will issue for the changed Work and/or Design Services, consistent with this ITC, increasing ☐ decreasing ☐ (*select one*) the Guaranteed Maximum Price ("GMP") by the amount of \$_____, which changed amount is maximum that UGAA is obligated to pay as a result of the above-described change. Design-Builder accepts the risk that it will incur costs in excess of that amount in its performance of the above-described changed Work and/or Design Services. The amount stated in this paragraph includes all Design-Builder's labor, materials, supervision, and administration costs, profit, overhead, Bond and insurance costs, fees, expenses, and time required to provide the changed Scope of Work and/or Design Services in accordance with Article VIII. Therefore, except for compensation provided in this ITC, Design-Builder waives any and all claims related to the change set forth here; *or*
- ☐ Design-Builder shall perform the Work described above in this ITC under the Force Account provisions set forth in ¶ VIII(C)(6) of the UGAA/Design-Builder Agreement, with a not-to-exceed limit of \$_____

This ITC is effective on the date accompanying the UGAA signature below; and Design-Builder's performance shall be modified accordingly.

<p>ADR:</p> <p>_____</p> <p><i>signature of ADR</i></p> <p>_____</p> <p><i>printed name</i></p> <p>_____, 201____</p> <p><i>date signed</i></p>	<p>University of Georgia Athletic Association, Inc.</p> <p>_____</p> <p><i>signature of authorized representative of UGAA</i></p> <p>_____, 201____</p> <p><i>date signed</i></p> <p>[Note: This signature required for ITC's ordering changes with a value in excess of \$10,000.00 and those that involve extensions of Contract Time.]</p>
---	--

UGAA/Design-Builder Agreement - Supplement R

**Rock Blasting Checklist
UGA Design & Construction
Supplemental General Requirements and Standards
May 16, 2014
01 41 26.05**

UGA Blasting Checklist

This form is to be submitted and approved prior to all blasting activities

Project Name: _____

Contractor Responsible: _____

Trade Contractor Responsible: _____

Blasting Company Responsible: _____

Scheduled Date / Time of Blasting: _____

Notifications (one week in advance):

1. UGA Office of Fire Safety (call 706-369-5706)
Date/Time Notified _____ Contact
Person _____
2. UGA Police (call
Date/Time Notified _____ Contact
Person _____
3. Local Police/Fire Department (For Athens-Clarke County call 706-542-2200)
Date/Time Notified _____ Contact Person

Day of Blast: _____

2. Local Utilities Department (For Athens-Clarke County call 706-613-3470 Admin)
Date/Time Notified _____ Contact Person

3. Department Notifications
(Coordinate list and Contact with Owner's Representative)
Department Name: _____ Date/Time
Notified _____

Checklist

1. Blaster certification card on file / Georgia license #: _____
2. Pre-blast seismic survey completed prior to
blast _____
Surveying Company _____ Survey Date
3. 6' of earth cover confirmed on site

4. Blast mats in place

5. Crushed stone used to fill boring holes

6. Perimeter verified & staffed by blaster and WT with radio communication – 200' from blast zone _____
7. Verify no charges are within 10' of existing utilities _____
8. Immediately prior to blasting administer 3 quick sirens and 1 long siren with air horn _____
9. Seismograph in place and functional _____
10. Post-blast seismograph reading _____ Time of Reading _____
11. Blaster checks detonation tail cap to verify all explosives have discharged before anyone can re-enter site _____

Trade Company Responsible Signature _____ Date: _____

Trade Company Responsible Printed Name _____

Contractor Signature _____

Date: _____

Contractor Printed Name _____

**Approval to Proceed Signature by UGA Office of Fire Safety Prior is required prior to Blasting.
This will insure that State Fire Marshal in appropriately contacted.**

Authorization to Proceed with Blasting by UGA Office of Fire Safety:

Signature _____

Printed Title: _____

Date: _____

END OF FORM

UGAA/Design-Builder Agreement - Supplement S

Materials certification of Design-Builder

STATE OF GEORGIA

COUNTY OF _____

I, the undersigned, _____ (*insert name*), being first duly sworn, depose and state as follows:

- A. I am over twenty-one years of age, and I am competent to make this Affidavit;
- B. I am employed in the position of _____ (*insert title*) by _____, (*insert legal name of Design-Builder*) ("Design-Builder") which has been employed pursuant to a contract with an effective date of the ____ day of _____, 201____ (the "UGAA/Design-Builder Agreement") by the **University of Georgia Athletic Association, Inc.** ("UGAA") to provide labor, materials, and services pertaining to _____ (the "Project") located on or near _____ (*insert street address*), in the county of _____, **Georgia**, on real property ("the Property"), which is owned by the **Board of Regents of the University System of Georgia** (and leased to UGAA);
- C. I make this Certification Affidavit on the basis of my own personal knowledge and upon proper investigation;
- D. I make this Certification Affidavit understanding that my statements and representations in it, and in the Final Payment Application to which this Affidavit is attached, will be relied upon by UGAA in making payments to Design-Builder with respect to the Project;
- E. I certify that no materials containing asbestos, formaldehyde, or lead were installed in the Work or stored within the Project or Project site by Design-Builder or its Subcontractors of any tier; *and*
- F. I am authorized by Design-Builder to make this Affidavit, and Design-Builder has approved the statements made herein, which are true and correct.

FURTHER AFFIANT SAYETH NOT.

Design-Builder: _____ (<i>insert</i>) _____ <i>Signature of Design-Builder's authorized representative and affiant here</i> _____ <i>Representative's printed name</i> <i>title</i> _____ <i>(Seal)</i> <i>Design-Builder's Legal Name</i> _____ <i>Address</i> _____ <i>City</i> <i>State</i> <i>Zip</i>	Witness: <u>NOTARY</u> Sworn and subscribed before me by _____ on this ____ day of _____, 201____, who is: personally known to me [____], or who produced _____ (<i>identify document</i>) as identification. _____ NOTARY PUBLIC (SEAL) My commission expires on _____ (<i>date</i>).
---	---

UGAA/Design-Builder Agreement - Supplement S1

Materials certification of Subcontractor

STATE OF GEORGIA

COUNTY OF _____

I, the undersigned, _____ (insert name), being first duly sworn, depose and state as follows:

- A. I am over twenty-one years of age, and I am competent to make this Affidavit;
- B. I am employed in the position of _____ (insert title) by _____, (insert legal name of Subcontractor) ("Subcontractor") which has been employed by _____ ("Design-Builder") which has been employed pursuant to a contract with an effective date of the ____ day of _____, 201____ (the "UGAA/Design-Builder Agreement") by the **University of Georgia Athletic Association, Inc.** ("UGAA") to provide labor, materials, and services pertaining to _____ (the "Project") located on or near _____ (insert street address), in the county of _____, **Georgia**, on real property ("the Property"), which is owned by the **Board of Regents of the University System of Georgia** (and leased to UGAA);
- C. I make this Certification Affidavit on the basis of my own personal knowledge and upon proper investigation;
- D. I make this Certification Affidavit understanding that my statements and representations in it, and in the Final Payment Application to which this Affidavit is attached, will be relied upon by UGAA in making payments to Design-Builder with respect to the Project and by Design-Builder in making payments to Subcontractor;
- E. I certify that no materials containing asbestos, formaldehyde, or lead were, installed in the Work or stored within the Project or Project-site by Subcontractor or its Subcontractors of any tier; and
- F. I am authorized by Design-Builder to make this Affidavit, and Subcontractor has approved the statements made herein, which are true and correct.

FURTHER AFFIANT SAYETH NOT.

<p>Subcontractor: _____ (insert)</p> <p>_____</p> <p><i>Signature of Subcontractor's authorized representative and Affiant here</i></p> <p>_____</p> <p><i>Representative's printed name title</i></p> <p>_____ (Seal)</p> <p><i>Subcontractor's Legal Name</i></p> <p>_____</p> <p><i>Address</i></p> <p>_____</p> <p><i>City State Zip</i></p>	<p>Witness:</p> <p style="text-align: center;"><u>NOTARY</u></p> <p>Sworn and subscribed before me by _____ on this ____ day of _____, 201____, who is:</p> <p>personally known to me [], or who produced _____ (identify document) as identification.</p> <p>_____</p> <p>NOTARY PUBLIC (SEAL)</p> <p>My commission expires on _____ (date).</p>
--	---

UGAA/Design-Builder Agreement - Supplement T
Design-Builder Proposal Cover Sheet

1. FEES:

- A. DESIGN-BUILDER PRECONSTRUCTION FEE:** As described in ¶ II(C)(2)(a) and related provisions of the UGAA/Design-Builder Agreement.

	TOTAL
Design-Builder Preconstruction Fee	\$

- B. DESIGN-BUILDER CONSTRUCTION FEE:** As described in ¶ II(C)(2)(d) and related provisions of the UGAA/Design-Builder Agreement.

	TOTAL
Design-Builder Construction Fee	\$

2. OVERHEAD COSTS:

- A. DESIGN-BUILDER'S PRECONSTRUCTION OVERHEAD COSTS:** As described in ¶ II(C)(2)(b) and related provisions of the UGAA/Design-Builder Agreement.

	TOTAL
Design-Builder Preconstruction Overhead Costs	\$

- B. DESIGN-BUILDER'S CONSTRUCTION OVERHEAD COSTS:** As described in ¶ II(C)(2)(e) and related provisions of the UGAA/Design-Builder Agreement.

	TOTAL
Design-Builder Construction Overhead Costs	\$

TOTAL MAXIMUM OVERHEAD COSTS: Sum of 2(A) and 2(B) above: \$

Legal Name of Design-Builder

By: _____
Signature of Design-Builder Officer

Title of Design-Builder Officer

UGAA/Design-Builder Agreement - Supplement U

Design Fee Schedule

Fees for Services of Design Professional, where performed on an hourly basis in accordance with this Agreement, shall not exceed the following rates:

Design Professional SAMPLE				
Principal	\$140-\$180/hour			
Associate	\$130/hour			
Senior Project Manager	\$125/hour			
Project Manager	\$115/hour			
Senior Project Manager	\$115/hour			
Project Architect	\$105/hour			
Staff Architect I	\$100/hour			
Staff Architect II	\$90/hour			
Intern Architect	\$80/hour			
Digital Artist/Graphics	\$115/hour			
Interior Designer I	\$100/hour			
Interior Designer II	\$90/hour			
Interior Designer III	\$80/hour			
Administrative	\$50/hour			

The following Subconsultants will provide Services on the Project according Article VII of this Agreement. Fees for Services of Subconsultants, where performed on an hourly basis in accordance with this Agreement, shall not exceed the following rates:

Subconsultant W SAMPLE			Subconsultant Y	
Principal	\$140-\$180/hour		Principal	\$170/hour
Associate	\$130/hour		Associate	\$135/hour
Senior Project Manager	\$125/hour		Project Manager	\$110/hour
Project Manager	\$115/hour		Senior Engineer	\$105/hour
Senior Project Manager	\$115/hour		Junior Engineer	\$85/hour
Project Architect	\$105/hour		Senior Designer	\$80/hour
Digital Artist/Graphics	\$115/hour			
Interior Designer I	\$100/hour			
Interior Designer II	\$90/hour		Low Voltage Engineer	
Interior Designer III	\$80/hour			
Administrative	\$50/hour			
			Electrical Engineer	
Structural Engineer X				
Principal	\$200/hour			
Project Mgr./Engineer	\$130/hour		Food Service Consultant	
Administrative/Draftsman	\$90/hour			
			Landscape Architecture	

GEORGIA SUPPLEMENTS
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