



MEMORANDUM

TO: Prospective Construction Management Firms

DATE: August 5, 2026

FROM: Ches Fedric, Director of PDCA

SUBJECT: Riley Campus Student Housing & Academic Building
RFQ NO. 27-06

Attached you will find the following:

1. Standard Form of Agreement between MSU and CMaR.
2. Slides from today's informational meeting. Note – errors on dates have been corrected.

END OF MEMO

AGREEMENT

BETWEEN OWNER AND CONSTRUCTION MANAGER-AT-RISK

THIS AGREEMENT is made as of the XXth day of XX 20XX, between MISSISSIPPI STATE UNIVERSITY ("University" and/or "Owner"), and

Construction Manager at Risk ("CMAR"):

for the Project:

IHL #
Mississippi State, MS

University's Contract Administrator:

Jeremy Clay
Director of Contracts Administration
Mississippi State University
Procurement and Contracts
McArthur Hall, Sixth Floor
Mississippi State, MS 39762

University's Representatives:

Ches Fedric
Director
Office of Planning, Design & Construction
Administration
Gast Building
130 Twelve Lane
Mississippi State, MS 39762

Design Professional:

Contract Documents for the
Work Prepared by:

The addresses for notices for each of the above persons or entities shall be as listed above.

TABLE OF CONTENTS

ARTICLE

1	WORK
2	OPTION
3	CONTRACT DOCUMENTS
4	CONTRACT SUM
	Preconstruction Services Sum
	Option Sum for Construction Services and CMAR's Fee
5	CONTRACT TIME
	Preconstruction Service
	Construction Services
6	LIQUIDATED DAMAGES
7	DELAY NOT CAUSED BY CMAR
8	DUE AUTHORIZATION
9	PRECONSTRUCTION SERVICES TERMINATION
10	CMAR'S REPRESENTATIONS
11	LIST OF EXHIBITS
	Ex. A General Conditions for Mississippi State University CMAR Contract
	Ex. B Supplementary Conditions to Mississippi State University CMAR Contract
	Ex. C MSU's Standard Front End Specifications
	Ex. D Project Cost Allocation Matrix
	Ex. E Guaranteed Maximum Price Proposal
	Attachment 1 to Ex. E – Guidelines for the Preparation of the GMP Proposal
	Ex. F Payment and Performance and Contract Bonds
	Ex. G Security Bond
	Ex. H CMAR's Preconstruction Proposal

University and CMAR hereby agree as follows:

ARTICLE 1 – WORK

CMAR shall provide all work required by the Contract Documents (the “Work”). CMAR agrees to do additional Work arising from changes ordered by the University pursuant to the Contract. The Work to be performed by CMAR will consist of Preconstruction Services and Construction Services. The Construction Services may consist of multiple, independent, sequentially ordered phases, preliminarily and generally identified as follows:

1. Construction Phase 1 –
2. Construction Phase 2 –
3. Construction Phase 3 –

The various phases of Construction Services, if applicable, will be further developed and refined with input from the Design Professional and CMAR, and the specific scopes of each phase of Construction Services will be fully identified and discussed in the Guaranteed Maximum Price (“GMP”) Amendment to be signed by the University and CMAR.

If the Work is being performed on an existing, occupied facility, CMAR will work in conjunction with the University, Design Professional, and Project team members as necessary so that the University can at all necessary times occupy and utilize existing portions of the facility that are not under construction.

CMAR will execute the Work as outlined in this Agreement and the Contract Documents.

Due to the potential for multiple phases of Construction Services, there may also be multiple phases of Preconstruction Services, and the various phases of Preconstruction Services may overlap with the various phases of Construction Services. The details for scope, duration, timing, and execution of each phase of Preconstruction Services should be addressed in CMAR’s Preconstruction Services Proposal.

ARTICLE 2 – OPTION

After execution of the GMP Amendment, the University may require the performance of the Work under any phase of Construction Services by directing the CMAR in writing to proceed with performance of Work on that particular phase of Construction Services. The University may issue separate notices to proceed for each separate phase of Construction Services. The direction from the University for the CMAR to proceed with any phase of Construction Services may be issued by the University at any time after the GMP Amendment is executed and a Notice to Proceed is issued by the University for the Preconstruction Services that are related to that particular phase of Construction Services. The University is not obligated to proceed with any phase of Construction Services. And as discussed below, the University may suspend or terminate performance of any or all work under any phase of Preconstruction Services or Construction Services for convenience or for good cause, with payment to CMAR as discussed in the Contract.

ARTICLE 3 - CONTRACT DOCUMENTS

“Contract Documents” means this Agreement, General Conditions, Supplementary Conditions, Exhibits, Specifications, List of Drawings, Drawings, Addenda, Notice to Proceed, Change Orders, Contract Amendments, Notice of Completion, the GMP Amendment, CMAR’s Qualifications, and all other documents identified in this Agreement that together form the contract between University and CMAR for the Work (the “Contract”). The Contract constitutes the complete agreement between University and CMAR and supersedes any previous agreements or understandings, representations or agreements, written or oral.

ARTICLE 4 - CONTRACT SUM

Subject to the provisions of the Contract Documents, University shall pay to CMAR for the performance of all Preconstruction Services the maximum allowable amount of XXXX Dollars (\$00.00) (the “Preconstruction Services Sum”). If the Preconstruction Services are divided into multiple phases, then the University may pay CMAR based on its completion of each separate phase of Preconstruction Services. At the outset of the Project, the Contract Sum is the Preconstruction Services Sum.

The CMAR shall prepare and submit a GMP Proposal, as defined below, to the University for its consideration. If the GMP Proposal is acceptable to the University, in its sole discretion, the University and the CMAR will then negotiate and, upon reaching an agreement, execute a GMP Amendment. If the University and CMAR execute a GMP Amendment, the Contract Sum will be increased as stated in the GMP Amendment to account for (a) the not to exceed amount of costs that the University agrees is necessary to perform and complete all phases of Construction Services (the “Option Sum for Construction Services”) and (b) the CMAR’s Fee for Construction Services. The Option Sum for Construction Services shall include the maximum allowable amount of General Conditions Costs payable to CMAR for Construction Services, except for such additional General Conditions Costs that are included in Change Orders. The University will be obligated to proceed with Construction Services only if the University executes a GMP Amendment and issues written direction for CMAR to proceed with a specific phase of the Construction Services. As discussed below, any GMP Amendment to be signed by the University will consist of the Preconstruction Services Sum, the Option Sum for Construction Services, and the CMAR’s Fee for Construction Services.

Preconstruction Services Sum:

Preconstruction Services include but are not limited to coordination, consulting, and related scope developmental services identified generally on CMAR’s Preconstruction Services Proposal, which is incorporated herein by this reference. As a part of Preconstruction Services, CMAR shall cooperate and coordinate with the Design Professional selected by the University to provide the required design professional services for the Project. The duty to cooperate and coordinate shall include but not be limited to providing constructability analysis, cost estimates, alternative materials, equipment or processes and other similar matters which may impact the overall construction of the Project. Payments for Preconstruction Services shall be based upon the University’s approval of the percentage of CMAR’s completion of each phase of Preconstruction Services. All payment requests for Preconstruction Services shall be submitted on an Application for Payment and shall be based on a Schedule of Values approved by the University. Any reimbursable expenses must be preapproved by University in writing and may include University-approved consultants, subconsultants, and vendors, personnel travel and living expenses, site office occupancy, and presentation materials provided such expenses are within the not to exceed amount for Preconstruction Services. University shall reimburse CMAR for any approved reimbursable expenses at actual cost. The costs of Preconstruction Services shall not be included

in the basis for calculation of the CMAR's Fee for Construction Services. If the University decides to suspend, cancel, or otherwise terminate CMAR's performance of any phase of Preconstruction Services, which the University may do for cause or for its convenience, the University shall owe CMAR only for the percentage of completion of such phase of Preconstruction Services at the time of such suspension, cancelation, or termination.

Option Sum for Construction Services and CMAR's Fee:

CMAR must submit a GMP Proposal prepared in accordance with the guidelines in this Agreement and the University's requests and delivered in the format specified by University, including as shown in the attached Exhibits. University, at its sole option and discretion, may specify different requirements for the GMP Proposal. CMAR shall not withdraw its GMP Proposal for sixty (60) days following submission to the University.

The GMP Proposal shall include, without limitation, a breakdown of: the Preconstruction Services Sum; CMAR's General Conditions Costs; CMAR's Costs of the Work organized by trade, tasks, and phases of the Work; detailed contingency amounts for CMAR and University; CMAR's Fee for Construction Services; the proposed Contract Time for each phase of Preconstruction Services and each phase of Construction Services, including dates for Notices to Proceed for each and proposed dates for Substantial Completion and Final Completion; any Schedule of Values required by the University and which has been approved by CMAR's bonding company; and other information required by the University or necessary for clarification of scopes of work, assignments, subcontracting processes, qualifications, documents, or other information pertinent to successful completion of the Work and Project.

The GMP Proposal shall be submitted at the completion of the Construction Drawings and Specifications and following the solicitation and selection of proposed Trade Subcontractors in consultation with the University. The GMP Proposal shall include all phases of Preconstruction Services and Construction Services, as reflected in the Drawings, Specifications, and Construction Documents.

The GMP Proposal and all supporting documents shall identify and describe all items, assumptions, costs, contingencies, schedules and other matters necessary and relevant for proper execution and completion of the Work and for establishment of the GMP. The GMP Proposal and the supporting documents are complementary and, in the event of an irreconcilable conflict between or among them not resolved by the terms of the GMP Proposal, the interpretation that provides for the higher quality of material and/or workmanship shall prevail over all other interpretations.

In submitting the GMP Proposal, the CMAR represents that it will provide every item, system or element of Work that is identified, shown or specified in the Contract Documents, in the GMP Proposal, or in the supporting documents for the GMP Proposal, along with all necessary or ancillary materials and equipment for their complete operating installation. Upon University's acceptance of the GMP Proposal, a GMP Amendment will be prepared for the University and CMAR's consideration, and, once the GMP Amendment is executed by the parties, the CMAR shall not be entitled to any increase in the proposed GMP except for changes in the scope of work authorized by the University in writing.

The GMP Proposal shall adopt and incorporate all of the terms and conditions of this Agreement and all attachments to this Agreement. Any proposed deviation by CMAR, whether through the GMP Proposal or otherwise, from the terms and conditions of this Agreement, as it may be

modified by any subsequent contractual amendment, must be clearly and conspicuously brought to the University's attention in writing and specifically accepted by the University. In the event of a conflict between (a) any term of the GMP Proposal that was not clearly and conspicuously identified or approved by the University and (b) the terms of this Agreement and its attachments, the terms of the Agreement and its attachments shall control.

Any savings between the actual costs of the Work and the GMP shall accrue to the University. CMAR shall report to the University at least quarterly the actual Cost of the Work as compared to the GMP Amendment. All savings amounts, remaining contingency amounts, unused allowances, unused general conditions, and amounts actually incurred by CMAR that are less than amounts set forth in the GMP, shall belong to the University. This global reconciliation and adjustment shall be made no later than Project completion. Of course, the University shall not be liable for any amounts expended that are in excess of the GMP.

For Construction Services, the University shall pay CMAR a stipulated Construction Services Fee equal to _____ percent (0.0%) of the Option Sum for Construction Services (referred to herein as the Construction Services Fee or as CMAR's Fee for Construction Services). However, if at the completion of all of the Work the Option Sum for Construction Services is less than the estimated total for the Option Sum for Construction Services included in the GMP Amendment, then CMAR shall owe University a credit equal to the above-referenced Fee percentage on the amount by which such actual costs of the Work were less than the estimated cost of the Work.

The Construction Services Fee shall not be included as part of the Option Sum for Construction Services for purposes of calculating the Fee for Construction Services. Likewise, neither the Preconstruction Services Sum nor any CMAR or University contingency amounts will be included as part of the Option Sum for Construction Services for purposes of calculating the amount of the CMAR's Fee for Construction Services. To be clear, neither CMAR's Fee for Construction Services, nor the Preconstruction Services Sum, nor any contingency amounts will be included as part of any basis for calculating the Fee for Construction Services.

The maximum allowable amount of CMAR's General Conditions Costs for Construction Services (barring Change Orders expressly allowing additional General Conditions Costs) shall be separately negotiated and agreed upon in writing by University and CMAR and shall be included as part of the Option Sum for Construction Services, which shall in turn be included as part of the GMP Proposal and, if accepted by the University, part of the GMP Amendment. The CMAR's General Conditions Costs will not be a separate payment to CMAR.

ARTICLE 5 - CONTRACT TIME

The total "Contract Time" is the time for completion of all phases of Preconstruction Services and Construction Services. Time is of the essence of this Agreement for all aspects of completion of Preconstruction Services and Construction Services, and the University's payment of the Contract Sum is consideration for, and conditioned upon, timely completion of the Work.

Preconstruction Services:

University has no obligation to commence Preconstruction Services and may decide, in its discretion and for its convenience, not to commence Preconstruction Services. Unless the University issues a written notice to proceed for Preconstruction Services, CMAR shall not be entitled to any payment from the University.

CMAR shall commence the Work for Preconstruction Services on the date specified in the University's written Notice to Proceed for the first phase of Preconstruction Services, and CMAR shall fully complete the work for each phase of Preconstruction Services within a time to be separately agreed upon by the University and CMAR in writing. The Contract Time on the date of contract award is the time for completion of the first phase of Preconstruction Services.

As mentioned above, there may be multiple Preconstruction Services phases. One or more of the phases of Preconstruction Services may overlap with one or more phases of Construction Services. There will be a separate written Notice to Proceed for each separate phase of Preconstruction Services. Each separate phase of Preconstruction Services will have its own time period for completion. The time allowed for completion of each phase of Preconstruction Services shall be set forth in the Contract Schedule included as part of the GMP Amendment.

Construction Services:

There will be a separate written Notice to Proceed for each separate phase of Construction Services. Each separate phase of Construction Services will have its own time period for completion of the Work. The time allowed for completion of each phase of Construction Services shall be set forth in the Contract Schedule included as part of the GMP Amendment.

CMAR shall commence the Work for each particular phase of Construction Services on the date specified in the Notice to Proceed for each such phase of Construction Services and fully complete the Work for that phase of Construction Services within the time agreed upon in writing by the University and CMAR, as established in the GMP Amendment.

Upon issuance of the Notice to Proceed for a subsequent phase of Preconstruction Services or Construction Services, the Contract Time will be revised to be the number of days calculated from the date specified on the Notice to Proceed for the first phase of Preconstruction Services, as modified by any applicable Change Order, through the specified date of completion for such phase of Preconstruction Services or Construction Services. As each subsequent phase of Preconstruction Services or Construction Services begins through the issuance of written Notices to Proceed, the total Contract Time will be revised to include the time period for completion of each such phase of Preconstruction Services or Construction Services. There may be overlap between the Work required for completion of any particular phase of Construction Services and any Preconstruction Services necessary for a subsequent phase of the Work.

In the event of any changes to the scope of Work approved by the University or the occurrence of other events for which CMAR is entitled to additional time pursuant to the Contract, it is understood and agreed that, depending on the circumstances for each such instance, no additional time for completion of the Work may be allowed by the University due to scheduling obligations associated with the University's use of the facility. And in lieu of granting all or part of additional time requested by CMAR, the University shall have the option, in its sole discretion, to account for all or part of such additional time through increased payments to CMAR, including any such payments that might be necessary for any acceleration or other impact, and that such compensation and accounting will be reflected by, and documented within, a Change Order. The Change Order will account for and reflect any increased payments for acceleration or otherwise that may be necessary due to the University's inability or refusal to grant time extensions, which is expressly permitted by this Agreement. Absent an agreed upon Change Order, CMAR shall not be entitled to any increase in the Contract Sum as a result of the University not issuing a time extension as requested. To the extent CMAR demonstrates through documentation acceptable

to the University that, despite CMAR's best efforts, acceleration is not possible, then CMAR may be entitled to additional Contract Time as otherwise provided for in the Contract.

By signing this Agreement and the GMP Amendment, CMAR represents to the University that the Contract Time for each phase of Preconstruction Services and Construction Services is reasonable for completion of the Work for each such phase and collectively for the entire Project, that time is of the essence of this Agreement, and that CMAR will complete the Work within the Contract Time.

ARTICLE 6 - LIQUIDATED DAMAGES

If CMAR fails to complete the Work within the Contract Time, CMAR shall pay to University, as liquidated damages and not as a penalty, _____ dollars (\$00) per day for each day after the expiration of the Contract Time that any aspect of the Work remains incomplete. Except as expressly discussed in the below paragraph, these liquidated damages represent all of University's damages arising out of CMAR's failure to complete the Work within the Contract Time, including, but not limited to, damages incurred for loss of use, income, and profit; financing charges; interest carry; business and reputational injury; rental and lease expenses; and loss of management and employee availability and productivity. University and CMAR agree that, except as discussed below, if the Work is not completed within the Contract Time, University's damages would be extremely difficult or impracticable to determine and that the aforesaid amounts are reasonable estimates of and reasonable sums for such damages. However, in the event of a significant delay by CMAR for which liquidated damages are not sufficient, in the University's discretion, to account for the delay and to compensate University in full for losses or damages caused by CMAR's delays, then the University shall calculate its actual damages caused by the delay and CMAR shall be liable to University for all such actual damages, if they are greater than the liquidated damages figure yielded by the same delay. CMAR shall be liable to University for the greater of the liquidated damages or actual damages, as calculated and determined by University. University may deduct any such liquidated or actual damages due by CMAR from any amounts otherwise due to CMAR under the Contract Documents. This provision shall not limit any right or remedy of University in the event of any other default of CMAR.

ARTICLE 7 - DELAY NOT CAUSED BY CMAR

Except as otherwise permitted by a provision of the Contract, or pursuant to a Change Order as described in Article 5 of this Agreement, neither CMAR nor any Trade Subcontractor shall be entitled to any increase in the contract sum or the GMP for any form of delay, regardless of cause, and whether or not the fault of the University or any entity for which the University is responsible.

If the critical path progress of CMAR's Work on the Project is interrupted, suspended or delayed due to any act or omission by the University or University's Representative, or anyone under their supervision or control, or due to any other factor beyond CMAR's control, then CMAR may assert a claim for an extension of the Contract Time to the extent of any such delays, subject to the terms of the General Conditions. CMAR shall not be entitled to an extension of the Contract Time for any interruption, suspension or delay to the extent caused in whole or in part by the CMAR or a Trade Subcontractor or which does not impact the critical path of the Project. Time extensions shall be governed by the terms set out in the General Conditions.

CMAR agrees that, except as otherwise permitted by a provision of the Contract, the sole and exclusive remedy for the CMAR and any Trade Subcontractor as a result of any delay shall be an agreed upon extension of the Contract Time. It is understood and agreed that this clause, and the

economic certainty it allows the University, is a material inducement in the University entering into the Agreement, and CMAR agrees this provision is enforceable regardless of the cause of delay, unless otherwise specifically agreed in writing by the University.

ARTICLE 8 – DUE AUTHORIZATION

The person or persons signing this Agreement on behalf of CMAR hereby represent and warrant to University that this Agreement is duly authorized, signed, and delivered by CMAR.

The University's Representatives are authorized to act on the University's behalf with respect to the Project and are the University's Primary Representatives. The University's Representative for the Project will be Mr. Ches Fedric, Director of Planning, Design & Construction Administration. CMAR shall include Mr. Fedric on all project related communications.

The Design Professional, _____, shall be obligated to fulfill each and every one of the duties assigned to it as set forth in the Professional Architectural and Engineering Services Agreement for this Project. CMAR shall cooperate with the Design Professional in all aspects of the Project and coordinate the Work with the Design Professional in a manner which allows the Design Professional to fulfill its obligations to the University.

ARTICLE 9 – PRECONSTRUCTION SERVICES TERMINATION

University may terminate the Preconstruction Services Work for convenience at any time upon 5 days written notice. In the event of such termination of the Preconstruction Services Work for convenience, CMAR agrees to waive any claims for damages, including loss of anticipated profits, on account thereof, and as the sole right and remedy of CMAR, the University shall pay CMAR the value of CMAR's Work corresponding to its percentage of completion of said Work as confirmed by the Schedule of Values up to the effective date of termination, not to exceed the Preconstruction Services Sum. Such payment shall not include payment for any work not performed or pending performance at the time of the termination, or for lost profits or overhead for work not performed.

Likewise, University may, in its discretion and for its convenience, suspend the Preconstruction Services Work at any time upon 5 days written notice, with no costs being charged to the University during the suspension or due to the suspension. If the suspension lasts longer than 365 days, then either CMAR or University may choose to terminate the Preconstruction Services Work, and such termination will be treated as if it is a termination of Preconstruction Services for the University's convenience, as stated above in this paragraph.

Article 13.4 of the General Conditions shall not apply to any termination of Preconstruction Services Work for convenience; Article 13.4 shall only apply to termination for convenience of the Construction Services Work.

ARTICLE 10 - CMAR'S REPRESENTATIONS

Without superseding, limiting, or restricting any other representation or warranty set forth elsewhere in the Contract Documents, or implied by operation of law, the CMAR makes the following representations to University:

- a. CMAR accepts the relationship of trust and confidence with the University established by the Contract Documents. CMAR will cooperate with the University.

- b. Before executing the GMP Amendment, CMAR has carefully examined the site of the Project, and the adjacent areas, has suitably investigated the nature and location of the Work and has reasonably satisfied itself as to the general and local conditions which will be applicable, including but not limited to: (a) conditions related to site access and to the transportation, disposal, handling and storage of materials; (b) the availability of labor, water, power, and roads; (c) normal weather conditions; (d) observable physical conditions at the site and existing site conditions including but not limited to: size, utility capacities and connection options of external utilities; (e) the surface conditions of the ground and (f) the character and availability of the equipment and facilities which will be needed prior to and during the performance of Work.
- c. Before executing the GMP Amendment, CMAR has obtained and reviewed any documentation furnished by University, and has obtained and reviewed any information needed for the Trade Subcontract proposal process, has complied with the statutory process for selecting Trade Subcontractors, and CMAR has reviewed all relevant and necessary information and prepared the documents needed for the Trade Subcontract packages.
- d. All labor, services, materials, equipment and furnishings incorporated into or used in the Construction Work will be of good quality, new (unless otherwise required or permitted by the Contract Documents) and free of liens, claims and security interests of third parties. If required by the University, CMAR will furnish satisfactory evidence as to the kind and quality of the materials, equipment and furnishings.
- e. The Work will be of good quality, free of defects and will conform to the requirements of the Contract Documents. Work not conforming to the requirements of the Contract Documents, including substitutions in design or construction not specifically approved or authorized by the University in advance, may be considered defective.
- f. All Project Construction Cost Estimates provided by the CMAR for the Work will be complete and accurate in accordance with the existing design documents; will incorporate the estimated cost for the means and methods required to complete the Work; and will incorporate the estimated cost for all schedule constraints shown in the Contract Schedule necessary to complete the work within Contract Time. The estimates shall be based on current market rates with reasonable allowances for overhead, profit and price escalation and shall include and consider, without limitation, all alternates, allowances and contingencies, designed and specified by the Design Professional and the cost of labor and material necessary of installation of University's furnished equipment.

As part of the Preconstruction Services and as part of the Construction Services, CMAR will provide to the University and the Design Professional suggestions for value analysis alternatives and/or other cost-saving modifications to the Project. Doing so shall not constitute the provision of design or engineering services and shall not result in CMAR holding design-related responsibility. If the University accepts in writing any of CMAR's suggestions, the University shall communicate the same to CMAR and the Design Professional, and the Design Professional shall incorporate such alternatives and/or modifications into the design documents

Draft Print

07/03/2025 10:53:10 AM

for the Project. CMAR shall provide to the University, for its benefit, the reduction in costs for such alternative and/or modification, and CMAR shall perform any Work according to the terms of the Contract Documents necessary to implement such alternative and/or modification. The University and CMAR will execute an appropriate Change Order to reflect any changes in the Work and the Contract Sum necessitated by the process defined in this paragraph.

THIS AGREEMENT is entered into by University and CMAR as of the date set forth above.

CMAR:
Company Name

UNIVERSITY:
MISSISSIPPI STATE UNIVERSITY

Name
Title

Jeremy Clay
Director of Contracts Administration

(Name of License)

(Classification and License Number)

(Expiration Date)

(Employer Identification Number)

Attach notary acknowledgment for all signatures of CMAR. If signed by other than the sole proprietor, a general partner, or corporate officer, attach original notarized Power of Attorney or Corporate Resolution.

EXHIBIT A

GENERAL CONDITIONS FOR MISSISSIPPI STATE UNIVERSITY CMAR CONTRACTS

TABLE OF CONTENTS

ARTICLE 1 GENERAL PROVISIONS

- 1.1 Basic Definitions
- 1.2 Ownership and Use of Contract Documents
- 1.3 Interpretation

ARTICLE 2 UNIVERSITY

- 2.1 Information and Services Provided by University
- 2.2 Access to Project Site
- 2.3 University's Right to Stop the Work
- 2.4 University's Right to Carry Out the Work
- 2.5 University's Right to Replace University's Representative

ARTICLE 3 CMAR

- 3.1 Review of Contract Documents and Field Conditions by CMAR
- 3.2 Supervision and Construction Procedures
- 3.3 Labor and Materials
- 3.4 CMAR Warranty
- 3.5 Taxes
- 3.6 Permits, Fees, and Notices
- 3.7 Applicable Code Requirements
- 3.8 Superintendent and Key Personnel
- 3.9 Schedules Required of CMAR
- 3.10 As-Built Documents
- 3.11 Documents and Samples at Project Site
- 3.12 Shop Drawings, Product Data, and Samples
- 3.13 Use of Site and Clean Up
- 3.14 Cutting, Fitting, and Patching
- 3.15 Access to Construction Work
- 3.16 Royalties and Patents
- 3.17 Differing Site Conditions
- 3.18 Hazardous Materials
- 3.19 Liability for and Repair of Damaged Construction Work
- 3.20 Indemnification
- 3.21 Subcontractor Proposal Solicitation
- 3.22 Building Information Modeling (BIM) and Other 3-D Modeling

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

- 4.1 Administration of the Contract by Design Professional
- 4.2 CMAR Change Order Requests
- 4.3 Claims
- 4.4 Assertion of Claims

- 4.5 Decision of Design Professional on Claims
- 4.6 Mediation
- 4.7 Waiver

ARTICLE 5 SUBCONTRACTORS

- 5.1 Default of Subcontractors
- 5.2 Subcontractual Relations

ARTICLE 6 CONSTRUCTION BY UNIVERSITY OR BY SEPARATE CONTRACTORS

- 6.1 University's Right to Perform Construction and to Award Separate Contracts
- 6.2 Mutual Responsibility
- 6.3 University's Right to Clean Up

ARTICLE 7 CHANGES IN THE WORK

- 7.1 Changes
- 7.2 Definitions
- 7.3 Change Order Procedures
- 7.4 Field Orders
- 7.5 Variation in Quantity of Unit Price Work
- 7.6 Waiver

ARTICLE 8 CONTRACT TIME

- 8.1 Commencement of the Work
- 8.2 Progress and Completion
- 8.3 Delay
- 8.4 Adjustment of the Contract Time for Delay
- 8.5 No Compensation for Delay
- 8.6 Waiver

ARTICLE 9 PAYMENTS AND COMPLETION

- 9.1 Cost Breakdown
- 9.2 Progress Payment
- 9.3 Application for Payment
- 9.4 Certificate for Payment
- 9.5 Retainage
- 9.6 Beneficial Occupancy
- 9.7 Substantial Completion
- 9.8 Final Completion, Final Payment, and Release of Retention

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

- 10.1 Safety Precautions and Programs
- 10.2 Safety of Persons and Property
- 10.3 Emergencies

ARTICLE 11 INSURANCE AND BONDS

- 11.1 CMAR's Insurance
- 11.2 Builder's Risk Property Insurance
- 11.3 Performance Bond and Payment Bond

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

- 12.1 Uncovering of Work
- 12.2 Correction of Defective Work and Guarantee to Repair Period

ARTICLE 13 TERMINATION OR SUSPENSION OF THE CONTRACT

- 13.1 Termination by CMAR
- 13.2 Termination by University for Cause
- 13.3 Suspension by University for Convenience
- 13.4 Termination by University for Convenience

ARTICLE 14 STATUTORY AND OTHER REQUIREMENTS

- 14.1 Nondiscrimination
- 14.2 Employment Protection Act

ARTICLE 15 MISCELLANEOUS PROVISIONS

- 15.1 Governing Law
- 15.2 Successors and Assigns
- 15.3 Rights and Remedies
- 15.4 Survival
- 15.5 Complete Agreement
- 15.6 Severability of Provisions
- 15.7 University's Right to Audit
- 15.8 Methods of Delivery for Specified Documents, Notices, Claims
- 15.9 Time of the Essence
- 15.10 Mutual Duty to Mitigate

ARTICLE 16 CONTRACT AMENDMENTS

- 16.1 General
- 16.2 Increase in Performance and Payment Bonds
- 16.3 Option
- 16.4 Subcontract Package(s)

ARTICLE 1

GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 APPLICABLE CODE REQUIREMENTS

The term “Applicable Code Requirements” means all laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over University, CMAR, any Trade Subcontractor, the Project, the Project site, the Work, or the prosecution of the Work including without limitation the requirements set forth in Article 3.7 of the General Conditions, in effect at the time of the Agreement.

1.1.2 APPLICATION FOR PAYMENT

The term “Application for Payment” means the submittal from CMAR wherein payment for certain portions of the completed Work is requested in accordance with Article 9 of the General Conditions.

1.1.3 BENEFICIAL OCCUPANCY

The term “Beneficial Occupancy” means the University’s occupancy or use of any part of the Work in accordance with Article 9 of the General Conditions.

1.1.4 SUBCONTRACT PACKAGE

The term “Subcontract Package” means documents and information pertaining to a particular aspect and scope of the Construction Work that is prepared by CMAR using a particular Design Package that is prepared by the University’s Design Professional. The Subcontract Packages are reviewed by the CMAR and performed by CMAR’s Trade Subcontractors.

As discussed in further detail below in the section related to “Subcontractor Proposal Solicitation,” the Design Professional will prepare a set of construction documents (a “Design Package” as defined in section 1.1.23) for each phase of Construction Services Work. CMAR will use the Design Packages to develop the necessary Subcontract Packages and related information needed to solicit proposals for each phase of the Construction Services Work.

To the extent “gaps” are discovered in the scopes of work necessary to complete the Construction Services and Work as a whole, CMAR may develop, with input from the University and Design Professional, and as part of CMAR’s Preconstruction Services, a separate General Works Package to be issued and completed as part of the GMP. Alternatively, if such “gaps” are discovered after commencement of the Construction Services aspect of the Work, then University may authorize CMAR, by executed Change Order, to self-perform any general work needed to fill the gap and complete the Work. Notwithstanding anything herein to the contrary, under no circumstances shall CMAR be permitted to self-perform work valued in excess of fifteen percent (15%) of the total Project cost.

1.1.5 CERTIFICATE FOR PAYMENT

The term “Certificate for Payment” means the form signed by Design Professional attesting to the CMAR’s right to receive payment for certain completed portions of the Work in accordance with Article 9 of the General Conditions.

1.1.6 CHANGE ORDER

See Article 7.2 of the General Conditions.

1.1.7 CLAIM

See Article 4.3 of the General Conditions.

1.1.8 CMAR

The term “CMAR” means the person or firm identified as the Construction Manager at Risk in the Agreement and is referred to throughout the Contract Documents as if singular in number.

1.1.9 CMAR’S FEE FOR CONSTRUCTION SERVICES

The phrase “CMAR’s Fee for Construction Services” or “Construction Services Fee” means the fee to be paid to CMAR, as set forth in the GMP Amendment, for completion of all Construction Services Work. The costs to be included in CMAR’s Fee for Construction Services shall be set forth in the Cost of Work Matrix attached to this Agreement as Exhibit D.

1.1.10 CONTINGENCY

University and CMAR acknowledge and agree that the GMP Amendment may include a contingency to account for the possibility of certain unanticipated items occurring during the prosecution of the Work. Examples of these items include, but are not limited to: Work sequencing changes; Work coordination issues; manpower adjustments; use of temporary measures to facilitate the work; mitigation of “scope gap” or buyout issues; and repairing / replacing damaged or non-conforming work not due to University’s, CMAR’s, or Trade Subcontractor’s negligence.

Use of such contingency shall require University approval in advance in writing, but such use shall not increase the GMP. Any use of contingency must be subsequently reconciled via Change Order. Any contingency remaining at the completion of the Project shall inure to the sole benefit of the University.

1.1.11 CONSTRUCTION WORK

The term “Construction Work” means that portion of the Work consisting of the provision of labor, materials, furnishings, equipment and services in connection with the completion of Construction Services and construction of the Project as set forth in the Contract Documents.

1.1.12 CONTRACT

The term “Contract” shall have the meaning identified in Article 3 of the Agreement.

1.1.13 CONTRACT AMENDMENT

The term “Contract Amendment” means a contract instrument used to modify the Contract, such as necessary to exercise the Option to proceed with Construction Services. A Change Order is considered to be one type of Contract Amendment.

1.1.14 CONTRACT DOCUMENTS

The term “Contract Documents” means all documents listed in Article 3 of the Agreement, as modified by Change Order, including but not limited to the Drawings and Specifications.

1.1.15 CONTRACT SCHEDULE

The term “Contract Schedule” means the graphical representation of a practical plan, in accordance with the Drawings and Specifications and other Contract Documents, to perform and complete the Work, or an applicable phase of the Work, within the time period for completion of the Work, or such phase of the Work within the Contract Time and in accordance with Article 3 of the General Conditions.

1.1.16 CONTRACT SUM

The term “Contract Sum” means the amount of compensation stated in the Agreement for the performance of the Work, as adjusted by Change Order or Contract Amendment. The Contract sum shall not exceed the Guaranteed Maximum Price (“GMP”) hereafter defined. Any costs that exceed the GMP shall be borne solely by the CMAR without reimbursement by University.

1.1.17 CONTRACT TIME

The term “Contract Time” means the number of days set forth in the Agreement, as adjusted by Change Order or Contract Amendment, within which CMAR must achieve Substantial Completion of the Work.

1.1.18 CONTRACTOR FEE FOR CHANGES IN THE WORK

See Article 7.3 of the General Conditions.

1.1.19 COST OF EXTRA WORK

See Article 7.3 of the General Conditions.

1.1.20 DAY

The term “day,” as used in the Contract Documents, shall mean calendar day, unless otherwise specifically provided.

1.1.21 DEFECTIVE WORK

The term “Defective Work” means work that is unsatisfactory, faulty, omitted, incomplete, deficient, or does not conform to the requirements of the Contract Documents, directives of University’s Representative, or the requirements of any inspection, reference standard, test, or approval specified in the Contract Documents.

1.1.22 DESIGN PACKAGE

The term “Design Package” means the Drawings and Specifications for a component of the Construction Work.

1.1.23 DESIGN PROFESSIONAL

The term “Design Professional” means _____ and any of its consultants or other individuals or entities who University has hired to provide architectural, engineering, and other professional services required for the coordinated design of the Project. The Design Professional will have the obligation of completing the duties set forth in the Professional Services Agreement between the University and the Design Professional.

1.1.24 DESIGN WORK

The term “Design Work” means the work performed by Design Professional to, among other things, prepare the Drawings, Specifications, and Construction Documents, produce the Design Packages for use by CMAR in preparing the Subcontract Packages, and otherwise producing a coordinated total design for the Project that incorporates University approved input by CMAR resulting from its Preconstruction Services.

1.1.25 DRAWINGS

The term “Drawings” means the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

1.1.26 EXTRA WORK

The term “Extra Work” means Work beyond or in addition to the Work required by the Contract Documents.

1.1.27 FIELD ORDER

See Article 7.2 of the General Conditions.

1.1.28 FINAL COMPLETION

The term “Final Completion” means the date at which the Construction Work has been fully completed in accordance with the requirements of the Contract Documents pursuant to Article 9.8.1 of the General Conditions.

1.1.29 GENERAL CONDITIONS WORK

The term “General Conditions Work” means all work and associated cost to complete the Construction Services Work that is not included in CMAR’s Fee for Construction Services or in Subcontract Packages issued to Trade Subcontractors; including, but not limited to, items required by the exhibits. All costs for General Conditions Work incurred in performing the Contract shall be included in CMAR’s Option Sum for Construction Services, which shall make up part of the GMP.

1.1.30 GUARANTEED MAXIMUM PRICE

The Guaranteed Maximum Price, or “GMP”, means the amount agreed to by CMAR and University as the maximum cost to University for construction and completion of all Work, including for all Preconstruction Services and Construction Services in accordance with the Contract Documents.

1.1.31 HAZARDOUS MATERIAL

The term “Hazardous Material” means any substance or material identified as hazardous under any State or Federal statute governing handling, disposal and/or cleanup of any such substance or material.

1.1.32 HOME OFFICE

The term “Home Office” means any and all offices, including but not limited to principal, branch, or main office, the CMAR may have before or during the Work, except its field office for this Project.

1.1.33 NOTICE OF INTENT

The term “Notice of Intent” means the notice given by the University’s Representative that the University intends to exercise its Option for Construction Services. This notice shall provide time for the CMAR to submit certain Contract Documents prior to a Contract Amendment being issued for Construction Services Work.

1.1.34 NOTICE TO PROCEED

The term “Notice to Proceed” means the date of commencement for either Preconstruction Services or a phase of Construction Services. This notice shall be issued by the University’s Representative or Design Professional to the CMAR.

1.1.35 OPTION

See Article 2 of the Agreement and Article 16 of these General Conditions.

1.1.36 OPTION SUM – CONSTRUCTION SERVICES

See Article 4 of the Agreement.

1.1.37 CONSTRUCTION SERVICES TIME

See Article 5 of the Agreement.

1.1.38 PRECONSTRUCTION SERVICES

The term “Preconstruction Services” means the services provided by the CMAR under the Preconstruction Services scope of Work. The Preconstruction Services shall continue through any overlap with any phase of Construction Services, if necessary, if directed by University after the University’s Option for Construction Services is exercised.

1.1.39 PROJECT

The term “Project” means the Work of the Contract and all other work, labor, equipment, and materials necessary to accomplish the Project. The Project may include construction by University or by Separate Contractors.

1.1.40 SEPARATE CONTRACTOR

The term “Separate Contractor” means a person or firm under separate contract with University performing other work related to the Project.

1.1.41 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

See Article 3.12 of the General Conditions.

1.1.42 SPECIFICATIONS

The term “Specifications” means that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

1.1.43 TRADE SUBCONTRACTOR

The term “Trade Subcontractor” or “Subcontractor” means a person, entity, vendor, or firm that has a contract with CMAR or with another Subcontractor to perform a portion of the Work or supply materials needed for the Work. Unless otherwise specifically provided, the term Trade Subcontractor includes Subcontractors of all tiers.

1.1.44 SUBSTANTIAL COMPLETION

See Article 9.7 of the General Conditions.

1.1.45 SUPERINTENDENT

The term “Superintendent” means the person designated by CMAR to represent CMAR at the Project site in accordance with Article 3 of the General Conditions.

1.1.46 TIER

The term “tier” means the contractual level of a Trade Subcontractor or supplier with respect to CMAR. For example, a first-tier Subcontractor is under subcontract with CMAR, a second-tier Subcontractor is under subcontract with a first-tier Subcontractor, and so on.

1.1.47 UNILATERAL CHANGE ORDER

See Article 7.2 of the General Conditions.

1.1.48 UNIVERSITY

The term “University” means Mississippi State University.

1.1.49 UNIVERSITY’S REPRESENTATIVE

The term “University’s Representative” means the person(s) or firm identified as such in this Agreement.

1.1.50 UNIVERSITY’S CONTRACT ADMINISTRATOR

The term “University’s Contract Administrator” means the person, or his or her authorized designee, who is authorized to execute the Agreement, Change Order, Contract Amendment, and other applicable Contract Documents on behalf of the University.

1.1.51 WORK

The term “Work” means the Preconstruction Services and all Construction Services Work and other requirements of the Contract Documents as modified by Change Order or Contract Amendment, whether completed or partially completed, and includes all labor, materials, equipment, tools, and services provided, or to be provided by, CMAR to fulfill CMAR’s obligations without limitation. The Work may constitute the whole or a part of the Project.

1.2 OWNERSHIP AND USE OF CONTRACT DOCUMENTS

1.2.1 The Contract Documents and all copies thereof furnished to or provided by CMAR are the property of the University and are not to be used by CMAR on other work.

1.3 INTERPRETATION

1.3.1 The Contract Documents are complementary and what is required by one shall be as binding as if required by all. In the case of conflict between terms of the Contract Documents, the following order of precedence shall apply:

- .1 Change Orders
- .2 The GMP Amendment
- .3 The Agreement
- .4 The Supplementary Conditions
- .5 The General Conditions
- .6 The Specifications
- .7 The Drawings

1.3.2 With respect to the Drawings, figured dimensions shall control over scaled measurements and specific details shall control over typical or standard details.

1.3.3 With respect to the Contract Documents, Addenda shall govern over other portions of the Contract Documents to the extent specifically noted; subsequent Addenda shall govern over prior Addenda only to the extent specifically noted.

1.3.4 Organization of the Specifications into various subdivisions and the arrangement of the Drawings shall not control CMAR in dividing the Construction Work among Trade Subcontractors or in establishing the extent of work to be performed by any trade.

1.3.5 Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood construction industry meanings; and non-technical words and abbreviations are used in accordance with their commonly understood meanings.

1.3.6 The Contract Documents may omit modifying words such as “all” and “any,” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word “including,” when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation,” “but not limited to,” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.

1.3.7 Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include corporation, partnership, trust, or other legal entity whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

ARTICLE 2

UNIVERSITY

2.1 INFORMATION AND SERVICES PROVIDED BY UNIVERSITY

2.1.1 If required for performance of the Work, as determined by University’s Representative or Design Professional, University or Design Professional will make available and provide for convenience only a survey describing known physical characteristics, boundaries, easements, and utility locations for the Project site. CMAR shall field verify all data and rely only upon the data so verified.

2.1.2 University is not subject to any requirement to obtain or pay for any building permits, inspection fees, plan checking fees, or utility fees. CMAR will obtain and pay for all utility permits, demolition permits, easements, and government approvals for the use or occupancy of permanent structures required in connection with the Construction Work.

2.1.3 CMAR will be furnished electronic copies of the Contract Documents. CMAR will be responsible to print any hard copies of the Contract Documents that it deems necessary for execution of the Work.

2.2 ACCESS TO PROJECT SITE

2.2.1 University will provide access to the lands and facilities upon which the Construction Work is to be performed at the time it exercises its Option for Construction Services, including such access and other lands and facilities designated in the Contract Documents for use by CMAR.

2.3 UNIVERSITY'S RIGHT TO STOP THE WORK

2.3.1 If CMAR or Trade Subcontractors fail to correct Defective Work as required by Article 12.2 of the General Conditions or fail to perform the Work in accordance with the Contract Documents, University or University's Representative may direct CMAR to stop the Work, or any portion thereof, until the cause for such order has been eliminated by CMAR, as determined in University's sole discretion. CMAR and Trade Subcontractors shall not be entitled to any adjustment of Contract Time or Contract Sum as a result of any such order. University and University's Representative have no duty or responsibility to CMAR or any other person or entity to exercise the right to stop the Work.

2.4 UNIVERSITY'S RIGHT TO CARRY OUT THE WORK

2.4.1 If CMAR or Trade Subcontractors fail to carry out the Work in accordance with the Contract Documents, fail to provide sufficient labor, materials, equipment, tools, and services to maintain the Contract Schedule, or otherwise fail to comply with any material term of the Contract Documents, and, after receipt of written notice from University, fail within 10 days, excluding Saturdays, Sundays and legal holidays, or within such additional time as the University may specify, to correct such failure, University may, without prejudice to other remedies University may have, correct such failure at CMAR's expense. In such case, University will be entitled to deduct from payments then or thereafter due CMAR the cost of correcting such failure, including without limitation compensation for the additional services and expenses of University's consultants made necessary thereby, and including reasonable attorneys' fees and costs incurred by the University. If payments then or thereafter due CMAR are not sufficient to cover such amounts, CMAR shall pay the additional amount to University.

2.5 UNIVERSITY'S RIGHT TO REPLACE UNIVERSITY'S REPRESENTATIVE OR UNIVERSITY'S CONTRACT ADMINISTRATOR

2.5.1 University may at any time and from time to time, without prior notice to or approval of CMAR, replace University's Representative(s) or the University's Contract Administrator with a new University's Representative or Contract Administrator. Upon receipt of notice from University informing CMAR of such replacement and identifying the new University's Representative or Contract Administrator, CMAR shall recognize such person or firm as University's Representative and/or Contract Administrator for all purposes under the Contract Documents.

ARTICLE 3

CMAR

3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CMAR

3.1.1 CMAR and its Trade Subcontractors shall carefully study and compare each of the Contract Documents with the others and with information furnished or made available by University, and shall promptly upon discovery report in writing to University's Representative and Design Professional any errors, inconsistencies, or omissions in the Contract Documents or

inconsistencies with Applicable Code Requirements observed by CMAR or its Trade Subcontractors.

3.1.2 CMAR and its Trade Subcontractors shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to CMAR before commencing any item of Construction Work. Errors, inconsistencies, or omissions discovered at any time shall be promptly reported in writing to Design Professional and University's Representative.

3.1.3 If CMAR and its Trade Subcontractors perform any construction activity involving an error, inconsistency, or omission referred to in Articles 3.1.1 and 3.1.2 of the General Conditions previously discovered by CMAR or the Trade Subcontractors, without giving the notice required in those Articles and obtaining the written consent of Design Professional and University's Representative, CMAR shall be responsible for the resultant losses, including, without limitation, the costs of correcting Defective Work.

3.1.4 CMAR, as part of the Scope of Work, will assist the Design Professional in preparing or organizing Contract Documents for Subcontract Packages. CMAR shall be responsible for all Losses attributable to the errors or omissions of the CMAR in the performance of Preconstruction Services and all services required of CMAR in the preparation of the various Subcontract Packages.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 CMAR shall supervise, coordinate, and direct the Construction Work using CMAR's best skill and attention. CMAR shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and the coordination of all portions of the Construction Work. CMAR shall manage and administer all phases of construction activities to achieve the completion of all Subcontract Packages within the requirements of the Contract Documents. The CMAR shall coordinate the work of its Trade Subcontractors to optimize efficiency and minimize conflict and interference between the various Subcontractors on-site.

3.2.2 CMAR shall be responsible to University for acts and omissions of CMAR's agents, employees, and Subcontractors of every tier, and their respective agents and employees.

3.2.3 CMAR shall not be relieved of its obligation to perform the Construction Work in accordance with the Contract Documents either by acts or omissions of University, University's Representative, or Design Professional in the administration of the Contract, or by tests, inspections, or approvals required or performed by persons or firms other than CMAR.

3.2.4 CMAR shall be responsible for inspection of all portions of the Construction Work, including those portions already performed under this Contract, to determine that such portions conform to the requirements of the Contract Documents and are ready to receive subsequent Construction Work. CMAR shall keep accurate Daily Reports showing all significant activities, events and occurrences regarding the Work, and CMAR shall submit copies of all such Daily Reports to Design Professional on a monthly basis. The receipt of such Daily Reports shall not be deemed or considered to be an agreement by University or University's Representative or Design Professional of the content of any such Reports.

3.2.5 CMAR shall at all times maintain good discipline and order among its employees and Trade Subcontractors. CMAR shall provide competent, fully qualified personnel to perform the Work.

3.2.6 CMAR's responsibility shall include assuring that its Trade Subcontractors are meeting all the terms of the Contract Documents. CMAR shall provide on-site quality control and inspection to ensure compliance with documents, drawings and contract specifications, schedule coordination and information coordination for all construction activities on the construction site including all General Conditions Work. CMAR shall schedule and coordinate all testing and inspection services. This will include coordination with the Subcontractors of the scheduling of all University's Representative or Design Professional inspections, Fire Marshall, Test Labs, Materials Inspectors and other inspections as required. Prior to close-up of concealed areas, the CMAR shall coordinate all applicable inspections with the University's Representative and create a punch list and distribute to all affected Subcontractors.

3.2.7 CMAR shall coordinate all required utility shut downs, road closures, traffic closures, and the like. This coordination shall follow procedures at the Facility, and or direction as provided by the Design Professional or the University's Representative.

3.3 LABOR AND MATERIALS

3.3.1 Unless otherwise provided in the Contract Documents, and until Substantial Completion of the Project, CMAR shall provide and pay for all labor, services, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and Final Completion of the Construction Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Construction Work. Any modification to terms for payment of these temporary or permanent costs may be addressed in the GMP Amendment.

3.4 CMAR WARRANTY

3.4.1 CMAR warrants to University that all materials and equipment used in or incorporated into the Construction Work will be of good quality, new (unless otherwise allowed by the Contract Documents), and free of liens, claims, and security interests of third parties; that the Construction Work will be of good quality and free from defects; and that the Construction Work will conform with the requirements of the Contract Documents. If required by Design Professional or University's Representative, CMAR shall furnish satisfactory evidence as to the kind and quality of materials and equipment. CMAR and Trade Subcontractors will, along with Design Professional and University's Representative, conduct a warranty inspection one year after substantial completion and will remedy at no cost to the University, any defects or deficiencies noted by University Representative or Design Professional.

3.4.2 The CMAR shall assure that there is no damage of existing utilities; and protect all existing facilities both during demolition and construction.

3.5 TAXES

3.5.1 CMAR shall pay all sales, consumer, use, and similar taxes for the Work or portions thereof provided by CMAR.

3.6 PERMITS, FEES, AND NOTICES

3.6.1 CMAR shall secure and pay for all permits, approvals, government fees, licenses, and inspections necessary for the proper execution and performance of the Construction Work. CMAR shall deliver to University all original licenses, permits, and approvals obtained by CMAR in connection with the Construction Work prior to the final payment or upon termination of the Contract, whichever is earlier.

3.7 APPLICABLE CODE REQUIREMENTS

3.7.1 Subject to Section 3.7.5, CMAR shall perform the Construction Work in accordance with the following Applicable Code Requirements based on their experience as a CMAR:

- .1 All laws, statutes, the most recent building codes, ordinances, rules, regulations, University guidelines, standards, or protocols, and lawful orders of all public authorities having jurisdiction over University, CMAR, any Trade Subcontractor, the Project, the Project site, the Construction Work, or the prosecution of the Construction Work, including but not limited to the following:
 - a) International Building Code
 - b) International Existing Building Code
 - c) International Plumbing Code
 - d) International Mechanical Code
 - e) International Fuel Gas Code
 - f) International Electrical Code
 - g) ASHRAE 90.1-2010 (Energy Standard for Buildings)
 - h) International Fire Code
 - i) Mississippi Handicapped Law, Mississippi Code 1972, Annotated, §§ 43-6-101 through 43-6-125
 - j) 2010 Americans with Disabilities Act, Standards for Accessible Design, 42 U.S.C. §§ 2101 et seq. (including 28 C.F.R. part 35.151, 2004 ADAAG at 36 C.F.R. part 1191 and appendices B and D, and 28 C.F.R. part 36 and subpart D)
 - k) The Rehabilitation Act of 1973, 28 U.S.C. §§ 791, 793, 794, 794d
 - l) The Architectural Barriers Act of 1968, 42 U.S.C. § 4151 et seq.
 - m) All requirements of the United States Access Board
 - n) Federal Register, Part III, Environmental Protection Agency 40 CFR Part 61, National Emission Standards for Hazardous Homes, Air Pollutants; Asbestos NESHAP Revision; Final Rule
 - o) Mississippi Regulations for Accreditation and Certification of Asbestos Abatement Personnel (Mississippi Department of Environmental Quality)
 - p) Federal Register, Part IV, Department of Justice 28 CFR Part 35, Nondiscrimination of the Basis of Disability in State and Local Government Services; Final Rule
 - q) Mississippi Floodplain Regulations
 - r) Information Technology Services (formerly Central Data Professing Authority) – Computer Equipment Purchases and Telecommunications Purchases
 - s) Mississippi Department of Archives and History, *Historic Properties*
 - t) Mississippi Department of Environmental Quality's Office of Pollution Control – *Air and Water*
 - u) Mississippi State Department of Health's Health Facilities Licensure and Certification Division – *Minimum Standards of Operation for Home Health, Minimum Standards of Operation for Personal Care, Minimum Standards of*

Operation for Chemical Dependency Units, Minimum Standards of Operation for Mississippi Hospitals, Minimum Standards of Operation for Psychiatric Hospitals, Minimum Standards of Operation for Ambulatory Surgical Facilities, Minimum Standards of Operation for Institutions for the Aged and Infirmed.

- .2 All requirements of any insurance company issuing insurance required hereunder.
- .3 The Federal Occupational Safety and Health Act and all other Applicable Code Requirements relating to safety.
- .4 Applicable provisions of any law of the State of Mississippi, Oktibbeha County, and the City of Mississippi State, where applicable.
- .5 All Applicable Code Requirements or other requirements relating to nondiscrimination, payment of prevailing wages, payroll records, apprentices, and work day.

3.7.2 Without limiting the foregoing, CMAR shall comply with the provisions regarding nondiscrimination, payment of prevailing wages, payroll records, apprentices, and work day set forth in Article 14 of the General Conditions and otherwise required by applicable law.

3.7.3 Subject to Section 3.7.5, CMAR shall comply with and give notices required by all Applicable Code Requirements, including all environmental laws and all notice requirements. CMAR shall promptly notify Design Professional and University's Representative in writing if CMAR becomes aware during the performance of the Work that the Contract Documents are at variance with Applicable Code Requirements.

3.7.4 Subject to Section 3.7.5, if CMAR allows the performance of Construction Work contrary to Applicable Code Requirements, without prior notice to Design Professional and University's Representative, CMAR shall be responsible for such Construction Work and any resulting damages including, without limitation, the costs of correcting Defective Work.

3.7.5. CMAR does not have responsibility for incorporating into the Contract Documents the above stated Applicable Code Requirements. The Design Professional shall incorporate the Applicable Code Requirements into the design plans and/or specifications. CMAR shall be entitled to rely upon the design plans and specifications as being prepared in compliance with the Applicable Code Requirements, except where CMAR knows or should know that the design plans or specifications do not meet such Applicable Code Requirements.

3.8 SUPERINTENDENT AND KEY PERSONNEL

3.8.1 CMAR shall employ a competent Superintendent satisfactory to University who shall be in attendance at the Project site at all times during the performance of the Construction Work. Superintendent shall represent CMAR and communications given to and received from Superintendent shall be binding on CMAR. Failure to maintain a Superintendent on the Project site at all times Construction Work is in progress shall be considered a material breach of this Contract, entitling University to terminate the Contract or alternatively, issue a stop Construction Work order until the Superintendent is on the Project site. If, by virtue of issuance of said stop Work order, CMAR fails to complete the Contract on time, CMAR will be assessed Liquidated Damages in accordance with the Agreement.

3.8.2 The Superintendent approved for the Project must be able to read, write and verbally communicate in English. The superintendent may not perform the Construction Work of any trade or perform any Construction Work not directly related to the supervision and coordination of the Construction Work at the Project site when Construction Work is in progress.

3.8.3 CMAR shall provide such Key Personnel as are mutually agreed upon and set forth in the GMP Amendment. Substitution or replacement of any named individual requires the written approval of the University's Representative and approval will be at the sole discretion of University. Failure to provide sufficient Key Personnel at all times the Work is in progress shall be considered a material breach of this Contract unless the named individuals are no longer employed or retained by CMAR, a company CMAR has a financial interest in, or a parent company of CMAR; such material breach shall entitle University to terminate the Contract or alternatively, issue a Stop Work order until the individual or an acceptable replacement is provided. If, by virtue of issuance of said Stop Work order, CMAR fails to complete the Contract on time, CMAR will be assessed Liquidated Damages in accordance with the Agreement.

3.9 SCHEDULES REQUIRED OF CMAR

3.9.1 CMAR shall submit a Preliminary Contract Schedule to Design Professional and University's Representative in a form approved or directed by Design Professional and University's Representative and within the time limit required by the Specifications, but no later than the time for submission of a GMP. Design Professional and University's Representative will review the Preliminary Contract Schedule with CMAR within the time limit required by the Specifications, or, if no such time period is specified, within a reasonable period of time.

3.9.2 CMAR shall submit a Contract Schedule and updated Contract Schedules to Design Professional and University's Representative in a form approved or directed by Design Professional and University's Representative and within the time limits required by the Specifications. Design Professional and University's Representative will determine acceptability of the Contract Schedule and updated Contract Schedules within the time limits required by the Specifications, or if no such time period is specified, within a reasonable period of time. If Design Professional or University's Representative deems the Contract Schedule or updated Contract Schedule unacceptable, it shall specify in writing to CMAR the basis for its objection. Any float time in the Contract schedule shall belong to Project and be available for use by CMAR or University, with the first party (University or CMAR) needing use of an increment of float being entitled to use that increment of float.

3.9.3 The Preliminary Contract Schedule, the Contract Schedule, and updated Contract Schedules shall represent a practical plan to complete the Work within the Contract Time. Schedules showing the Work completed in less than the Contract Time may be acceptable if judged by Design Professional and University's Representative to be practical.

Design Professional and University's Representative will timely review the updated Contract Schedule submitted by CMAR. If Design Professional or University's Representative determines that additional supporting data are necessary to fully evaluate the updated Contract Schedule, Design Professional or University's Representative will request such additional supporting data in writing. Such data shall be furnished no later than 10 days after the date of such request. Design Professional and University's Representative will render a decision promptly and in any case within 30 days after the later of the receipt of the updated Contract Schedule or the deadline for furnishing such additional supporting data. Failure of Design Professional and University's Representative to render a decision by the applicable deadline will be deemed a decision denying

approval of the updated Contract Schedule. Acceptance of any schedule showing completion beyond the Contract Time by Design Professional or University's Representative shall not change the Contract Time and is without prejudice to any right of the University. The Contract Time, not the Contract Schedule, shall control in the determination of liquidated damages payable by CMAR under Article 5 and Article 6 of the Agreement and in the determination of any delay under Article 8 of the General Conditions.

3.9.4 If a schedule showing the Work completed in less than the Contract Time is accepted, CMAR shall not be entitled to extensions of the then current Contract Time for delays until such delays extend the Final Completion of the Work beyond the expiration of the then current Contract Time.

3.9.5 CMAR shall prepare and keep current, to the reasonable satisfaction of University's Representative, a Submittal Schedule for each submittal, as required by the Specifications, and that are coordinated with the other activities in the Contract Schedule. CMAR will complete all project close-out requirements as required by Design Professional or University's Representative and will provide a completed check list of all such close out requirements.

3.9.6 The Preliminary Contract Schedule, Contract Schedule, and the Updated Contract Schedules shall meet the following requirements:

- .1 Schedules must be suitable for monitoring progress of the Work.
- .2 Schedules must provide necessary data about the timing for University decisions and University-furnished items.
- .3 Schedules must be in sufficient detail to demonstrate adequate planning for the Work.
- .4 Schedules must represent a practical plan to perform and complete the Work within the Contract Time.
- .5 Schedules must define the critical path of the Work.

Design Professional's and University's Representative's review of the form and general content of the Preliminary Contract Schedule, Contract Schedule, and Updated Contract Schedules is for the purpose of determining if the above-listed requirements have been satisfied.

3.9.7 CMAR shall plan, develop, supervise, control, and coordinate the performance of the Construction Work so that its progress and the sequence and timing of Construction Work will permit its completion within the Contract Time, any Contract milestones and any Contract phases. CMAR shall have the right to require performance in accordance with the Contract Schedule and Updated Contract Schedules.

3.9.8 In preparing the Preliminary Contract Schedule, the Contract Schedule, and updated Contract Schedules, CMAR shall obtain such information and data from Trade Subcontractors as may be required to develop a reasonable and appropriate schedule for performance of the work and shall provide such information and data to the Design Professional and University's Representative upon request. CMAR shall continuously obtain from Trade Subcontractors information and data about the planning for and progress of the Construction Work and the delivery of equipment, shall coordinate and integrate such information and data into updated

Contract Schedules, and shall monitor the progress of the Construction Work and the delivery of equipment.

3.9.9 CMAR shall act as the expeditor of potential and actual delays, interruptions, hindrances, or disruptions for its own forces and those forces of Trade Subcontractors, regardless of tier. CMAR shall cooperate with Design Professional and University's Representative in the development of the Contract Schedule and updated Contract Schedules.

3.9.10 Design Professional's and University's Representative's acceptance of or its review of comments about any schedule or scheduling data shall not relieve CMAR from its sole responsibility to plan for, perform, and complete the Work within the Contract Time. Acceptance of or review comments about any schedule shall not transfer responsibility for any schedule to Design Professional, University's Representative, or University nor imply their agreement with (1) any assumption upon which such schedule is based or (2) any matter underlying or contained in such schedule.

3.9.11 Failure of Design Professional or University's Representative to discover errors or omissions in schedules that it has reviewed, or to inform CMAR that CMAR, Trade Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Contract Schedule shall not relieve CMAR from its sole responsibility to perform and complete the Work within the Contract Time and shall not be a cause for an adjustment of the Contract Time or the Contract Sum.

3.9.12 Most work is proposed to proceed during normal work hours; however, portions of the work will require after-hours work, including, but not necessarily limited to: utility shutdowns, early morning concrete pours, etc. CMAR will identify these instances in the schedule and include them in the Work without additional compensation.

3.10 AS-BUILT DOCUMENTS

3.10.1 CMAR shall maintain one set of As-built drawings and specifications, which shall be kept up to date during the Construction Work of the Contract and which shall also be kept: (1) digitally using a software program acceptable to the University (or some similar software that allows revised PDF drawings to be shared over the internet); and (2) in the Revit Model. All changes which are incorporated into the Construction Work which differ from the documents as drawn and written shall be noted on the As-built set. Notations shall reflect the actual material, equipment and installation methods used for the Construction Work and each revision shall be initialed and dated by Superintendent. Prior to filing of the Notice of Completion each drawing and the specification cover shall be signed by CMAR and dated attesting to the completeness of the information noted therein. As-built Documents shall be turned over to the Design Professional and University's Representative and shall become part of the Record Documents.

3.10.2 Unless otherwise stated in the Contract Documents, CMAR and Trade Subcontractors will perform all commissioning requirements set by code or regulation or as determined by Design Professional or University's Representative for all applicable systems.

3.11 DOCUMENTS AND SAMPLES AT PROJECT SITE

3.11.1 CMAR shall maintain the following at the Project site:

- .1 One as-built copy of the Contract Documents, in good order and marked to record current changes and selections made during construction
- .2 The current accepted Contract Schedule
- .3 Shop Drawings, Product Data, and Samples
- .4 All other required submittals

These documents shall be available to Design Professional and University's Representative and shall be delivered to Design Professional and University's Representative for submittal to University upon the earlier of Final Completion or termination of the Contract.

3.12 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

3.12.1 Definitions:

- .1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Construction Work by CMAR or a Trade Subcontractor to illustrate some portion of the Construction Work.
- .2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by CMAR to illustrate or describe materials or equipment for some portion of the Construction Work.
- .3 Samples are physical examples which illustrate materials, equipment, or workmanship and establish standards by which the Construction Work will be judged.

3.12.2 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate, for those portions of the Construction Work for which submittals are required, how CMAR proposes to conform to the information given and the design concept expressed in the Contract Documents.

3.12.3 CMAR shall review, approve, and submit to the Design Professional, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Construction Work or in the activities of University or of Separate Contractors. Submittals made by CMAR which are not required by the Contract Documents may be returned without action by Design Professional or University's Representative.

3.12.4 CMAR shall perform no portion of the Construction Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been reviewed by Design Professional and no exceptions have been taken by University's Representative or the Design Professional. Such Construction Work shall be in accordance with approved submittals and the Contract Documents.

3.12.5 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, CMAR represents that it has determined or verified materials and field measurements and conditions related thereto, and that it has checked and coordinated the information contained

within such submittals with the requirements of the Contract Documents and Shop Drawings for related Construction Work.

3.12.6 If CMAR discovers any conflicts, omissions, or errors in Shop Drawings or other submittals, CMAR shall notify University's Representative and Design Professional and receive instruction before proceeding with the affected Work.

3.12.7 CMAR shall not be relieved of responsibility for deviations from requirements of the Contract Documents by University's Representative's or Design Professional's review or approval of Shop Drawings, Product Data, Samples, or similar submittals, unless CMAR has specifically informed University's Representative and Design Professional in writing of such deviation at the time of submittal and University's Representative and Design Professional has given written approval of the specific deviation. CMAR shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by University's Representative's or Design Professional's review, acceptance, comment, or approval thereof. Despite any such review or approval, CMAR remains liable at all times to construct the Project in strict accordance with the Contract Documents.

3.12.8 CMAR shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by University's Representative and Design Professional on previous submittals.

3.13 USE OF SITE AND CLEAN UP

3.13.1 CMAR shall confine operations at the Project site to areas permitted by law, ordinances, permits, and the Contract Documents. CMAR shall not unreasonably encumber the Project site with materials or equipment. CMAR will comply with and implement all clean construction protocol as directed by University's Representative or Design Professional and keep all documentation required to demonstrate compliance.

3.13.2 CMAR and Trade Subcontractors shall, during performance of the Construction Work, cause the Project site and surrounding area, including all streets and impacted areas in proximity to the site, to be kept free from the accumulation of excess dirt, waste materials, and rubbish. CMAR shall cause to be removed all excess dirt, waste material, and rubbish; tools; equipment; machinery; and surplus materials from the Project site and surrounding area at the completion of the Construction Work.

3.13.3 Personnel of CMAR and Trade Subcontractors shall not occupy, live upon, or otherwise make use of the Project site, or surrounding University property, during any time that Work is not being performed at the Project site, except as otherwise provided in the Contract Documents.

3.14 CUTTING, FITTING, AND PATCHING

3.14.1 CMAR shall cause to be done all cutting, fitting, or patching of the Construction Work required to make all parts of the Construction Work come together properly and to allow the Construction Work to receive or be received by work of Separate Contractors shown upon, or reasonably implied by, the Contract Documents.

3.14.2 CMAR shall not endanger the Construction Work, the Project, or adjacent property by cutting, digging, or otherwise. CMAR shall not cut or alter the work of any Separate Contractor without the prior consent of Design Professional and University's Representative.

3.15 ACCESS TO CONSTRUCTION WORK

3.15.1 University, University's Representative, Design Professional, and their consultants, and other persons authorized by University will at all times have access to the Construction Work wherever it is in preparation or progress. CMAR shall provide safe and proper facilities for such access and for inspection.

3.16 ROYALTIES AND PATENTS

3.16.1 CMAR shall pay all royalties and license fees required for the performance of the Work. CMAR shall defend suits or claims resulting from CMAR's or any Trade Subcontractor's infringement of patent rights and shall indemnify University and University's Representative from losses on account thereof, including all costs and reasonable attorneys' fees.

3.17 DIFFERING SITE CONDITIONS

3.17.1 If CMAR encounters any of the following conditions at the site, CMAR shall immediately and in no event later than 10 days after identifying the condition, notify the Design Professional and University's Representative in writing of the specific differing conditions before they are disturbed and before any affected Work is performed, and permit investigation of the conditions:

- .1 Subsurface or latent physical conditions at the site (including Hazardous Materials) which differ materially from those indicated in this Contract; or
- .2 Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

3.17.2 CMAR shall be entitled to an equitable adjustment to the Contract Sum and/or Contract Time to be accomplished via written Change Order, as the result of extra costs and/or delays resulting from a materially differing site condition, if and only if CMAR fulfills the following conditions:

- .1 CMAR fully complies with Article 3.17.1 before any such condition is altered, changed or disturbed; and
- .2 CMAR fully complies with Article 4 of the General Conditions (including the timely filing of a Change Order Request and all other requirements for Change Orders Requests and Claims).

3.17.3 Adjustments to the Contract Sum and/or Contract Time shall be subject to the procedures and limitations set forth in this Agreement, including Article 5, and in the General Conditions, including Articles 7 and 8.

3.18 HAZARDOUS MATERIALS

3.18.1 The University shall not be responsible for any Hazardous Material brought to the site by the CMAR or any Trade Subcontractor, and CMAR shall be liable for any claims or damages to the extent such claims or damages arise from CMAR's or any Trade Subcontractor's misuse, neglect, or mishandling of a Hazardous Material.

3.18.2 If the CMAR: (i) allows the introduction and/or discharge of a Hazardous Material onto the site in a manner not specified by the Contract Documents; and/or (ii) disturbs a Hazardous Material identified in the Contract Documents, the CMAR shall hire a qualified remediation contractor at CMAR's sole cost to eliminate the condition as soon as possible. Under no circumstance shall the CMAR perform Work for which it is not qualified. University, in its sole discretion, may require the CMAR to retain at CMAR's cost an independent testing laboratory.

3.18.3 If the CMAR encounters a Hazardous Material which may cause foreseeable injury or damage, CMAR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such material or substance (except in an emergency situation); and (iii) notify University (and promptly thereafter confirm such notice in writing)

3.18.4 Subject to CMAR's compliance with this Article, the University shall verify the presence or absence of the Hazardous Material reported by the CMAR, and, in the event such material or substance is found to be present, verify that the levels of the hazardous material are below OSHA Permissible Exposure Levels and below levels which would classify the material as a state of Mississippi or federal hazardous waste. When the material falls below such levels, Work in the affected area shall resume upon direction by the University. The Contract Time and Sum shall be extended appropriately as provided in Articles 7 and 8.

3.18.5 The University shall be responsible for claims, damages, losses and expenses, arising from a Hazardous Material on the Project site, if such Hazardous Material: (i) was not shown on the Contract Documents; (ii) was not brought to the site by CMAR or Trade Subcontractor; and (iii) exceeded OSHA Permissible Exposure Levels or levels which would classify the material as a state of Mississippi or federal hazardous waste. The obligation in this Article shall not apply to:

- .1 Claims, damages, losses or expenses arising from the breach of contract, negligence or willful misconduct of CMAR, its suppliers, its Trade Subcontractors of all tiers and/or any persons or entities working under CMAR; and
- .2 Claims, damages, losses or expenses arising from a Hazardous Material subject to Article 3.18.2.

3.18.6 In addition, CMAR shall indemnify and hold harmless the Indemnitees, as defined in Article 3.202.1, from and against claims, damages, losses and expenses (including reasonable attorneys' fees), arising from CMAR's or a Trade Subcontractor's acts or omissions in connection with a Hazardous Material on the Project site or CMAR's or a Trade Subcontractor's misuse, neglect, or mishandling of such Hazardous Material, regardless of whether the Hazardous Material was brought to the site by CMAR or any Trade Subcontractor or by someone else. Nothing in this paragraph shall obligate the CMAR to indemnify Indemnitees to the extent of the negligence of the Indemnitees.

3.19 LIABILITY FOR AND REPAIR OF DAMAGED CONSTRUCTION WORK

3.19.1 CMAR shall be liable for any and all damages and losses to the Project (whether by fire, theft, vandalism, hurricane, tornado, tidal wave, flood, earthquake or otherwise) prior to University's final acceptance of the Project as fully completed. This is notwithstanding the understanding that the University may continue to occupy portions of the Project where ongoing construction work is not taking place. CMAR will not be liable for damage to areas of the Project where CMAR is not working and has not worked or which are caused by the University.

3.19.2 CMAR shall promptly repair and replace any Construction Work or materials damaged or destroyed for which the CMAR is liable under this Article.

3.20 INDEMNIFICATION

3.20.1 To the fullest extent permitted by law, CMAR shall indemnify, defend, and hold harmless the University, the Board of Trustees of State Institutions of Higher Learning (IHL), Design Professional, University's consultants, University's Representative, University's Representative's consultants, and all of their respective trustees, directors, officers, staff, agents, and employees, including in their official and individual capacities, (collectively used throughout the Contract as "Indemnitees") from and against all losses, damages, costs, and expenses (including without limitation the cost of repairing defective work and remedying the consequences of defective work and reasonable attorneys' fees (but not for loss of use or other consequential damages, saving only liquidated damages set forth in the Agreement)) arising out of, resulting from, or relating to the following:

- .1 The failure of CMAR or anyone working under it to perform its obligations under the Contract.
- .2 The inaccuracy of any representation or warranty by CMAR given in accordance with or contained in the Contract Documents.
- .3 Any claim of damage or loss by any Trade Subcontractor against University arising out of any alleged act or omission of CMAR or any other Trade Subcontractor, or anyone directly or indirectly employed by CMAR or any Trade Subcontractor.
- .4 Any claim of damage or loss resulting from Hazardous Materials introduced, discharged, or disturbed by CMAR.
- .5 Any claim of damage or loss by any third party against University arising out of or related to any alleged act or omission of CMAR or any Trade Subcontractor, or anyone directly or indirectly employed by CMAR or any Trade Subcontractor.

3.20.2 The University shall not be liable or responsible for any accidents, loss, injury (including death) or damages happening or accruing during the term of the performance of the Work herein referred to or in connection therewith, to persons and/or property, and CMAR shall fully indemnify, defend and hold harmless Indemnitees and protect them from and against the same. In addition to the liability imposed by law upon the CMAR for damage or injury (including death) to persons or property by reason of the negligence of the CMAR, its officers, agents, employees or Trade Subcontractors, which liability is not impaired or otherwise affected hereby, the CMAR shall, indemnify, defend, hold harmless, release and forever discharge the Indemnitees from and against and waive any and all responsibility of same for every expense, liability, or payment by reason of any damage or injury (including death) to persons or property suffered or claimed to have been suffered through any alleged negligent act, omission, or willful misconduct of the CMAR, its officers, agents, employees, or any of its Subcontractors, or anyone directly or indirectly employed by either of them or from the condition of the premises or any part of the premises while in control of the CMAR, its officers, agents, employees, or any of its Subcontractors or anyone directly or indirectly employed by either of them, arising out of the performance of the Work called for by this Contract.

Nothing contained herein shall require the CMAR or any of its agents, employees, or representatives to indemnify or hold harmless the Indemnitees from any claim or damage to the extent and degree such claim or damage is caused by a negligent act or omission of Indemnitees.

3.20.3 In claims against any person or entity indemnified under this Article 3.20 that are made by an employee of CMAR or any Trade Subcontractor, a person indirectly employed by CMAR or any Trade Subcontractor, or anyone for whose acts CMAR or any Trade Subcontractor may be liable, the indemnification obligation under this Article 3.20 shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for CMAR or any Trade Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

3.20.4 The indemnification obligations under this Article 3.20 shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.

3.20.5 CMAR shall indemnify the Indemnitees from and against losses resulting from any claim of damage made by any Separate Contractor against University arising out of any alleged acts or omissions of CMAR, any Subcontractor, anyone directly or indirectly employed by either of them, or anyone for whose acts either of them may be liable.

3.20.6 CMAR shall indemnify Separate Contractors from and against losses arising out of the negligent acts, omissions, or willful misconduct of CMAR, any Trade Subcontractor, anyone directly or indirectly employed by either of them, or anyone for whose acts either of them may be liable.

3.21 SUBCONTRACTOR PROPOSAL SOLICITATION

3.21.1 CMAR shall obtain proposals from Trade Subcontractors for a specific portion of Work identified by CMAR in consultation with the Design Professional and the University. The proposals may include, but not be limited to the following criteria: cost of the work or services to be performed or supplied; past experience and performance of projects similar in size and scope; current financial status and ability to provide payment and performance bonds and insurance requirements; current workload and backlog of work for the anticipated duration of the Project; safety record and any prior safety violations or fines; history of legal disputes or performance defaults; proposed project personnel and manpower and the experience of each; ability to meet the required schedule; and any other factors the CMAR, University or Design Professional deem applicable. The CMAR, in consultation with the University, shall publish in a regular newspaper published in Oktibbeha County, Mississippi for a period of four (4) weeks in advance of any contract award, all requests for proposals from Trade Subcontractors, including the specific scope of work at issue and all applicable qualifications and criteria for selection. The failure of any Trade Subcontractor to timely respond to the CMAR's request for proposals or to provide information the CMAR deems necessary or appropriate to consider a proposal may result in the disqualification of any such Trade Subcontractor, in CMAR and University's discretion.

3.21.2 CMAR shall not be required to comply with the requirements of Miss. Code Ann. 31-7-13. Upon receipt of proposals from Trade Subcontractors for a specific scope of work, CMAR, in consultation with the University, shall select the preferred Trade Subcontractor for the scope of work at issue. Upon selecting the preferred Trade Subcontractor, the CMAR shall enter into negotiations with said Trade Subcontractor in an effort to agree upon a Trade Subcontract or Purchase Order. No Trade Subcontract or Purchase Order shall be issued or executed by the CMAR until after the CMAR and University have executed the GMP Amendment.

3.21.3 The CMAR and Trade Subcontractors shall identify and label any information considered to be confidential and proprietary prior to submission to the University. However, the CMAR and Trade Subcontractors are advised that the University is a public body and any information submitted to the University may ultimately be subject to disclosure.

3.21.4 The CMAR or any company the CMAR has a financial interest in, an affiliate, or a parent or related company of CMAR, may submit a proposal to self-perform the work of any Subcontract Package; provided however, the CMAR and any of its related entities or affiliates shall not be allowed to perform work or provide services which collectively total in excess of fifteen percent (15%) of the total Project cost. The University further reserves the right to not allow the CMAR or any of its related entities or affiliates to self-perform any Work on the Project, in its sole discretion. CMAR or its affiliate must be properly licensed for any Work it does self-perform on the Project.

3.21.5 University and CMAR anticipate that the following Subcontractor proposal solicitation process may be used, to the extent it complies with applicable Mississippi law:

1. CMAR should immediately begin informing the subcontractor and vendor community of project scope and anticipated project timeline to ensure the market is prepared to potentially prepare and submit proposals. This will allow subcontractors and vendors to plan their resources accordingly and make available to pursue the Project.
2. CMAR should have conversations with local subcontractors and vendors to determine their capabilities to allow for appropriate sizing of Subcontract Packages. The intent is that CMAR will endeavor to maximize the number of proposals submitted by qualified local Subcontractors.
3. The Project team may host a Subcontractor and vendor meet and greet. Event will be informative about the project, allow subcontractors and vendors interested in the project to attend, ask questions regarding project scope, process, etc., and share their company information with our team to ensure they are given an opportunity.
4. CMAR may prequalify any Trade Subcontractors or other vendors seeking to submit a proposal on the Project as allowed by law.
5. Design Professional will complete the Construction Documents and provide the same to CMAR to use in connection with Trade Subcontractor proposal solicitation and development of the GMP Proposal.
6. CMAR will put together summaries of the Subcontract Package scopes, generate front-end performance specs related to schedule and manpower for the Work to be included in the Subcontract Packages, compile and distribute the Subcontract Packages, and solicit proposals. CMAR must include the proposed subcontract between CMAR and Subcontractor in the proposal solicitation documents.
7. Proposal questions will go to CMAR for vetting first and then to Design Professional. The Design Professional will respond to CMAR and CMAR will respond to the Subcontractor. CMAR is responsible for generating and maintaining an RFI and question log that will track all questions and answers through the Subcontractor proposal solicitation process.

8. CMAR is responsible for coordinating and administering Subcontract Packages, document distribution to Subcontractors, and sending proposals to the University for evaluation. CMAR is responsible for managing the Subcontractor proposal solicitation process and for conducting all aspects of the Subcontract process.
9. CMAR will utilize a database for soliciting Subcontractors/vendors and also distributing electronic documents for the Subcontract Packages. CMAR will review and validate the proposals from Subcontractors.
10. With consent and approval from the University, CMAR will send a notice of intent to award each Subcontract Package to the qualified, preferred, and selected Subcontractor for each scope and aspect of the Work.
11. CMAR and the selected Subcontractor will finalize the subcontract agreement to be entered into between the selected Subcontractor and CMAR.
12. CMAR may, before subcontracting other aspects of the Work and to the extent allowed by applicable procurement laws, issue early Subcontract Packages to lock in prices for long lead time materials and equipment or such materials and equipment which may be subject to irregular availability or market volatility.

3.22 – Building Information Modeling (BIM) and Other 3-D Modeling

3.22.1 CMAR will provide BIM file and model hosting site for coordination with University and Design Professional. CMAR and its Trade Subcontractors will provide BIM trade models.

3.22.2 CMAR will provide BIM coordination and clash detection. CMAR will coordinate with University and Design Professional on construction BIM execution plan.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 ADMINISTRATION OF THE CONTRACT BY DESIGN PROFESSIONAL

4.1.1 Design Professional will provide administration of the Contract as provided in the Contract Documents and will be one of the representatives of University. Design Professional will have authority to act on behalf of University only to the extent provided in the Contract Documents.

4.1.2 University's Representative and Design Professional will have the right to visit the Project site at such intervals as deemed appropriate by the University's Representative or Design Professional. However, no actions taken during such Project site visit by University's Representative or Design Professional shall relieve CMAR of its obligations as described in the Contract Documents.

4.1.3 University's Representative or Design Professional will not have control over, will not be in charge of, and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Construction Work, since these are solely CMAR's responsibility.

4.1.4 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, University and CMAR shall communicate through Design Professional. Except when direct communication has been specifically authorized in writing by University's Representative, communications by CMAR with University's consultants and University's Representative's consultants shall be through University's Representative. Communications by University and University's Representative with Trade Subcontractors will be through CMAR. Communications by CMAR and Trade Subcontractors with Separate Contractors shall be through University's Representative. CMAR shall not rely on oral or other non-written communications.

4.1.5 Based on Design Professional's Project site visits and evaluations of CMAR's Applications for Payment, Design Professional will recommend amounts, if any, due CMAR and will issue Certificates for Payment in such amounts.

4.1.6 University's Representative and Design Professional will have the authority to reject the Work, or any portion thereof, which does not conform to the Contract Documents. University's Representative and Design Professional will have the authority to stop the Work or any portion thereof. Whenever University's Representative or Design Professional considers it necessary or advisable for implementation of the intent of the Contract Documents, University's Representative or Design Professional will have the authority to require additional inspection or testing of the Work in accordance with the Contract Documents, whether or not such Work is fabricated, installed, or completed. However, no authority of University's Representative or Design Professional conferred by the Contract Documents nor any decision made in good faith either to exercise or not exercise such authority, will give rise to a duty or responsibility of University or University's Representative or Design Professional to CMAR, or any person or entity claiming under or through CMAR.

4.1.7 University's Representative or Design Professional will have the authority to conduct inspections as provided in the Contract Documents, to take Beneficial Occupancy and to determine the dates of Substantial Completion and Final Completion; will receive for review and approval any records, written warranties, and related documents required by the Contract Documents and assembled by CMAR; and will issue a final Certificate for Payment upon CMAR's compliance with the requirements of the Contract Documents.

4.1.8 Design Professional will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of performance thereunder by CMAR. Should CMAR discover any conflicts, omissions, or errors in the Contract Documents; have any questions about the interpretation or clarification of the Contract Documents; question whether Work is within the scope of the Contract Documents; or question that Work required is not sufficiently detailed or explained, then, before proceeding with the Work affected, CMAR shall notify Design Professional and University's Representative in writing and request interpretation, clarification, or furnishing of additional detailed instructions. Design Professional's response to questions and requests for interpretations, clarifications, instructions, or decisions will be made with reasonable promptness. Should CMAR proceed with the Work affected before receipt of a response from Design Professional, any portion of the Work which is not done in accordance with Design Professional's interpretations, clarifications, instructions, or decisions shall be removed or replaced and CMAR shall be responsible for all resultant losses.

4.2 CMAR CHANGE ORDER REQUESTS

4.2.1 CMAR may, subject to other provisions of this Contract, request changes to the Contract Sum and GMP and/or Contract Time for Extra Work or materially differing site conditions or as otherwise allowed by the Contract Documents.

4.2.2 Conditions precedent to obtaining an adjustment of the Contract Sum, GMP, and/or Contract Time, payment of money, or other relief with respect to the Contract Documents, for any other reason, are:

- .1 Timely submission of a Change Order Request that meets the requirements of Articles 4.2.3.1 and 4.2.3.2; and
- .2 If requested, timely submission of additional information requested by the University's Representative pursuant to Article 4.2.3.3.

4.2.3 Change Order Request.

4.2.3.1 A Change Order Request will be deemed timely submitted if, and only if, it is submitted within 21 days of the date the CMAR discovers, or reasonably should discover the circumstances giving rise to the Change Order Request, unless additional time is allowed in writing by Design Professional and University's Representative for submission of the Change Order Request (which shall not be unreasonably withheld), provided that if:

- .1 The Change Order Request includes compensation sought by a Trade Subcontractor; AND
- .2 The CMAR requests in writing to the Design Professional, within the 21-day time period, additional time to permit CMAR to conduct an appropriate review of the Subcontractor Change Order Request, the time period for submission of the actual Change Order Request shall be extended by the number of days specified in writing by the Design Professional and University's Representative.

4.2.3.2 Change Order Request must state that it is a Change Order Request, state and justify the reason for the request, and specify the amount of any requested adjustment of the Contract Sum, Contract Time, and/or other monetary relief. If the CMAR requests an adjustment to the Contract Sum or other monetary relief, the CMAR shall submit the following with the Change Order Request:

- .1 A completed Cost Proposal meeting the requirements of Article 7 of the General Conditions; OR
- .2 A partial Cost Proposal and a declaration of what required information is not then known to CMAR. If CMAR failed to submit a completed Cost Proposal with the Change Order Request, CMAR shall submit a completed Cost Proposal meeting the requirements of Article 7 of the General Conditions within 21 days of the date the CMAR submitted the Change Order Request unless additional time is allowed by the University's Representative.

4.2.3.3 Upon request of Design Professional or University's Representative, CMAR shall to the extent reasonably possible submit such additional information as may be requested by Design Professional or University's Representative for the purpose of evaluating the Change Order Request. Such additional information may include:

- .1 If CMAR seeks an adjustment of the Contract Sum, increase in the GMP, or other monetary relief, actual cost records for any changed or extra costs (including without limitation, payroll records, material and rental invoices and the like), shall be submitted by the deadline established by the Design Professional or University's Representative, who may require such actual cost records to be submitted and reviewed, on a daily basis, by the Design Professional and/or University's Representative.
- .2 If CMAR seeks an adjustment of the Contract Time, written documentation demonstrating CMAR's entitlement to a time extension under Article 8.4 of the General Conditions, which shall be submitted within 15 days of the date requested. If requested, CMAR may submit a schedule in support of its request for a time extension. The University may, but is not obligated to, grant a time extension on the basis of a schedule alone, which may not be a complete schedule analysis. If deemed appropriate by Design Professional and University's Representative, CMAR shall submit a more detailed schedule analysis in support of its request for a time extension.
- .3 Any other information requested by the Design Professional or University's Representative for the purpose of evaluating the Change Order Request, which shall be submitted by the deadline established by the Design Professional or University's Representative.

4.2.4 Design Professional will review and make a decision on a Change Order Request, within a reasonable time, after receipt of a Change Order Request. In the event the Change Order Request is submitted pursuant to Article 8.4.1, the Design Professional shall promptly review and submit it to the University's Representative within fourteen (14) days of receipt. The University's Representative shall issue a final decision accepting or rejecting the Change Order Request within a reasonable period of time. A final decision is any written decision on a Change Order Request which expressly states that it is final. If University's Representative issues a final decision denying a Change Order Request in whole or in part, CMAR may contest the decision by filing a timely Claim under the procedures specified in Article 4.3 below. If University's Representative fails to issue a written final decision on a Change Order Request within a reasonable period of time, such failure shall operate as a denial of the Change Order Request.

4.2.5 CMAR may file a written demand for a final decision by University's Representative on all or part of any Change Order Request as to which the University's Representative has not previously issued a final decision pursuant to Article 4.2.4 above; such written demand may not be made earlier than the 30th day after submission of the Change Order Request from Design Professional to University's Representative. Within 30 days of receipt of the demand, University's Representative will issue a final decision on the Change Order Request. The University's Representative's failure to issue a decision within the 30-day period shall be treated as the issuance, on the last day of the 30-day period, of a final decision to deny the Change Order Request in its entirety.

4.2.6 Change Order Requests that relate only to contingency costs or amounts, as discussed in Section 1.1.10 above, shall follow the same process as all other Change Order Requests. Any Change Order Request must be approved in writing by the University before taking effect.

4.3 CLAIMS

4.3.1 The term “Claim” means a written demand or assertion by CMAR seeking an adjustment or interpretation of the terms of the Contract Documents, payment of money, extension of time, increase in the GMP, or other relief with respect to the Contract Documents, including a determination of disputes or matters in question between University and CMAR arising out of or related to the Contract Documents or the performance of the Construction Work. However, the term “Claim” shall not include, and the Claims procedures provided under this Article 4, shall not apply to the following:

- .1 Claims respecting penalties for forfeitures prescribed by statute or regulation which a government agency is specifically authorized to administer, settle, or determine.
- .2 Claims respecting personal injury, death, reimbursement, or other compensation arising out of, or resulting from, liability for personal injury or death.
- .3 Claims by University, except as set forth in Article 4.7.4 of the General Conditions.
- .4 Claims respecting stop notices.

4.3.2 A Claim arises upon the issuance of a written final decision denying in whole or in part CMAR’s Change Order Request pursuant to Article 4.2.4 and/or 4.2.5 above.

4.3.3 A Claim must include the following, otherwise any such claim is waived:

- .1 A statement that it is a Claim and a request for a decision pursuant to Article 4.5 of the General Conditions.
- .2 A detailed factual narrative of events fully describing the nature and circumstances giving rise to the Claim, including but not limited to, necessary dates, locations, and items of work affected.
- .3 A certification, executed by CMAR, that the claim is filed in good faith.
- .4 A certification, executed by each Trade Subcontractor claiming not less than 5% of the total monetary amount sought by the claim, that the subcontractor’s portion of the claim is filed in good faith.
- .5 A statement demonstrating that a Change Order Request was timely submitted as required by Article 4.2.3 above.
- .6 If a Cost Proposal or declaration was required by Article 4.2.3 above, a statement demonstrating that the Cost Proposal or the declaration was timely submitted as required by Article 4.2.3.
- .7 A detailed justification for any remedy or relief sought by the Claim, including to the extent applicable, the following:
 - (a) If the Claim involves Extra Work, a detailed cost breakdown of the amounts claimed, including the items specified in Article 7.3.2 of the General Conditions. An estimate of the costs must be provided even if the costs claimed have not been incurred when the Claim is submitted. To the extent

costs have been incurred when the Claim is submitted, the Claim must include actual cost records (including without limitation, payroll records, material and rental invoices and the like) demonstrating that costs claimed have actually been incurred. To the extent costs have not yet been incurred at the time the Claim is submitted, actual cost records must be submitted on a current basis not less than once a month during any periods costs are incurred. A cost record will be considered current if submitted within 30 days of the date the cost reflected in the record is incurred. At the request of the University's Representative, claimed extra costs may be subject to further verification procedures (such as having an inspector verify the performance of alleged Extra Work on a daily basis). The cost breakdown must include an itemization of costs for (i) labor including workers' names, classifications, regular hours and overtime hours worked, dates worked, and other pertinent information; (ii) materials stored or incorporated in the work including invoices, purchase orders, location of materials either stored or incorporated into the work, dates materials were transported to the project or incorporated into the work, and other pertinent information; and (iii) itemization of machinery and equipment including make, model, hours of use, dates of use and equipment rental rates of any rented equipment.

- (b) If the Claim involves an extension of the Contract Time, written documentation demonstrating the CMAR's entitlement to a time extension under Article 8.4 of the General Conditions, including the specific dates for which a time extension is sought and the specific reasons for entitlement of a time extension.

4.3.4 Failure to meet these requirements will result in a waiver of the Claim.

4.4 ASSERTION OF CLAIMS

4.4.1 Claims by CMAR shall be first submitted to Design Professional for decision.

4.4.2 Notwithstanding the making of any Claim or the existence of any dispute regarding any Claim, unless otherwise directed by Design Professional or University's Representative, CMAR shall not cause any delay, cessation, or termination in or of CMAR's performance of the Work, but shall diligently proceed with performance of the Work in accordance with the Contract Documents.

4.4.3 CMAR shall submit a Claim in writing, together with all supporting data specified in Article 4.3.3 above, to Design Professional as soon as possible but not later than 30 days after the date the Claim arises under Article 4.3.2, provided that after written notification to the Design Professional within such time period, the time period for submission of the Claim shall be extended by the number of days specified in writing by the Design Professional where the Claim includes compensation sought by a Trade Subcontractor and the CMAR requests an extension of time to permit it to discharge its responsibilities to conduct an appropriate review of the Trade Subcontractor claim.

4.4.4 Strict compliance with the requirements of Articles 4.2, 4.3, and 4.4 of the General Conditions are conditions precedent to CMAR's right to litigate a Claim. CMAR specifically agrees to assert no Claims in litigation unless there has been strict compliance with Articles 4.2, 4.3, and 4.4. The failure of CMAR to strictly comply with the requirements of Articles 4.2, 4.3 and 4.4

constitutes a failure by CMAR to exhaust its administrative remedies with the University, thereby denying any court to adjudicate the Claim.

4.5 DECISION OF DESIGN PROFESSIONAL ON CLAIMS

4.5.1 Design Professional will timely review Claims submitted by CMAR. If Design Professional determines that additional supporting data is necessary to fully evaluate a Claim, Design Professional will request such additional supporting data in writing. Such data shall be furnished by CMAR no later than 10 days after the date of such request. Design Professional will render a decision promptly and in any case within 30 days after the later of the receipt of the Claim or the deadline for furnishing such additional supporting data; provided that, if the amount of the Claim is in excess of \$50,000, the aforesaid 30-day period shall be 60 days. Failure of Design Professional to render a decision by the applicable deadline will be deemed a decision denying the Claim on the date of the deadline.

4.5.4 Any litigation shall be filed in a court of competent jurisdiction in Oktibbeha County, Mississippi.

4.5.5 The parties will attempt in good faith to resolve any controversy or Claim arising out of or relating to this Contract by negotiation.

4.6 MEDIATION

4.6.1 The parties may agree to mediate any controversy or Claim arising out of or relating to this Contract.

4.7 WAIVER

4.7.1 A waiver of or failure by University or University's Representative or Design Professional to enforce any requirement in this Article 4, including without limitation the requirements in Articles 4.2, 4.3, 4.4 and 4.5, in connection with any Claim shall not constitute a waiver of, and shall not preclude the University or University's Representative or Design Professional from enforcing, such requirements in connection with any other Claims.

4.7.2 The CMAR agrees and understands that no oral approval, either express or implied, of any Claim shall be binding upon University unless and until such approval is ratified by execution of a written Change Order.

ARTICLE 5

SUBCONTRACTORS

5.1 DEFAULT OF SUBCONTRACTORS

5.1.1 In the event of a default or termination for default of a Trade Subcontractor, any increase in the cost of the Construction Work resulting from the replacement or substitution of a Trade Subcontractor, shall be borne solely by CMAR and CMAR shall not be entitled to any increase in Contract Sum on account of such replacement or substitution. However, CMAR shall be entitled to an equitable adjustment of the Contract Time, if CMAR shows that the delay caused by the default or termination for default was to the critical path of the Work.

5.2 SUBCONTRACTUAL RELATIONS

5.2.1 Any part of the Construction Work performed for CMAR by a first-tier Trade Subcontractor shall be pursuant to a written subcontract. Each such subcontract shall require the Trade Subcontractor, to the extent of the Construction Work to be performed by the Trade Subcontractor, to be bound to CMAR by the terms of the Contract Documents, to assume toward CMAR all the obligations and responsibilities which CMAR assumes towards University by the Contract Documents, and to perform such portion of the Construction Work in accordance with the Contract Documents. Each such subcontract shall preserve and protect the rights of University under the Contract Documents, with respect to the Construction Work to be performed by Trade Subcontractor, so that subcontracting thereof will not prejudice such rights. CMAR shall cause each such subcontract to expressly include the following requirements:

- .1 Trade Subcontractor waives all rights that Trade Subcontractor may have against Indemnitees for damages caused by fire or other perils covered by builder's risk property insurance carried by CMAR or University, except for such rights Trade Subcontractor may have to the proceeds of such insurance held by CMAR or University under Article 11 of the General Conditions.
- .2 Trade Subcontractor and CMAR recognize the right of University, in the event of default of CMAR, to accept a contingent assignment of Subcontracts upon notice from University that University has elected to accept said assignment and to retain Trade Subcontractor pursuant to the terms of the subcontract, to complete the unperformed obligations under the subcontract and, if requested by University, to execute a written agreement confirming that Trade Subcontractor is bound to University under the terms of the subcontract.

5.2.2 Upon the request of University, CMAR shall promptly furnish to University a true, complete, and executed copy of any subcontract.

5.2.3 Nothing contained in the Contract Documents shall create any contractual relationship between any Trade Subcontractor and University.

ARTICLE 6

CONSTRUCTION BY UNIVERSITY OR BY SEPARATE CONTRACTORS

6.1 UNIVERSITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 University reserves the right to award separate contracts for, or to perform with its own forces, construction or operations related to the Work or other construction or operations at or affecting the Project site, including portions of the Work which have been deleted by Change Order. CMAR shall cooperate with University's forces and Separate Contractors.

6.1.2 University will provide coordination of the activities of University's forces and of each Separate Contractor with the Work of CMAR. CMAR shall participate with University and Separate Contractors in joint review of construction schedules and Project requirements. CMAR shall make necessary revisions to the Contract Schedule after such joint review.

6.2 MUTUAL RESPONSIBILITY

6.2.1 CMAR shall afford University and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities. CMAR shall connect, schedule, and coordinate its construction and operations with the construction and operations of University and Separate Contractors as required by the Contract Documents.

6.2.2 If a portion of the Construction Work is dependent upon the proper execution or results of other construction or operations by University or Separate Contractors, CMAR shall inspect such other construction or operations before proceeding with that portion of the Construction Work. CMAR shall promptly report to Design Professional apparent discrepancies or defects which render the other construction or operations unsuitable to receive the Construction Work. Unless otherwise directed by Design Professional, CMAR shall not proceed with the portion of the Construction Work affected until apparent discrepancies or defects have been corrected. Failure of CMAR to so report within a reasonable time after discovering such discrepancies or defects shall constitute an acknowledgment that the other construction or operations by University or Separate Contractors is suitable to receive the Construction Work, except as to defects not then reasonably discoverable.

6.3 UNIVERSITY'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises between CMAR and Separate Contractors as to the responsibility under their respective contracts for maintaining the Project site and surrounding areas free from waste materials and rubbish, University may clean up and allocate the cost between those firms it deems to be responsible.

ARTICLE 7

CHANGES IN THE WORK

7.1 CHANGES

7.1.1 University may, from time to time, order or authorize additions, deletions, and other changes in the Work by Change Order or Field Order without invalidating the Contract and without notice to sureties. Absence of such notice shall not relieve such sureties of any of their obligations to University.

7.1.2 CMAR may request a Change Order under the procedures specified in Article 4.2 of the General Conditions.

7.1.3 A Field Order may be issued in writing by Design Professional, which does not require the agreement of CMAR, and shall be valid with or without the signature of CMAR.

7.1.4 CMAR shall proceed promptly with any changes in the Work, unless otherwise provided in the relevant Change Order or Field Order.

7.1.5 In the event of any changes to the scope of Work approved by the University or the occurrence of other events for which CMAR may be entitled to additional time pursuant to other provisions of the Contract, it is understood and agreed that, depending on the circumstances for each such instance, the University has the sole and absolute discretion to allow no additional time for completion of the Work due to scheduling obligations or constraints associated with the

University's use of the Project. And in lieu of granting all or part of additional time requested by CMAR, the University shall have the option to account for all or part of such additional time through increased payments to CMAR, including any such payments that might be necessary for any acceleration or other impact, and that such compensation and accounting will be reflected by, and documented within, a Change Order. The Change Order will account for and reflect any increased payments for acceleration or otherwise that may be necessary due to the University's inability or refusal to grant time extensions, which is expressly permitted by this Agreement. To the extent CMAR demonstrates through documentation acceptable to the University that, despite CMAR's best efforts, acceleration is not possible, then CMAR may be entitled to additional Contract Time as otherwise provided for in the Contract.

7.2 DEFINITIONS

7.2.1 A Change Order is a Contract Document which has been signed by both University and CMAR, and states their agreement, as applicable, to the following:

- .1 A change in the Work, if any.
- .2 The amount of an adjustment of the Contract Sum, if any.
- .3 The amount of an adjustment of the Contract Time, if any.

7.2.2 A Unilateral Change Order (or Construction Change Directive) may also be issued by University, without CMAR's signature, where University determines that a change in the Work requires an adjustment of the Contract Sum, GMP, or Contract Time, even though no agreement has been reached between University and CMAR. CMAR is obligated to proceed with a Unilateral Change Order (or Construction Change Directive) with a full reservation of its right to seek an adjustment in the Contract Sum, GMP or Contract Time, provided that in the event the unilateral change is not due to an act or omission of CMAR, the University shall pay CMAR the undisputed portion of the Cost of the Work as set forth in the Construction Change Directive until a Change Order is fully executed resolving the change.

7.2.3 The Design Professional shall have authority to order CMAR to perform minor changes in the Work which do not involve an adjustment in the Contract Sum or an extension of the Contract Time and which are not inconsistent with the intent of the Contract Documents. Such orders by the Design Professional for minor changes in the Work may be referred to as a Field Order or Supplemental Instruction. A Field Order may, but need not, constitute a change in the Work. CMAR is obligated to proceed with a Field Order with a full reservation of any right to seek an adjustment in the Contract Sum or Contract Time.

7.3 CHANGE ORDER PROCEDURES

7.3.1 CMAR shall provide a Change Order Request and Cost Proposal pursuant to Article 4.2 of the General Conditions and this Article 7.3. Adjustments of the Contract Sum or GMP resulting from Extra Work and Deductive Work shall be determined using one of the methods described in this Article 7.3. Adjustments of the Contract Time shall be subject to the provisions in Article 8 of the General Conditions. CMAR's obligation to provide Cost Proposals shall be subject to the following:

- .1 The obligation of CMAR to provide Cost Proposals is not Extra Work, and shall not entitle the CMAR to an adjustment of the Contract Sum or Contract Time.

- .2 The failure of CMAR to timely provide a Cost Proposal pursuant to Article 4.2 and this Article 7.3.1 is a material breach of the Contract. CMAR shall be responsible for any delay in implementing a change for which CMAR failed to timely provide a Cost Proposal consistent with the requirements of Article 4.2 and this Article 7.3.1.

7.3.2 The term "Cost of Extra Work" as used in this Article 7.3 shall mean actual costs incurred or estimated costs to be incurred by CMAR and each Trade Subcontractor regardless of tier involved, to the extent not otherwise disallowed under Article 7.3.3, and shall be limited to the following (to the extent the CMAR demonstrates that the actual or estimated costs are both reasonable):

- .1 Straight-time wages or salaries for employees employed at the Project site, or at fabrication sites off the Project site, incurred as a result of the performance of the Extra Work.
- .2 Fringe Benefits and Payroll Taxes for employees employed at the Project site, or at fabrication sites off the Project site, incurred as a result of the performance of the Extra Work.
- .3 Overtime wages or salaries, specifically authorized in advance in writing by University's Representative, for employees employed at the Project site, or at fabrication sites off the Project site, incurred as a result of the performance of the Extra Work.
- .4 Fringe Benefits and Payroll Taxes for overtime Work specifically authorized in advance in writing by University's Representative, for employees employed at the Project site, or at fabrication sites off the Project site, incurred as a result of the performance of the Extra Work.
- .5 Costs of materials and consumable items which are furnished and incorporated into the Extra Work. Such costs shall be charged at the lowest price available to the CMAR but in no event shall such costs exceed competitive costs obtainable from other subcontractors, suppliers, manufacturers, and distributors in the area of the Project site. All discounts, rebates, and refunds and all returns from sale of surplus materials and consumable items shall accrue to University and CMAR shall make provisions so that they may be obtained.
- .6 Sales tax on the cost of materials and consumable items, which are incorporated into and used in the performance of the Extra Work pursuant to Article 7.3.2.5 above.
- .7 Rental charges for necessary machinery and equipment, whether owned or hired, exclusive of hand tools, used directly in the performance of the Extra Work. The charges for any machinery and equipment shall cease when the use thereof is no longer necessary for the Extra Work.
- .8 Additional costs of royalties and permits due to the performance of the Extra Work.

University and CMAR may agree upon rates to be charged for any of the items listed in this Article 7.3.2.

7.3.3 Cost of Extra Work shall not include any of the following, unless included in Exhibit D or approved in advance by the University:

- .1 Supervision
- .2 Superintendent(s)
- .3 Assistant Superintendent(s)
- .4 Project Engineer(s)
- .5 Project Manager(s)
- .6 Scheduler(s)
- .7 Estimator(s)
- .8 Small tools
- .9 Office expenses including staff, materials and supplies
- .10 On-site or off-site trailer and storage rental and expenses
- .11 Site fencing
- .12 Utilities including gas, electric, sewer, water, telephone, telefax, copier equipment
- .13 Data processing personnel and equipment
- .14 Federal, state, or local business income and franchise taxes
- .15 Costs and expenses of any kind or item not specifically and expressly included in Article 7.3.2 above
- .16 Costs and expenses of any kind or item specifically and expressly included in definition of CMAR's Fee for Construction Services
- .17 Delay costs of any kind, including extended overhead or equipment costs or extended supervision costs, and including any delay costs paid by CMAR to any Subcontractor.

7.3.4 Any such Cost of Extra Work shall serve to increase the Option Sum for Construction Services (which is part of the GMP), which is the basis for calculation of CMAR's Fee for Construction Services. Any compensation to CMAR for work related to changes, Extra Work, or Change Orders shall be limited to any increase in the CMAR's Fee for Construction Services as a result of any increase in the Option Sum for Construction Services (and thus, the GMP). CMAR shall not be entitled to any other compensation, direct or indirect (including without limitation any overhead and profit), for any of its own Work or the Work of any Trade Subcontractors in connection with changes, Extra Work, or Change Orders, whether or not such costs and expenses are specifically referred to in Article 7.3.3 above.

7.3.5 Compensation for Extra Work shall be computed on the basis of the following:

- .1 Where the Work involved is covered by Unit Prices contained in the Contract Documents, by application of the Unit Prices to the quantities of the items involved.
- .2 Where Unit Prices are not applicable, a mutually agreed upon lump sum supported by a Cost Proposal pursuant to Article 7.3.1 above.
- .3 Where University and CMAR cannot agree upon a lump sum, by the Cost of Extra Work plus CMAR Fee applicable to such Extra Work.

7.3.6 As a condition to CMAR's right to an adjustment of the Contract Sum or GMP, pursuant to Article 7.3.5.3 above, CMAR must keep daily detailed and accurate records itemizing each element of cost and shall provide substantiating records and documentation, including time cards and invoices. Such records and documentation shall be submitted to Design Professional and University's Representative on a daily basis.

7.3.7 For Work to be deleted by Change Order, the reduction of the Contract Sum or GMP shall be computed on the basis of one or more of the following:

- .1 Unit Prices stated in the Contract Documents.
- .2 Where Unit Prices are not applicable, a lump sum agreed upon by University and CMAR, based upon the actual costs which would have been incurred in performing the deleted portions of the Work as calculated in accordance with Articles 7.3.2 and 7.3.3 above, supported by a Cost Proposal pursuant to Article 7.3.1 above.

7.3.8 If any one Change involves both Extra Work and Deleted Work in the same portion of the Work, an increase in the CMAR Fee will not be allowed if the deductive cost exceeds the additive cost. If the additive cost exceeds the deductive cost, an increase in the CMAR Fee, as a result of multiplying the increased Option Sum for Construction Services by the agreed upon Fee percentage, will be allowed only on the difference between the two amounts, subject to limitations in Article 7.3.5.5 above.

7.4 FIELD ORDERS

7.4.1 Field Orders issued by the Design Professional shall be subject to the following:

- .1 A Field Order may state that it does or does not constitute a change in the Work.
- .2 If the Field Order states that it does not constitute a change in the Work and the CMAR asserts that the Field Order constitutes a change in the Work, in order to obtain an adjustment of the Contract Sum or Contract Time for the Work encompassed by the Field Order, CMAR must follow all procedures set forth in Article 4 of the General Conditions, starting with the requirement of submitting a timely Change Order Request within 7 days of CMAR's receipt of the Field Order; failure to strictly follow those procedures is a bar to any Claim for an adjustment of the Contract Sum or Contract Time arising from performance of the Work described in the Field Order.

- .3 If the Field Order states that it does constitute a change in the Work, the Work described in the Field Order shall be considered Extra Work and the CMAR shall be entitled to an adjustment of the Contract Sum and Contract Time, calculated under and subject to CMAR's compliance with the procedures for verifying and substantiating costs and delays in Articles 7 and 8 of the General Conditions.
- .4 In addition, if the Field Order states that it does constitute a change in the Work, the Field Order may or may not contain University's estimate of adjustment of Contract Sum and/or Contract Time. If the Field Order contains an estimate of adjustment of Contract Sum or Contract Time, the Field Order is subject to the following:
 - (a) The CMAR shall not exceed the University's estimate of adjustment to Contract Sum or Contract Time without prior written notification to the Design Professional and University's Representative.
 - (b) If the CMAR asserts that the change in the Work encompassed by the Field Order may entitle CMAR to an adjustment of Contract Sum or Contract Time in excess of the University's estimate, in order not to be bound by University's estimate CMAR must follow all procedures set forth in Article 4 of the General Conditions, starting with the requirement of submitting a timely Change Order Request within 7 days of CMAR's receipt of the Field Order; failure to strictly follow those procedures is a bar to any Claim for an adjustment of the Contract Sum or Contract Time, in excess of the University's estimate, arising from performance of the Work described in the Field Order.

7.4.2 Upon receipt of a Field Order, CMAR shall promptly proceed to perform the Work as ordered in the Field Order notwithstanding any disagreement by the CMAR concerning whether the Work is extra.

7.5 VARIATION IN QUANTITY OF UNIT PRICE WORK

7.5.1 University has the right to increase or decrease the quantity of any Unit price item for which an Estimated Quantity is stated in any Contract Document.

7.6 WAIVER

7.6.1 A waiver of or failure by University or University's Representative to enforce any requirement in this Article 7, including without limitation the requirements in Articles 7.3.6, 7.3.8, or 7.3.9 in connection with any adjustment of the Contract Sum, will not constitute a waiver of, and will not preclude the University or University's Representative from enforcing, such requirements in connection with any other adjustments of the Contract Sum.

7.6.2 The CMAR agrees and understands that no oral approval, either express or implied, of any adjustment of the Contract Sum by University or its agents shall be binding upon University unless and until such approval is ratified by execution of a written Change Order.

ARTICLE 8

CONTRACT TIME

8.1 COMMENCEMENT OF THE WORK

8.1.1 The date of commencement of the Work shall be set forth in the Construction Services Notice to Proceed. The date of commencement of the Work shall not be postponed by the failure of CMAR, Trade Subcontractors, or of persons or firms for whom CMAR is responsible, to act.

8.2 PROGRESS AND COMPLETION

8.2.1 By signing the Agreement:

- .1 CMAR represents to University that the Contract Time is reasonable for performing the Work, including for each phase of Construction Services and that CMAR is able to perform the Work within the Contract Time.
- .2 CMAR agrees that University is purchasing the right to have the CMAR present on the Project site for the full duration of the Contract Time for all phases of Construction Services, even if CMAR could finish the Contract in less than the Contract Time.

8.2.2 CMAR shall not, except by agreement or instruction of University in writing, commence operations on the Project site or elsewhere prior to the effective date of insurance required by Article 11 of the General Conditions to be furnished by CMAR. The dates of commencement and Final Completion of the Construction Work shall not be changed by the effective date of such insurance.

8.2.3 CMAR shall proceed expeditiously with adequate forces and shall achieve Final Completion of the Work within the Contract Time. If Design Professional determines and notifies CMAR that CMAR's progress is such that CMAR will not achieve Final Completion of the Work within the Contract Time, CMAR shall immediately and at no additional cost to University, take all measures necessary, including working such overtime, additional shifts, Saturdays, Sundays, or holidays as may be required to ensure that the Work is fully completed within the Contract Time. Upon receipt of such notice from Design Professional, CMAR shall immediately notify Design Professional and University's Representative of all measures to be taken to ensure Final Completion of the Work within the Contract Time. CMAR shall reimburse University for any extra costs or expenses (including the reasonable value of any services provided by University's employees) incurred by University as the result of such measures.

8.3 DELAY

8.3.1 Except for its right to an extension of the Contract Time, CMAR agrees:

- .1 Unless allowed by the University in accordance with another provision of this Agreement, CMAR shall not be entitled to any increased or additional compensation as the result of a delay.
- .2 To bear the risk of any and all delays to the Work, regardless of cause or fault, and regardless of whether such delays were within the contemplation of the parties at any time; and
- .3 CMAR's acceptance of the Contract was made with full knowledge of this risk.

In agreeing to bear the risk of delays to the Work, CMAR understands that, except and only to the extent of CMAR's right to an extension of the Contract Time or as otherwise consistent with Article 5 of the Agreement, the occurrence of events that delay the Work shall not excuse CMAR from its obligation to achieve Final Completion of the Work within the Contract Time as may be adjusted pursuant to the Contract Documents and shall not entitle the CMAR to an adjustment of the Contract Sum.

8.4 ADJUSTMENT OF THE CONTRACT TIME FOR DELAY

8.4.1 Subject to Article 8.4.2 below and Article 5 of the Agreement, the Contract Time may be extended for each day of delay for which CMAR demonstrates that all of the following four conditions have been met; a time extension will not be granted for any day of delay for which CMAR fails to demonstrate compliance with the four conditions:

- .1 Condition Number One: The delay is critical. A delay is critical if and only to the extent it delays a work activity that cannot be delayed without delaying Final Completion of the Work beyond the Contract Time. Under this Article, if the Contract Schedule shows Final Completion of the Work before expiration of the Contract Time, a delay is critical if and only to the extent the delay pushes Final Completion of the Work to a date that is beyond the Contract Time.
- .2 Condition Number Two: Within 21 days of the date the CMAR discovers or reasonably should discover an act, error, omission or unforeseen condition or event causing the delay is likely to have an impact on the critical path of the Project, (even if the CMAR has not yet been delayed when the CMAR discovers or reasonably should discover the critical path impact of the act, error, omission or unforeseen condition giving rise to the delay) the CMAR submits both a timely and complete Change Order Request that meets the requirements of Article 4.2 of the General Conditions.
- .3 Condition Number Three: The delay is not caused by:
 - (a) A concealed, unforeseen or unknown condition or event except for a materially differing site condition pursuant to Article 3.17 of the General Conditions; or
 - (b) The financial inability, misconduct or default of the CMAR, a Trade Subcontractor or supplier; or
 - (c) The unavailability of materials or parts.
- .4 Condition Number Four: The delay is caused by:
 - (a) A materially differing site condition pursuant to Article 3.17 of the General Conditions; or
 - (b) An error or omission in the Contract Documents; or
 - (c) The University's decision to change the scope of the Work, where such decision is not the result of any default or misconduct of the CMAR; or

- (d) The University's decision to suspend the Construction Work, where such decision is not the result of any default or misconduct of the CMAR; or
- (e) The failure of the University (including the University acting through its consultants, Design Professionals, Separate Contractors or the University's Representative) to perform any Contract obligation unless such failure is due to CMAR's default or misconduct; or
- (f) An act or omission of the University, the University's separate contractors, or the Design Professional, or those for whose acts and omissions they are responsible; or
- (g) Reasonably and objectively recognized force majeure, acts of government, acts of God, natural disaster, pandemic, fires, or floods; or
- (h) "Adverse weather," but only for such days of adverse weather, or on-site conditions caused by adverse weather, that are in excess of the number of days for the Project location as set forth in the GMP Amendment or otherwise in the Contract. The CMAR agrees that normal weather occurrences and disruption to construction activities are already included in the schedule. Weather occurrences or delays beyond normal are defined as days beyond the NOAA average for each month as published by NOAA for Mississippi State, MS. Additional days will be granted based upon the occurrence of weather events that occurred in excess of the average as indicated by NOAA.

The CMAR is responsible for providing the NOAA data, NOAA average, and the observed deviation in excess of the average as defined by NOAA for the Mississippi State, MS area. The weather data is to be received monthly with the Application for Payment.

In order for a day to be considered a day of adverse weather for the purpose of determining whether CMAR is entitled to an adjustment in Contract Time, both of the following conditions must be met:

- (i) The day must be a day in which, as a result of adverse weather, less than one half day of critical path work is performed by CMAR; and
- (ii) The day must be identified in the Contract Schedule as a scheduled work day; and
- (iii) In evaluation of the above, Saturdays will be considered make-up days for time lost during the normal work week due to weather, and Saturdays which are considered workable shall offset claims made by the CMAR for weather days, unless CMAR had previously submitted a schedule to the University that reflected a planned 6-day work week; and

- (iv) The weather experienced at the Project site during the time of the alleged delay must be found to be abnormally adverse or unusually severe, that is, more severe than the adverse weather anticipated for the Project location during any given month; and
- (v) The abnormally adverse or unusually severe weather must actually cause a delay to the completion of the Project. The delay must be beyond the control and without the fault or negligence of the CMAR.

The University and CMAR will agree on the average monthly anticipated adverse weather delays as part of the GMP Amendment. Such average shall be based on National Oceanic and Atmospheric Administration (NOAA) data for the Project location and will constitute the base line for monthly weather time evaluations. CMAR's activity durations in the progress schedule must reflect these anticipated adverse weather delays in all weather-dependent activities.

Upon commencement of Construction Services and continuing throughout the Contract, CMAR shall record on the daily report, the occurrence of adverse weather and resultant impact to normally scheduled Work. Actual adverse weather delay days must prevent work on the Project's critical activities for 50 percent or more of CMAR's scheduled work day. The number of actual adverse weather days shall include days impacted by actual adverse weather (even if adverse weather occurred in previous month), be calculated chronologically from the first to the last day of each month, and be recorded as full days. If the number of actual adverse weather delay days exceeds the number of days allowed per the Contract, then University and Design Professional will convert any qualifying delays to calendar days, giving full consideration for equivalent fair weather work days, and issue a modification in accordance with the contract.

8.4.2 If and only if a delay meets all conditions prescribed in Article 8.4.1, then a time extension will be granted for each day that Final Completion of the Work is delayed beyond the Contract Time, subject to the following:

- .1 When two or more delays (each of which meet all four conditions prescribed in Article 8.4.1) occur concurrently on the same day, and each such concurrent delay by itself without consideration of the other delays would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Contract Time should be adjusted pursuant to this Article 8.4.2, such concurrent critical delays shall be treated as a single delay for each such day.
- .2 CMAR shall not be entitled to a time extension for a day of delay that meets all four requirements of Article 8.4.1 if the delay is concurrent with a delay that does not meet all four conditions of Article 8.4.1.

8.4.3 If for any reason one or more of the four conditions prescribed in Article 8.4.1 above is held legally unenforceable, then all remaining conditions must be met as a condition to obtaining an extension of the Contract Time under Article 8.4.2.

8.5 NO COMPENSATION FOR DELAY

8.5.1 To the maximum extent allowed by law, CMAR shall not be entitled to any adjustment of the Contract Sum or GMP as the result of delays.

8.5.2 By signing the Agreement, the parties agree that the University is buying the right, at no increase in the Contract Sum or GMP, to delay the Work, including without limitation, delays resulting from the failure of the University or the University's Representative to timely perform any Contract obligation and delays for University's convenience.

8.5.3 Subject to Article 5 of the Agreement, University may grant a reasonable time extension as set forth in 8.4 above, to complete the Work. Time is of the essence for all Work designated under this Contract, and any failure by CMAR to progress the Work as required herein shall constitute a material default of CMAR's obligations under this Contract. The Work shall be performed diligently and continuously. If CMAR's performance of the Work is delayed, altered, rescheduled, interfered, or in any way extended, whether the cause for such be due to acts or omissions of the University or any third party, and be they avoidable or unavoidable, it is hereby agreed that the University shall not be liable for any costs or damages so incurred by CMAR or by and Trade Subcontractor. However, CMAR may, unless prohibited by other provisions of this Contract, be granted an appropriate time extension to perform the Work. Unless otherwise agreed by the University, CMAR's sole remedy for any delay to the Work shall be an extension of the time to perform the Work, and CMAR shall in no event be entitled to any compensation for any delays under any provision of the Contract Documents. CMAR hereby expressly agrees that its sole and exclusive remedy for any delays encountered on this Project shall be the University's granting of justifiable time extensions to complete the Work. CMAR acknowledges that its right to receive an extension of time pursuant to the provisions of 8.4 above shall be CMAR's sole and exclusive remedy in regard to any delays, hindrance or interferences with the construction schedule and CMAR hereby waives any and all claims for monetary damages arising out of or related to any such delay, hindrance or interference.

8.6 WAIVER

8.6.1 A waiver of or failure by University or University's Representative to enforce any requirement in this Article 8 or this Contract, including without limitation the requirements in Article 8.4 and 8.5 above, in connection with any or all past delays shall not constitute a waiver of, and shall not preclude the University or University's Representative from enforcing, such requirements in connection with any present or future delays.

8.6.2 CMAR agrees and understands that no oral approval, either express or implied, of any time extension by University or its agents shall be binding upon University unless and until such approval is ratified by execution of a written Change Order.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 COST BREAKDOWN

9.1.1 Within 10 days after execution of the GMP Amendment and receipt of University's Notice to Proceed with Construction Services, CMAR shall submit to Design Professional and University's Representative a Cost Breakdown of the Contract Sum for Work for which a Trade

Subcontractor has been committed. The Cost Breakdown shall itemize as separate line items the cost of each Work Activity and all associated costs, including but not limited to warranties, as-built documents, overhead expenses, and the total allowance for profit. Insurance and bonds shall each be listed as separate line items. The total of all line items shall equal the Contract Sum. The Cost Breakdown, when approved by the Design Professional and University's Representative, shall become the basis for determining the cost of Work performed for CMAR's Applications for Payment.

9.2 PROGRESS PAYMENT

9.2.1 University agrees to pay monthly to CMAR, subject to Article 9.4.3 below, an amount equal to 95% of the sum of the following:

- .1 Cost of the Construction Work in permanent place as of the date of the CMAR's Application for Payment, based on a schedule of values reflecting the value of the Work in place, to be approved in advance in writing by the University.
- .2 Plus cost of materials not yet incorporated in the Construction Work, subject to Article 9.3.5 below.
- .3 In the event of a Unilateral Change Order or Construction Change Directive where the change is not due to an act or omission of CMAR, the University will include payment for the undisputed portion of the Cost of the Work as set forth in the Construction Change Directive.
- .4 CMAR's Fee as reflected by line item on the approved schedule of values.
- .5 Less amounts previously paid.
- .6 For Preconstruction Services, the University shall pay CMAR a prorated percentage amount, based on the Preconstruction Services Sum and based on the approved Schedule of Values.
- .7 Retainage can be reduced for Trade Subcontractor work completed as determined by the University.

9.2.2 After Substantial Completion and subject to Article 9.4.3 below, University will make any of the remaining progress payments in full.

9.3 APPLICATION FOR PAYMENT

9.3.1 On or before the 10th day of the month or such other date as is established by the Contract Documents, CMAR shall submit to Design Professional an itemized Application for Payment, for the cost of the Work in permanent place, as approved by Design Professional, which has been completed in accordance with the Contract Documents, less amounts previously paid. The Application for Payment shall be prepared as follows:

- .1 Use the form approved by or directed by Design Professional.
- .2 Itemize in accordance with the Cost Breakdown.

- .3 Include such data substantiating CMAR's right to payment as Design Professional may reasonably require, such as invoices, certified payrolls, daily time and material records, and, if securities are deposited in lieu of retention pursuant to Article 9.5 below, a certification of the market value of all such securities as of a date not earlier than 5 days prior to the date of the Application for Payment.
- .4 Itemize retention.
- .5 Reduction of retainage as agreed upon by the University.

9.3.2 Applications for Payment shall not include requests for payment on account of (1) changes which have not been authorized by Change Orders (except as allowed above) or (2) amounts CMAR does not intend to pay a Trade Subcontractor because of a dispute or other reason.

9.3.3 If required by University, an Application for Payment shall be accompanied by (1) a summary showing payments that will be made to Trade Subcontractors covered by such application and conditional waivers and releases of claims and bond rights upon progress payment and final payment, and (2) unconditional waivers and releases of claims and bond rights, from each Trade Subcontractor listed in the preceding Application for Payment covering sums disbursed pursuant to that preceding Application for Payment.

9.3.4 CMAR warrants that, upon submittal of an Application for Payment, all Work, for which Certificates for Payment have been previously issued and payment has been received from University, shall be free and clear of all claims, security interests, and encumbrances in favor of CMAR, Trade Subcontractors, or other persons or firms entitled to make claims by reason of having provided labor, materials, or equipment relating to the Work.

9.3.5 At the sole discretion of University, Design Professional may approve for inclusion in the Application for Payment the cost of materials not yet incorporated in the Work but already delivered and suitably stored either at the Project site or at some other appropriate location acceptable to Design Professional and University's Representative. In such case, CMAR shall furnish evidence satisfactory to University's Representative (1) of the cost of such materials and (2) that such materials are under the exclusive control of CMAR. Only materials to be incorporated in the Work will be considered for payment. Any payment shall not be construed as acceptance of such materials nor relieve CMAR from sole responsibility for the care and protection of such materials; nor relieve CMAR from risk of loss to such materials from any cause whatsoever; nor relieve CMAR from its obligation to complete the Work in accordance with the Contract; nor act as a waiver of the right of University to require fulfillment of all terms of the Contract. Nothing contained within this Article 9.3.5 shall be deemed to obligate University to agree to payment for any non-incorporated materials or any part thereof, payment being in the sole and absolute discretion of University.

9.3.6 CMAR will submit to the University with each Application for Payment cash flow projections using a form provided by, or acceptable to, the University.

9.4 CERTIFICATE FOR PAYMENT

9.4.1 If CMAR has submitted an Application for Payment in accordance with Paragraph 9.3, Design Professional shall, not later than 10 working days after the date of receipt of the Application for Payment, issue to University, with a copy to CMAR, a Certificate for Payment for such amount as Design Professional determines to be properly due.

9.4.2 If any such Application for Payment is determined not to be in accordance with Article 9.3 above, University will inform CMAR as soon as practicable, but not later than 10 working days after receipt. Thereafter, CMAR shall have 3 days to revise and resubmit such Application for Payment; otherwise Design Professional may issue a Certificate for Payment in the amount that University's Representative determines to be properly due without regard to such Application for Payment.

9.4.3 Approval of all or any part of an Application for Payment may be withheld, a Certificate for Payment may be withheld, and all or part of a previous Certificate for Payment may be nullified and that amount withheld from a current Certificate for Payment on account of any of the following:

- .1 Defective Work not remedied.
- .2 Third-party claims against CMAR or University arising from the acts or omissions of CMAR or Subcontractors.
- .3 Lien or Bond Claims.
- .4 Failure of CMAR to make timely payments due Trade Subcontractors for material or labor.
- .5 A reasonable doubt that the Construction Work can be completed for the balance of the Contract Sum then unpaid.
- .6 Damage to University or Separate Contractor for which CMAR is responsible.
- .7 Reasonable evidence that the Work will not be completed within the GMP or the Contract Time; and that the unpaid balance of the Contract Sum or GMP would not be adequate to cover University's damages for the anticipated delay.
- .8 Failure of CMAR to maintain and update as-built documents.
- .9 Failure of CMAR to submit schedules or their updates as required by the Contract Documents.
- .10 Failure to provide conditional or unconditional releases from any Trade Subcontractor or supplier, if such waiver(s) have been requested by Design Professional or University's Representative.
- .11 Performance of Construction Work by CMAR without properly processed Shop Drawings.
- .12 Liquidated damages assessed in accordance with Article 6 of the Agreement.
- .13 Failure to provide updated Reports of Trade Subcontractor Information and Self-Certifications, as applicable.
- .14 Failure to provide a Final Distribution of Contract Dollars with final Application for Payment.

- .15 Any other failure of CMAR or anyone from whom it is responsible to perform its obligations under the Contract Documents.

9.4.4 Subject to the withholding provisions of Subparagraph 9.4.3, University will pay CMAR the amount set forth in the Certificate for Payment no later than 10 working days after the issuance of the Certificate for Payment.

9.4.5 Neither University, nor University's Representative, nor Design Professional will have an obligation to pay or to see to the payment of money to a Trade Subcontractor, except as may otherwise be required by law.

9.4.6 Neither a Certificate for Payment nor a progress payment made by University will constitute acceptance of Defective Work.

9.5 RETAINAGE

9.5.1 The retainage withheld from each progress payment shall be governed by the applicable provisions of the Mississippi Code.

9.6 BENEFICIAL OCCUPANCY

9.6.1 University reserves the right, at its option and convenience, to occupy or otherwise make use of any part of the Construction Work at any time prior to Substantial Completion or Final Completion upon 10 days' notice to CMAR. Such occupancy or use is herein referred to as "Beneficial Occupancy." Beneficial Occupancy shall be subject to the following conditions:

- .1 Design Professional and University's Representative will make an inspection of the portion of the Project to be beneficially occupied and prepare a list of items to be completed or corrected prior to Final Completion. Prior to Beneficial Occupancy, University will issue a Certificate of Beneficial Occupancy.
- .2 Beneficial Occupancy by University shall not be construed by CMAR as an acceptance by University of that portion of the Construction Work which is to be occupied or acceptance of any defective or deficient aspects of the Work.
- .3 Beneficial Occupancy by University shall not constitute a waiver of existing claims of University or CMAR against each other.
- .4 CMAR shall provide, in the areas beneficially occupied and on a 24 hour and 7 day week basis as required, utility services, heating, and cooling for systems which are in operable condition at the time of Beneficial Occupancy. All responsibility for the operation and maintenance of equipment shall remain with CMAR while the equipment is so operated. CMAR shall submit to University an itemized list of each piece of equipment so operated with the date operation commences.
- .5 The Guarantee to Repair Periods, as defined in Article 12.2 of the General Conditions, will commence upon the occupancy date stated in the Certificate of Beneficial Occupancy except that the Guarantee to Repair Periods for that part of equipment or systems that serve portions of the Work for which University has not taken Beneficial Occupancy or issued a Certificate of Substantial Completion shall not commence until the University has taken Beneficial Occupancy for that portion

of the Work or has issued a Certificate of Substantial Completion with respect to the entire Project.

- .6 University will pay normal utility, operating, and maintenance costs which arise out of the Beneficial Occupancy and are outside of GMP. CMAR shall be responsible for utility, operating, and maintenance costs associated with temporary offices and other facilities necessary for completion of the Work or resulting from its use of equipment in areas beneficially occupied.
- .7 CMAR shall not be responsible for providing security in areas beneficially occupied.
- .8 University will use its best efforts to prevent its Beneficial Occupancy from interfering with the conduct of CMAR's remaining Construction Work.
- .9 CMAR shall not be required to repair damage caused by University in its Beneficial Occupancy.
- .10 Except as provided in this Article 9.6, there shall be no added cost to University due to Beneficial Occupancy.
- .11 CMAR shall continue to maintain all insurance required by the Contract in full force and effect.

9.7 SUBSTANTIAL COMPLETION

9.7.1 "Substantial Completion" means the stage in the progress of the Construction Work, as determined by Design Professional and agreed to by University's Representative, when the Construction Work is complete and in accordance with the Contract Documents except only for completion of minor items which do not impair University's ability to occupy and fully utilize the Construction Work for its intended purpose, the State Fire Marshall issues a Certificate of Compliance, and the Design Professional issues a Certificate of Substantial Completion.

9.7.2 Before contacting the Design Professional regarding Substantial Completion, CMAR shall have created its own punch-list of items remaining to be completed. CMAR shall vigorously pursue completion of the items on its own punch-list before contacting Design Professional or University's Representative regarding creation of separate punch-lists in connection with Substantial Completion. When CMAR gives notice to Design Professional that the Construction Work is substantially complete, and that the items on CMAR's punch-list have been fully addressed, unless Design Professional or University's Representative determines that the Construction Work is not sufficiently complete to warrant an inspection to determine Substantial Completion, Design Professional will then inspect the Construction Work. If the Design Professional determines that the Work is not substantially completed, the Design Professional will prepare and give to CMAR a comprehensive punch list of items to be completed or corrected before establishing Substantial Completion. CMAR shall proceed promptly to complete and correct all items on the list. Failure to include an item on such list does not alter the responsibility of CMAR to complete all Construction Work in accordance with the Contract Documents. After CMAR completes or corrects all items on Design Professional's punch-list, then Design Professional and University's Representative will make another inspection to determine whether the Construction Work is substantially complete. At that time, the University's Representative may prepare a separate punch-list of items still remaining to be completed or corrected by CMAR.

Costs for additional inspections by Design Professional or University's Representative, other than those contemplated by this paragraph, shall be deducted from any monies due and payable to CMAR.

9.7.3 When Design Professional and University's Representative determine that the Construction Work is substantially complete, and all close out requirements have been met, University's Representative will arrange for inspection by University's Building Official and other officials, as appropriate, for the purpose of issuing a Certificate of Occupancy. After a Certificate of Occupancy has been issued by the University's Building Official, the Design Professional will prepare a Certificate of Substantial Completion, which, when signed by University, shall establish the date of Substantial Completion and the responsibilities of University and CMAR for security, maintenance, utilities, insurance, and damage to the Construction Work. The Design Professional will prepare and furnish to the CMAR a separate, comprehensive "punch list" of items to be completed or corrected prior to Final Completion.

9.7.4 Unless otherwise provided in the Certificate of Substantial Completion, the Guarantee to Repair Period for the Construction Work covered by the Certificate of Substantial Completion, shall commence on the date of Substantial Completion of the Construction Work except that Substantial Completion shall not commence the Guarantee to Repair Period for any equipment or systems that:

- .1 Are not operational (equipment or systems shall not be considered operational if they cannot be used to provide the intended service; or
- .2 Are not accepted by the University.

The Guarantee to Repair Period for equipment or systems which become operational and accepted subsequent to Substantial Completion will begin on the date of their written acceptance by University. The Guarantee to Repair Period for any equipment or systems that become operational before the date of Substantial Completion will begin to run on the date of Substantial Completion, not on the date that the equipment or systems become operational.

9.8 FINAL COMPLETION, FINAL PAYMENT, AND RELEASE OF RETENTION

9.8.1 Upon receipt of notice from CMAR that the Work is ready for final inspection, Design Professional and University's Representative and other necessary University personnel or consultants will make such inspection. Final Completion shall be when Design Professional determines, and the University Representative agrees, that the Work is fully completed and in accordance with the Contract Documents, including without limitation, satisfaction of all "punch list" items, and determines that a Certificate of Occupancy has been issued by the University's Building Official. After receipt of the final Application for Payment, if Design Professional determines that Final Completion has occurred, and University's Representative agrees, then Design Professional will issue the final Certificate for Payment.

9.8.2 Final payment and retention shall be released to CMAR, as set forth in Article 9.8.3, after:

- .1 CMAR submits the final Application for Payment and all submittals required in accordance with Article 9.3;
- .2 CMAR submits final releases and waivers of claims on behalf of itself and all Trade Subcontractors;

- .3 CMAR submits all guarantees and warranties procured by CMAR from Subcontractors, all operating manuals for equipment installed in the Project, as-built documents, and all other submittals required by the Contract Documents;
- .4 CMAR submits the Final Distribution of Contract Dollars; and
- .5 Design Professional issues the final Certificate for Payment.

At its sole discretion, after Final Completion, University may waive the requirement that CMAR submit a final Application for Payment before making final payment and/or release of retention to CMAR.

9.8.3 Final payment shall be paid not more than 30 working days after Design Professional issues the final Certificate for Payment.

9.8.4 Acceptance of final payment by CMAR shall constitute a waiver of all claims, except claims previously made in writing and identified by CMAR as unsettled at the time of the final Application for Payment.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 CMAR shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 CMAR shall take adequate precautions for safety of and shall provide adequate protection to prevent damage, injury, or loss to the following:

- .1 Employees involved in the Work and other persons who may be affected thereby.
- .2 The Work in place and materials and equipment to be incorporated therein, whether in storage on or off the Project site, under care, custody, or control of CMAR or Trade Subcontractors.
- .3 Other property at the Project site and adjoining property.

10.2.2 CMAR shall erect and maintain, as required by existing conditions and performance of the Construction Work, adequate safeguards for safety and protection, including providing adequate lighting and ventilation, posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

10.2.3 When use or storage of explosives, other hazardous materials, equipment, or unusual methods are necessary for execution of the Construction Work, CMAR shall exercise the utmost care and carry on such activities only under the supervision of properly qualified personnel.

10.2.4 CMAR shall designate a responsible member of CMAR's organization at the Project site whose duty shall be the prevention of accidents. That person shall be the Superintendent, unless otherwise designated by CMAR in writing to University, Design Professional, and University's Representative.

10.2.5 CMAR shall not load or permit any part of the Work or the Project site to be loaded so as to endanger the safety of persons or property.

10.3 EMERGENCIES

10.3.1 In an emergency affecting the safety of persons or property, CMAR shall act to prevent or minimize damage, injury, or loss. CMAR shall promptly notify Design Professional and University's Representative, which notice may be oral followed by written confirmation, of the occurrence of such an emergency and CMAR's action.

ARTICLE 11

INSURANCE AND BONDS

11.1 CMAR'S INSURANCE

11.1.1 CMAR shall purchase and maintain in full force and effect such insurance as will protect itself and the Indemnitees from claims, such as for bodily injury, wrongful death, and property damage, which may arise out of or result from the Work required by the Contract Documents, whether such Work is done by CMAR, by any Trade Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The amounts of such insurance and any additional insurance requirements are specified in the Supplementary Conditions.

11.1.2 The following policies and coverages shall be furnished by CMAR:

- .1 COMMERCIAL FORM GENERAL LIABILITY INSURANCE covering all Work done by or on behalf of CMAR and providing insurance for bodily injury, wrongful death, personal injury, property damage, and contractual liability. Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limit shall apply separately to Work required of CMAR by these Contract Documents. If the insurance under this Article 11.1.2.1 is written on a claims-made form, coverage shall continue for a period of not less than 6 years following termination of this Contract. Coverage shall provide for a retroactive date of placement prior to or coinciding with the effective date of this Contract.
- .2 BUSINESS AUTOMOBILE LIABILITY INSURANCE on an "Occurrence" form covering owned, hired, leased, and non-owned automobiles used by or on behalf of CMAR and providing insurance for bodily injury and property damage.
- .3 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE as required by Federal and State of Mississippi law. CMAR shall also require all of its Trade Subcontractors to maintain this insurance coverage.

- .4 PROFESSIONAL LIABILITY INSURANCE. If the insurance under this Article 11.1.2.4 is written on a claims-made form, coverage shall continue for a period of not less than 6 years following termination of this Contract. Coverage shall provide for a retroactive date of placement prior to or coinciding with the effective date of this Contract.
- .5 OWNERS & CONTRACTORS PROTECTIVE LIABILITY INSURANCE on an "Occurrence" form.
- .6 EXCESS LIABILITY UMBRELLA POLICY INSURANCE.
- .7 BUILDER'S RISK INSURANCE covering the CMAR's Work at the Project, including the Work at the Project and the Work at buildings or structures attached to the Project, notwithstanding the University's beneficial occupancy of some aspects of the Project throughout the Work.

11.1.3 Certificates of Insurance, as evidence of the insurance required by these Contract Documents and as further required by Exhibit B, shall be submitted by CMAR to University prior to the commencement of any Work. The Certificates of Insurance shall provide for no cancellation or modification of coverage without prior written notice to University, in accordance with policy provisions.

11.1.4 In the event CMAR does not comply with these insurance requirements, University may, at its option, provide insurance coverage to protect University; and the cost of such insurance shall be paid by CMAR and may be deducted from the Contract Sum.

11.1.5 CMAR's insurance as required by Article 11.1.2, shall, by endorsement to the policies, include the following:

- .1 Indemnitees will be included as additional insureds on all required insurance policies for and relating to the Work to be performed by the CMAR and Trade Subcontractors. This requirement shall not apply to Worker's Compensation and Employer's Liability insurance.
- .2 A Severability of Interest Clause that shall be primary insurance as respects the University, its officers, agents and employees. Any insurance or self-insurance maintained by the University shall be in excess of and non-contributory to the insurances of CMAR by the Contract. The provision shall state that, "The term 'insured' is hereby used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limits of the insurers' liability."
- .3 A Cross Liability Clause stating that, "In the event of claims being made under any of the coverages of the policies referred to herein by one or more insureds hereunder for which another insured hereunder may be liable, then the policies shall cover such insureds against whom a claim is made or may be made in the same manner as if separate policies had been issued to each insured hereunder. Nothing contained herein, however, shall operate to increase the insurers' limits of liability as set forth in the insuring agreements."

- .4 Indemnitees will not by reason of their inclusion as insureds incur liability to the insurance carriers for payment of premiums for such insurance.
- .5 Coverage provided is primary and is not in excess of or contributing with any insurance or self-insurance maintained by Indemnitees.
- .6 The Professional Liability insurance policy shall include Contractual Liability Coverage or endorsements to the insurance policies for Contractual Liability Coverage for liability that would exist in the absence of the contract.
- .7 All insurances provided by CMAR shall include waivers of subrogation in favor of Indemnitees.

11.1.6 The form and substance of all insurance policies required to be obtained by CMAR shall be subject to approval by University. All policies required by Articles 11.1.2.1, 11.1.2.2, and 11.1.2.3 above shall be issued by companies with ratings and financial classifications as specified in the Supplementary Conditions.

11.1.7 CMAR shall, by mutual agreement with University, furnish any additional insurance as may be required by University. CMAR shall provide Certificates of Insurance evidencing such additional insurance.

11.1.8 The Certificate of Insurance shall show (1) all companies affording coverage and (2) the name of the insured exactly in the manner as shown on the Subcontract and/or Contract. The name of the insured must be the name under which the entity is licensed by the Contractors State License Board.

11.1.9 At the request of University or IHL, CMAR shall submit to University copies of the policies obtained by CMAR.

11.1.10 CMAR shall require all Trade Subcontractors to provide insurance meeting the requirements of Article 11 and as specified in the Supplementary Conditions.

11.2 BUILDER'S RISK PROPERTY INSURANCE

11.2.1 The CMAR will provide builder's risk property insurance in an amount and type necessary to protect the Work at the Project, including any Work at buildings or structures attached to the Project. In addition, a summary of the provisions of the policy is included in Exhibit B to the Contract. In the event that the University determines that broader builder's risk property insurance coverage is necessary or required, the parties will negotiate and agree upon such additional coverage as part of the GMP Amendment. The proceeds under such insurance policies taken out by CMAR insuring the Work and materials will be payable to University and CMAR as their respective interests, from time to time, may appear. CMAR shall be responsible for the deductible amount in the event of a loss. In addition, nothing in this Article 11.2 shall be construed to relieve CMAR of full responsibility for loss of or damage to materials not incorporated in the Work, for buildings or structures located immediately adjacent to the Work but not included in the Work itself, and for CMAR's tools and equipment used to perform the Work, whether on the Project site or elsewhere, or to relieve CMAR of its responsibilities referred to under this Article 11. "Materials incorporated in the Work," as used in this Article 11.2, shall mean materials furnished while in transit to, stored at, or in permanent place at the Project site.

11.2.2 Insurance policies referred to under this Article 11.2 shall:

- .1 Include a provision that the policies are primary and do not participate with nor are excess over any other valid collectible insurance carried by CMAR.
- .2 Include a waiver of subrogation against the Indemnitees.

11.2.3 Builder's risk insurance coverage under this Article 11.2 will expire on the date of Final Completion recited in a Notice of Completion filed pursuant to Article 9.8.1. Should a Notice of Completion be filed more than 10 days after the date of Final Completion, the date of Final Completion recited in the Notice of Completion will govern.

11.3 PERFORMANCE BOND AND PAYMENT BOND

11.3.1 CMAR shall furnish bonds covering the faithful performance of the Contract (Performance Bond) and payment of obligations arising thereunder (Payment Bond) on the forms contained in Exhibit F.

11.3.2 The Payment Bond and Performance Bond shall each be in the amount of the GMP. If thereafter the Contract Sum or GMP is increased, CMAR shall furnish supplemental Payment and Performance Bonds in an amount equal to any increase in the Contract Sum or GMP.

11.3.3 The Payment Bond and Performance Bond shall be in effect prior to the date the Contract Amendment for Construction Services is signed by University. The CMAR shall provide Payment Bond and Performance Bond within ten (10) days of Notice of Intent.

11.3.4 Surety companies used by CMAR shall be, on the date the Contract is signed by University, a duly licensed surety insurer with the State of Mississippi Department of Insurance.

11.3.5 The premiums for the Payment Bond and Performance Bond shall be paid by CMAR.

ARTICLE 12

UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 If a portion of the Work is covered contrary to Design Professional's or University's Representative's request or direction, or contrary to the requirements of the Contract Documents, it must, if required in writing by Design Professional or University's Representative, be uncovered for Design Professional's and/or University's Representative's observation and be replaced at CMAR's expense without adjustment of the Contract Time or the Contract Sum.

12.1.2 If a portion of the Work has been covered, which is not required by the Contract Documents to be observed or inspected prior to its being covered and which Design Professional or University's Representative has not specifically requested to observe prior to its being covered, Design Professional or University's Representative may request to see such Work and it shall be uncovered and replaced by CMAR. If such Work is in accordance with the Contract Documents, the costs of uncovering and replacing the Work shall be added to the Contract Sum by Change Order; and if the uncovering and replacing of the Work extends the Contract Time, an appropriate adjustment of the Contract Time shall be made by Change Order. If such Work is not in

accordance with the Contract Documents, CMAR shall pay such costs and shall not be entitled to an adjustment of the Contract Time or the Contract Sum.

12.2 CORRECTION OF DEFECTIVE WORK AND GUARANTEE TO REPAIR PERIOD

12.2.1 The term "Guarantee to Repair Period" means a period of 1 year, unless a longer period of time is specified or allowed by Mississippi law commencing as follows:

- .1 For any Construction Work not described as incomplete in the Certificate of Substantial Completion, on the date of Substantial Completion.
- .2 For space beneficially occupied or for separate systems fully utilized prior to Substantial Completion pursuant to Article 9.6 of the General Conditions, from the first date of such Beneficial Occupancy or actual use, as established in a Certificate of Beneficial Occupancy.
- .3 For all Construction Work other than .1 or .2 above, from the date of Final Completion.

This Guarantee to Repair Period shall not impact or lessen any time periods for claims or warranties set forth in applicable Mississippi law.

12.2.2 CMAR shall (1) correct Defective Work that becomes apparent during the progress of the Construction Work or during the Guarantee to Repair Period and (2) replace, repair, or restore to University's satisfaction any other parts of the Construction Work and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work not caused by University's neglect. CMAR shall promptly commence such correction, replacement, repair, or restoration upon notice from University's Representative or University, but in no case later than 10 days after receipt of such notice; and CMAR shall diligently and continuously prosecute such correction to completion. CMAR shall bear all costs of such correction, replacement, repair, or restoration, and all losses resulting from such Defective Work, including additional testing, inspection, and compensation for Design Professional's and University's Representative's services and expenses. CMAR shall perform corrective Construction Work at such times that are acceptable to University and in such a manner as to avoid, to the extent practicable, disruption to University's activities.

12.2.3 If immediate correction of Defective Work is required for life safety or the protection of property and is performed by University or Separate Contractors, CMAR shall pay to University all reasonable costs of correcting such Defective Work. CMAR shall replace, repair, or restore to University's satisfaction any other parts of the Construction Work and any other real or personal property which is damaged or destroyed as a result of such Defective Work or the correction of such Defective Work.

12.2.4 CMAR shall remove from the Project site portions of the Work and materials which are not in accordance with the Contract Documents and which are neither corrected by CMAR nor accepted by University.

12.2.5 If CMAR fails to commence correction of Defective Work within 10 days after notice from University, Design Professional, or University's Representative or fails to diligently prosecute such correction to completion, University may correct the Defective Work in accordance with Article 2.4

of the General Conditions; and, in addition, University may remove the Defective Work and store salvageable materials and equipment at CMAR's expense.

12.2.6 If CMAR fails to pay the costs of such removal and storage as required by Articles 12.2.4 and 12.2.5 above within 10 days after written demand, University may, without prejudice to other remedies, sell such materials at auction or at private sale, or otherwise dispose of such material. CMAR shall be entitled to the proceeds of such sale, if any, in excess of the costs and damages for which CMAR is liable to University, including compensation for Design Professional's and University's Representative's services and expenses. If such proceeds of sale do not cover costs and damages for which CMAR is liable to University, the Contract Sum shall be reduced by such deficiency. If there are no remaining payments due CMAR or the remaining payments are insufficient to cover such deficiency, CMAR shall promptly pay the difference to University.

12.2.7 CMAR's obligations under this Article 12 are in addition to and not in limitation of its warranty under the General Conditions or any other obligation of CMAR under the Contract Documents. Enforcement of CMAR's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies University may have under the Contract Documents or at law or in equity for Defective Work. Nothing contained in this Article 12 shall be construed to establish a period of limitation with respect to other obligations of CMAR under the Contract Documents. Establishment of the Guarantee to Repair Period relates only to the specific obligation of CMAR to correct the Construction Work and in no way limits either CMAR's liability for Defective Work or the time within which proceedings may be commenced to enforce CMAR's obligations under the Contract Documents.

ARTICLE 13

TERMINATION OR SUSPENSION OF THE CONTRACT

13.1 TERMINATION BY CMAR

13.1.1 Subject to Article 13.1.2 below, CMAR shall have the right to terminate the Contract only upon the occurrence of one of the following:

- .1 University has not commenced reasonable action to remove any order of a court stopping construction within 120 days of the order being extended, or the Construction Work is stopped for 120 consecutive days through no act or fault of CMAR, any Trade Subcontractor, or any employee or agent of CMAR or any Trade Subcontractor, due to an issuance of an order of a court or other public authority having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable.
- .2 University fails to perform any material obligation under the Contract Documents and fails to cure such default within 45 days, or University has not commenced to cure such default within 45 days where such cure will require a reasonable period beyond 45 days and diligently prosecutes the same to completion, after receipt of notice from CMAR stating the nature of such default.
- .3 Repeated suspensions by University, other than such suspensions as are agreed to by CMAR under Article 13.3 below, which constitute in the aggregate more than 100% of the Contract Time.

13.1.2 Upon the occurrence of one of the events listed in Article 13.1.1 above, CMAR may, upon 10 days additional notice to University, Design Professional, and University's Representative, and provided that the condition giving rise to CMAR's right to terminate is continuing, terminate the Contract.

13.1.3 Upon termination by CMAR, University will pay to CMAR the sum determined by Article 13.4.4 below. Such payment will be the sole and exclusive remedy to which CMAR is entitled in the event of termination of the Contract by CMAR pursuant to this Article 13.1; and CMAR will be entitled to no other compensation or damages and expressly waives the same.

13.2 TERMINATION BY UNIVERSITY FOR CAUSE

13.2.1 University will have the right to terminate the Contract for cause at any time after the occurrence of any of the following events:

- .1 CMAR becomes insolvent or files for relief under the bankruptcy laws of the United States.
- .2 CMAR makes a general assignment for the benefit of its creditors or fails to pay its debts as the same become due.
- .3 A receiver is appointed to take charge of CMAR's property.
- .4 The commencement or completion of any Work activity on the critical path is more than 30 days behind the date set forth in the Contract Schedule for such Work activity due to the fault of CMAR or any Trade Subcontractor, and which results in a delay.
- .5 CMAR abandons the Work.
- .6 CMAR fails to properly account for exigent circumstances, conditions, complications, cost increases, time related issues, or other issues arising from any pandemic or global or national health crisis.
- .7 Substantial or final completion of any phase of the Work is more than 30 days behind the date set forth in the Contract Schedule due to the fault of CMAR or any Trade Subcontractor.

13.2.2 Upon the occurrence of any of the following events, University will have the right to terminate the Contract for cause if CMAR fails to promptly commence to cure such default and diligently prosecute such cure within 5 days after notice from University, or within such longer period of time as is reasonably necessary to complete such cure:

- .1 CMAR persistently or repeatedly refuses or fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to prosecute the Work in accordance with the Contract Documents.
- .2 CMAR fails to make prompt payment of amounts properly due Subcontractors after receiving payment from University.

- .3 CMAR disregards Applicable Code Requirements.
- .4 CMAR persistently or materially fails to execute the Work in accordance with the Contract Documents.
- .5 CMAR is in default of any other material obligation under the Contract Documents.
- .6 CMAR persistently or materially fails to comply with applicable safety requirements.
- .7 CMAR fails to adhere to any order or directive issued by the University with regard to any pandemic or global or national health crisis.

13.2.3 Upon any of the occurrences referred to in Articles 13.2.1 and 13.2.2 above, University may, at its election and by notice to CMAR, terminate the Contract and take possession of the Project site and all materials, supplies, equipment, tools, and construction equipment and machinery thereon owned by CMAR; accept the assignment of any or all of the subcontracts; and then complete the Work by any method University may deem expedient. If requested by University, CMAR shall remove any part or all of CMAR's materials, supplies, equipment, tools, and construction equipment and machinery from the Project site within 7 days of such request; and if CMAR fails to do so, University may remove or store, and after 90 days sell, any of the same at CMAR's expense.

13.2.4 If the Contract is terminated by University as provided in this Article 13.2, CMAR shall not be entitled to receive any further payment until the expiration of 35 days after Final Completion and acceptance of all Construction Work by University.

13.2.5 If the unpaid balance of the Contract Sum exceeds the cost of completing the Work, including all additional costs and expenses made necessary thereby, including costs for University staff time, plus all losses sustained, including any liquidated damages due at the time of CMAR's termination provided under the Contract Documents and reasonable attorneys' fees incurred by the University, such excess shall be paid to CMAR. If such costs, expenses, losses, and liquidated damages exceed the unpaid balance of the Contract Sum, CMAR shall pay such excess to University.

13.2.6 No termination or action taken by University after termination shall prejudice any other rights or remedies of University provided by law or by the Contract Documents upon such termination; and University may proceed against CMAR to recover all losses suffered by University.

13.3 SUSPENSION BY UNIVERSITY FOR CONVENIENCE

13.3.1 University may, at any time and from time to time, without cause, order CMAR, in writing, to suspend, delay, or interrupt the Work in whole or in part for such period of time, up to 180 days, as University may determine, with such period of suspension to be computed from the date of delivery of the written order. Such order shall be specifically identified as a "Suspension Order" under this Article 13.3. The Work may be stopped for such further period as the parties may agree. Upon receipt of a Suspension Order, CMAR shall comply with its terms and take all reasonable steps to minimize costs allocable to the Work covered by the Suspension Order during the period of Work stoppage. Within 90 days after the issuance of the Suspension Order, or such extension

to that period as is agreed upon by CMAR and University, University shall either cancel the Suspension Order or delete the Work covered by such Suspension Order by issuing a Change Order. University will have the right to suspend or terminate the Contract in whole or in part at any time that it determines in good faith to be in the University's or the Project's best interest.

13.3.2 If a Suspension Order is canceled or expires, CMAR shall continue with the Work. A Change Order will be issued to cover any agreed upon adjustments of the Contract Sum or the Contract Time necessarily caused by such suspension. Any Claim by CMAR for an adjustment of the Contract Sum or the Contract Time shall be made within 21 days after the end of the Work suspension. CMAR agrees that submission of its claim within said 21 days is an express condition precedent to its right to litigate such a claim.

13.3.3 The provisions of this Article 13.3 shall not apply if a Suspension Order is not issued by University. A Suspension Order shall not be required to stop the Work as permitted or required under any other provision of the Contract Documents.

13.4 TERMINATION BY UNIVERSITY FOR CONVENIENCE

13.4.1 University may, at its option, and for any reason whatsoever or for no reason, terminate this Contract, in whole or from time to time in part, at any time by giving notice to CMAR. Upon such termination, CMAR agrees to waive any claims for damages, including loss of anticipated profits, on account thereof; and, as the sole right and remedy of CMAR, University shall pay CMAR in accordance with Article 13.4.4 below. University will have the right to suspend or terminate the Contract in whole or in part at any time that it determines in good faith to be in the University's or the Project's best interest.

13.4.2 Upon receipt of notice of termination under this Article 13.4, CMAR shall, unless the notice directs otherwise, do the following:

- .1 Immediately discontinue the Work to the extent specified in the notice.
- .2 Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the Construction Work as is not discontinued.
- .3 Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent they relate to the performance of the discontinued portion of the Work.
- .4 Thereafter do only such Construction Work as may be necessary to preserve and protect Construction Work already in progress and to protect materials, plants, and equipment on the Project site or in transit thereto.

13.4.3 Upon such termination, the obligations of the Contract shall continue as to portions of the Work already performed and, subject to CMAR's obligations under Article 13.4.2 above, as to bona fide obligations assumed by CMAR prior to the date of termination.

13.4.4 Upon such termination, University shall pay to CMAR the sum of the following:

- .1 The amount of the Contract Sum, including General Conditions and Fee, allocable to the portion of the Work properly performed by CMAR as of the date of termination, less sums previously paid to CMAR.

- .2 Plus previously unpaid costs of any items delivered to the Project site which were fabricated for subsequent incorporation in the Work.
- .3 Plus any proven Losses with respect to materials and equipment directly resulting from such termination, including reasonable cost incurred for CMAR demobilization.

The above payment shall be the sole and exclusive remedy to which CMAR is entitled in the event of termination of the Contract by University pursuant to this Article 13.4; and CMAR will be entitled to no other compensation or damages and expressly waives same. In no event shall the amount of the payment cause the GMP to be exceeded.

ARTICLE 14

STATUTORY AND OTHER REQUIREMENTS

14.1 NONDISCRIMINATION

14.1.1 CMAR shall comply and shall ensure that all Trade Subcontractors comply with all applicable state and federal laws regarding nondiscrimination.

14.1.2 CMAR agrees as follows during the performance of the Work:

- .1 CMAR shall provide equal treatment to, and shall not willfully discriminate against or allow harassment of any employee or applicant for employment on the basis of: race; color; religion; sex; age; ancestry; national origin; sexual orientation; physical or mental disability; veteran's status; medical condition, marital status; gender identity, pregnancy, or citizenship (within the limits imposed by law or University's policy) or service in the uniformed services (as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994). CMAR will also take affirmative action to ensure that any such employee or applicant for employment is not discriminated against on any of the bases identified above. Such equal treatment shall apply, but not be limited to the following: employment; upgrade; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CMAR also agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The CMAR will, in all solicitations or advertisements for employees placed by or on behalf of the CMAR, state that qualified applicants will receive consideration for employment without regard to: race; color; religion; sex; age; ancestry; national origin; sexual orientation; physical or mental disability; veteran's status; marital status; pregnancy, or citizenship (within the limits imposed by law or University's policy) or service in the uniformed services (as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994). For purposes of this provision: (1) "Pregnancy" includes pregnancy, childbirth, and medical conditions related to pregnancy and childbirth; and (2) "Service in the uniformed services" includes membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

- .2 CMAR and all Trade Subcontractors will permit access to their records of employment, employment advertisements, application forms, and other pertinent data and records by University or any appropriate agency of the State of Mississippi designated by University for the purposes of investigation to ascertain compliance with this Article 14.1. The outcome of the investigation may result in the following:
- (a) A finding of willful violation of the provisions of this Contract or of any equal opportunity laws, including but not limited to those enacted, monitored, or enforced by the Equal Employment Opportunity Commission, may be regarded by University as (1) a basis for determining that CMAR or its Trade Subcontractors are not a “responsible bidder” or “qualified contractor or vendor” as to future contracts for which such CMAR may submit bids or (2) a basis for refusing to accept or consider the bids or proposals of CMAR for future contracts.
 - (b) Nothing contained in this Article 14.1 shall be construed in any manner so as to prevent University from pursuing any other remedies that may be available at law.
 - (c) CMAR shall meet the following standards for compliance and provide University with satisfactory evidence of such compliance upon University’s request, which shall be evaluated in each case by University:
 - (i) CMAR shall notify its Superintendent and other supervisory personnel of the nondiscrimination requirements of the Contract Documents and their responsibilities thereto.
 - (ii) CMAR shall notify all sources of employee referrals of the nondiscrimination requirements of the Contract Documents by sending to such sources and by posting the Notice of Equal Employment Opportunity (EEO).
 - (iii) CMAR or its representative shall, through all unions with whom it may have agreements, develop agreements that (1) define responsibilities for nondiscrimination in hiring, referrals, upgrading, and training and (2) implement an affirmative nondiscrimination program, in terms of the unions' specific areas of skill and geography, such that qualified minority women, non-minority women, and minority men shall be available and given an equal opportunity for employment.
 - (iv) CMAR shall notify University of opposition to the nondiscrimination requirements of the Contract Documents by individuals, firms, or organizations during the term of the Contract.

- (v) CMAR shall include the provisions of the foregoing Article 14.2 in all subcontracts with Subcontractors, so that such provisions will be binding upon each such Subcontractor.

14.2 EMPLOYMENT PROTECTION ACT

CMAR represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code of 1972 (as amended) and will register and participate in the status verification system for all newly hired employees. The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. CMAR agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State. CMAR further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. CMAR understands and agrees that any breach of these warranties may subject CMAR to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to CMAR by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, CMAR would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit. CMAR shall require all Trade Subcontractors to comply with the provisions of this Article 14.2.

ARTICLE 15

MISCELLANEOUS PROVISIONS

15.1 GOVERNING LAW

15.1.1 The Contract shall be governed by the law of the State of Mississippi.

15.2 SUCCESSORS AND ASSIGNS

15.2.1 University and CMAR respectively bind themselves and their successors, permitted assigns, and legal representatives to the other party and to the successors, permitted assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract, in whole or in part, without prior written consent of the other party. Notwithstanding any such assignment, each of the original contracting parties shall remain legally responsible for all of its obligations under the Contract.

15.3 RIGHTS AND REMEDIES

15.3.1 All University’s rights and remedies under the Contract Documents will be cumulative and in addition to and not in limitation of all other rights and remedies of University under the Contract Documents or otherwise available at law or in equity.

15.3.2 No action or failure to act by University, Design Professional, or University's Representative will constitute a waiver of a right afforded them under the Contract, nor will such action or failure to act constitute approval of or acquiescence in a condition or breach thereunder, except as may be specifically agreed in writing. No waiver by University, Design Professional, or University's Representative of any condition, breach or default will constitute a waiver of any other condition, breach or default; nor will any such waiver constitute a continuing waiver.

15.3.3 No provision contained in the Contract Documents shall create or give to third parties any claim or right of action against Indemnitees or CMAR.

15.4 SURVIVAL

15.4.1 The provisions of the Contract which by their nature survive termination of the Contract or Final Completion, including all warranties, indemnities, payment obligations, and University's right to audit CMAR's books and records, shall remain in full force and effect after Final Completion or any termination of the Contract.

15.5 COMPLETE AGREEMENT

15.5.1 The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may be modified only by a written instrument signed by both parties or as provided in Articles 7 and 16 of the General Conditions.

15.6 SEVERABILITY OF PROVISIONS

15.6.1 If any one or more of the provisions contained in the Contract Documents should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

15.7 UNIVERSITY'S RIGHT TO AUDIT

15.7.1 University shall have the right to audit all aspects of the costs necessary to perform the Work, including but not limited to the lump-sum prices of the Subcontracts entered into between CMAR and the Trade Subcontractors, the costs of CMAR to self-perform any of the Work, material costs and procurements, equipment rental costs, and other costs that make up any part of the GMP Amendment and/or the Option Sum for Construction Services. Any savings between the actual costs of the Work and the amount of the GMP Amendment shall belong to the University.

University and entities and agencies designated by University will have access to and the right to audit and the right to copy at University's cost all of CMAR's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work. CMAR shall preserve all such records and other items during the performance of the Contract and for a period of at least 6 years after Final Completion.

15.8 METHODS OF DELIVERY FOR SPECIFIED DOCUMENTS, NOTICES, CLAIMS

15.8.1 All notices to University, including notices of any claims, changes, delays, demands, conditions, cost increases, performance issues, corrective work issues, suspensions, terminations, and other similarly important matters, must be delivered in the following manner:

- .1 By personal delivery to University's Representative.
- .2 Sent by Express Mail, or another method of delivery providing for overnight delivery where receipt is confirmed, to University's Representative.
- .3 Sent by registered or certified mail, postage prepaid, return receipt requested, to University's Representative.
- .4 By email to University's Representative, conditioned strictly upon the receiving party acknowledging receipt of such notice, including receipt of any attachments to the notice. Otherwise, such email notice shall not be sufficient.

15.8.2 The documents and notices contemplated by Article 15.8.1 shall only be effective if delivered in the manner specified in Article 15.8.1. Subject to the foregoing, such documents shall be deemed given and received upon actual receipt except for registered or certified mail; and in the case of registered or certified mail, on the date shown on the return receipt or the date delivery during normal business hours was attempted. Delivery of the specified documents shall be made at the respective street addresses set forth in the Agreement. Such street addresses may be changed by notice given in accordance with this Article 15.8.

15.9 TIME OF THE ESSENCE

15.9.1 Time limits stated in the Contract Documents are of the essence of the Contract.

15.10 MUTUAL DUTY TO MITIGATE

15.10.1 University and CMAR shall use all reasonable and economically practicable efforts to mitigate delays and damages to the Project and to one another with respect to the Project, regardless of the cause of such delay or damage.

ARTICLE 16

CONTRACT AMENDMENTS

16.1 GENERAL

16.1.1 Contract Amendments, including but not limited to any amendments that be necessary to accomplish the various phases of Construction Services Work, shall be used to modify the Contract when either the University elects to exercise its Option for Construction Services, or to incorporate Construction Work from a University approved Subcontract Package.

16.2 INCREASE IN PERFORMANCE AND PAYMENT BONDS

16.2.1 The amount of the Payment and Performance Bonds shall be increased by CMAR, as appropriate, pursuant to Article 11.3.2 of the General Conditions or upon the University's issuance of a Contract Amendment. University shall withhold payment until increased Performance and Payment Bonds are received, if they are not received within ten (10) days of the Contract Amendment.

[End]

EXHIBIT B

SUPPLEMENTARY CONDITIONS TO MISSISSIPPI STATE UNIVERSITY CMAR CONTRACT

1. MODIFICATION OF GENERAL CONDITIONS, ARTICLE 11 – INSURANCE AND BONDS

Insurance required by Paragraphs 11.1.2.1, 11.1.2.2, and 11.1.2.4 shall be (i) issued by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's) or (ii) guaranteed, under terms consented to by the University (such consent to not be unreasonably withheld), by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's). Certificates of insurance shall be delivered to the IHL's Office of Risk Management as evidence that requirements have been met.

CMAR will provide such insurance as will protect itself and the Indemnitees from claims and shall be written for not less than the following:

	<u>Minimum Requirement</u>
11.1.2.1 Commercial Form General Liability Insurance (including XCU) - Limits of Liability	
Each Occurrence-Combined Single Limit for Bodily Injury and Property Damage	\$2,000,000
Products and Completed Operations Aggregate	\$4,000,000
Personal and Advertising Injury Aggregate	\$2,000,000
General Aggregate	\$4,000,000
Medical Expense	\$500,000 per person
Excess Liability-Combined Single Limit	\$20,000,000
11.1.2.2 Business Automobile Liability Insurance- Limits of Liability (Owned, Non-owned, and Hired Vehicles)	
Each Accident-Combined Single Limit for Bodily Injury and Property Damage	\$1,000,000
11.1.2.4 Professional Liability Insurance - Limits of Liability	
Each Occurrence	\$2,000,000
General Aggregate	\$4,000,000

CMAR shall furnish one (1) copy of the Standard Construction Contract Certificate of Insurance Form specifically setting forth evidence of all coverage required above. CMAR shall also furnish to the University copies of any endorsements that are subsequently issued amending limits of coverage. If the coverages are provided on a claims-made basis, the policy date or retroactive date shall predate the Contract; the termination date, or the policy, or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after final payment.

Insurance required by Paragraph 11.1.2.3 shall be issued by companies (i) that have a Best rating of B+ or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's); or (ii) that are acceptable to the University. Such insurance shall be written for not less than the following:

		<u>Minimum Requirement</u>
11.1.2.3	WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY –	
	Worker's Compensation:	(as required by Federal and State of Mississippi law).
	Employer's Liability:	
	Each Employee	\$1,000,000
	Each Accident	\$1,000,000
	Policy Limit	\$1,000,000

The following article is added to the General Conditions:

11.1.2.8 The CMAR shall obtain, either itself or through the applicable Trade Subcontractor(s) performing Work involving hazardous materials, Contractor's Pollution Liability (CPL) insurance coverage for such Work AND an endorsement to either its CPL or Business Auto policies for transporting or hauling of hazardous materials. The insurance required by this paragraph 11.1.2.8 shall be (i) issued by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's) or (ii) guaranteed, under terms consented to by the University (such consent to not be unreasonably withheld), by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's). Such insurance shall be written for not less than the following and include the Indemnitees as Additional Insureds by endorsement:

CONTRACTOR'S POLLUTION LIABILITY - Limits of Liability	<u>Minimum Requirement</u>
Each Occurrence	\$1,000,000
Products-Completed Operations	\$1,000,000
General Aggregate	\$1,000,000

If coverage is provided on a Claims-Made form, CMAR shall provide coverage to include a three (3)-year Extended Reporting Period beyond completion of such Work. Coverage must extend to Transportation and Hauling of hazardous materials. The University shall require a copy of the

policy endorsement noting extension of Transportation coverage. If this extension of coverage is not provided under the CMAR's or applicable Subcontractor's Contractor's Pollution Liability, then the CMAR/Subcontractor shall also be required to evidence the following under its Business Auto policy:

BUSINESS AUTO - Combined Single Limit Per Accident \$1,000,000
Covering Transportation and/or Hauling of hazardous materials in the course of transit by the insured.

Coverage shall include MCS-90 endorsement with the Indemnitees as Additional Insureds and shall be endorsed to specifically limit the reimbursement provisions of the MCS-90 to the Named Insured.

2. MODIFICATION OF GENERAL CONDITIONS, ARTICLE 11 – INSURANCE AND BONDS

The following article is added to the General Conditions:

11.1.10 CMAR shall require all Subcontractors to provide insurance meeting the requirements of Article 11 in amounts up to and including the limits specified below. CMAR shall include in its Option Sum - Construction Services the cost of insurance provided by Subcontractors to the extent the cost results from the CMAR's decision to require insurance exceeding the requirements of Article 11 and/or the specified limits:

		<u>Minimum Requirement</u>
11.1.10.1	Commercial Form General Liability Insurance-Limits of Liability	
	Each Occurrence-Combined Single Limit for Bodily Injury and Property	\$1,000,000
	Products-Completed Operations Aggregate	\$2,000,000
	Personal and Advertising Injury	\$2,000,000
	General Aggregate	\$2,000,000
	Excess Liability-Combined Single Limit	\$3,000,000
11.1.10.2	Business Automobile Liability Insurance-Limits of Liability	
	Each Accident-Combined Single Limit for Bodily Injury and Property Damage	\$1,000,000
11.1.10.3	Workers' Compensation and Employer's Liability Insurance as required by Federal and State of Mississippi law.	

3. MODIFICATION OF GENERAL CONDITIONS ARTICLE 11 – INSURANCE AND BONDS

Article 11.3 of the General Conditions is replaced in its entirety with the following revised Article 11.3.

11.3 PERFORMANCE BOND AND PAYMENT BOND

11.3.1 CMAR shall furnish bonds covering the faithful performance of the Contract (Performance Bond) and payment of obligations arising thereunder (Payment Bond).

11.3.2 The Payment Bond and Performance Bond shall each be in the amount of the Construction Services Contract Sum.

11.3.3 If thereafter the Contract Sum is increased, CMAR shall furnish supplemental Payment and Performance Bonds in an amount equal to any increase in the Contract Sum.

11.3.4 Surety companies used by CMAR shall be, on the date the Contract is signed by University surety insurer licensed in the State of Mississippi.

11.3.5 The premiums for the Payment Bond and Performance Bond shall be paid by CMAR.

11.3.6 If CMAR fails to furnish the increased performance and payment bonds required hereunder within 10 days of the University's issuance of the Notice of Intent, this failure will be a material breach of the Agreement.

11.3.7 The CMAR shall require similarly conforming payment and performance bonds from each of the Trade Subcontractors in the full amount of each Trade Subcontract. The University shall be an additional obligee (or co-obligee) under the Trade Subcontractor's performance bonds.

4. BUILDER'S RISK INSURANCE

Article 11.2 of the General Conditions is modified to include the following language.

Builder's Risk coverage shall be purchased by the CMAR and be a broad risk property insurance upon the entire Work and shall be evidenced by the kind of policy which does not have to be adjusted or reported upon periodically but provides constant insurance at full 100% of all insurable values as they are created during construction by performance of this Agreement. The insurance shall apply on a replacement cost basis. The insurance shall name the Indemnitees, CMAR, and Trade Subcontractors performing work on the Project as insureds. The coverage of such Builder's Risk property insurance shall not be less than equal to the value of the Work and for full replacement cost of such Work. The CMAR will provide builder's risk property insurance in an amount and type necessary to protect the Work at the Project, including, because the Project is being constructed in phases over the course of several years and involves significant renovation, Work in the Project and any buildings or structures attached to it or immediately adjacent to it.

5. DESIGN/CONSTRUCTION OVERLAP DURATION

Based on the CMAR's approved schedule and work plan, the University, Design Professional, and University's Representative will review and approve the CMAR's proposed overlap time

Draft Print

07/03/2025 10:53:12 AM

duration. It is anticipated that the Preconstruction Services will overlap with various phases of the Construction Services.

EXHIBIT C

MSU STANDARD FRONT END SPECIFICATIONS

The following standard University Front End Specifications are applicable, are to be considered part of the Contract, and must be followed by CMAR and incorporated into all Trade Subcontracts between CMAR and Trade Subcontractors:

1. Section 00 600 – Contract Bond
2. Section 00 820 – Labor Requirements
3. Section 00 830 – Mandatory Addendum to All University Construction Contracts
4. Section 01 910 – University Additional Conditions

EXHIBIT D
PROJECT COST ALLOCATION MATRIX

* Specific justification and all estimated costs shall be submitted and approved by the University prior to any travel or event.

EXHIBIT E **GUARANTEED MAXIMUM PRICE PROPOSAL**

The Construction Manager hereby submits to Mississippi State University for the use and benefit of MSU pursuant to the provisions of the Agreement by and between CMAR and University dated _____, 20__ (the "Agreement"), a Guaranteed Maximum Price (GMP) for the _____,
[CMAR - Insert Project Name and Stage, Component Name, State, City]

Project number _____ - _____ (as defined in the Agreement), based on the Contract Documents [CMAR - Insert Project No.]

(as defined by the Agreement) developed for the Project, as follows:

1. A not-to exceed amount for the Cost of the Work pursuant to the Agreement: \$ _____
2. A not-to exceed amount for the General Conditions pursuant to the Agreement: \$ _____
3. A not-to exceed amount for the Construction Manager's Contingency pursuant to the Agreement: \$ _____
4. A lump sum amount for the Construction Phase Fee pursuant to the Agreement: \$ _____
5. University's Special Cash Allowance provided by the University: \$ _____
6. University's Construction Contingency provided by the University. This is a lump sum amount from which changes are to be paid in accordance with the General and Supplementary General Conditions. Any unused amount will be deducted from the Guaranteed Maximum Price by Change Order: \$ _____
7. TOTAL OF GMP LINE ITEMS 1 THROUGH 6: \$ _____

This figure shall be the Guaranteed Maximum Price (GMP), which we hereby guarantee to the University.

GUARANTEED MAXIMUM PRICE PROPOSAL SIGNATURE PAGE
(Continuation of Exhibit E)

Corporations/LLC's: Attest:

Corporate Secretary

[Construction Manager at Risk]

Other business forms: Witness:

By: _____

Name: _____
[Print or Type]

Title: _____

SEAL:

Date of Signature: _____

CONTENT APPROVED:

Mississippi State University

By: _____
(Original Signature)

Name:

Title:

ATTACHMENT 1 TO EXHIBIT E

GUIDELINES FOR THE PREPARATION OF THE GUARANTEED MAXIMUM PRICE PROPOSAL

1. CONTRACT REQUIREMENTS:

Refer to Article 4 of the Agreement. The provisions of the GMP are defined here and other related requirements are included throughout the Agreement. In the event of irreconcilable conflict between the GMP Proposal and the Agreement, the interpretation that provides for the higher quality of material and/or workmanship shall prevail.

The GMP Proposal shall adopt and incorporate all of the terms and conditions of the Agreement. Any exceptions to or modifications of such terms and conditions proposed shall not be effective unless they are expressly stated and conspicuously identified in the GMP Proposal and are specifically accepted and approved by the University.

2. PRE SUBMITTAL REQUIREMENTS:

- A. Scope Definition: Prior to GMP submittal, the Contractor shall thoroughly review the GMP construction document package with the University and determine if the scope is sufficiently defined and identify those areas requiring additional scope definition. As a minimum the following should be defined: Program building size, site limits and access, utility systems (existing and new), complete building systems descriptions, materials outline by division, MEP systems descriptions including materials, MEP system options shall be defined and accepted.
- B. Schedule: The anticipated Notice to Proceed and Substantial Completion dates for Construction shall be coordinated and approved by the University.
- C. Value Engineering: Proposed value engineering items included in the GMP shall be updated from previously submitted value engineering and should reflect the "final acceptance" of VE items, which are part of the scope of work. The VE schedule shall identify current acceptance and the date of acceptance in an adjacent column. The intent is for VE items to be resolved and accepted by the University prior to GMP submittal. Any open VE items shall be resolved by University and CMAR within 90 days of execution of GMP.
- D. Pre-submittal Conference: The CMAR shall schedule a conference with the University no later than four (4) weeks prior to submitting the initial draft of the GMP to the University. Issues regarding the required materials to be included in the GMP should be reviewed so that there is a clear understanding of the format and contents of each division of work to be submitted. Additionally, a review of acceptable "General Condition" items, as defined in the Agreement, is required.

3. CONSOLIDATION OF REVIEW COMMENTS:

The University and its consultants shall provide review comments. The CMAR shall consolidate all responses to those groups into a document. Each University comment shall have a corresponding answer directly below the original comment. A reply to each University comment

is required even if only a clarification is required. Each reply shall state where in the GMP Proposal the corresponding information may be located.

4. GENERAL REQUIREMENTS;

The GMP Proposal shall be submitted at the phase specified by the University and using any format or protocol specified by the University. Proposals substantially deviating from University's specified format will be returned to the CMAR for re-submittal. Proposals not in compliance with the format, which result in substantial delay, will be the responsibility of the CMAR and may not extend the construction duration or substantial completion date.

5. MULTIPLE GMP PROPOSALS:

In order to expedite the project schedule, the University and CMAR may execute multiple GMP Proposals (stages), which shall be incorporated into the contract through a change order to the previous approved GMP Proposal(s), identified in Article 7. The requirements for this method shall be identical to the requirements for the first GMP submittal/approval process.

6. GMP PROPOSAL PACKAGE

The GMP Proposal shall be submitted using a format and protocols as specified by the University. Since several submittal revisions may be submitted, always state which submittal number is currently being submitted.

EXHIBIT F

PAYMENT AND PERFORMANCE AND CONTRACT BONDS

See Section 00600 of University's Standard Front End Specifications, titled "CONTRACT BOND" which is incorporated herein by reference. Actual Bonds shall be supplied by CMAR, approved by University, and executed after the execution of the GMP Amendment.

EXHIBIT G

SECURITY BOND

Surety Bond No. _____

STATE OF MISSISSIPPI

COUNTY OF _____

KNOW ALL MEN BY THESE PRESENTS:

That we, _____, as
Principal, and _____, as
Surety, are hereby held and firmly bound unto Mississippi State University as Obligee in the
penal sum of Five Percent (5%) of _____
(\$_____), the Construction Cost Limitation (CCL) for the Project defined
herein below, for payment whereof the said Principal and Surety bind themselves, their heirs,
executors, administrators, and successors, jointly and severally, firmly by these presents.

Whereas the Principal has executed a contract with Obligee for the use and benefit of _____
_____,
_____, dated _____, _____ (the
"Contract"), for
_____, Project
No. _____, (the "Project").

NOW THEREFORE, the condition of this obligation is such that, if the aforesaid Principal
shall execute a Guaranteed Maximum Price Proposal acceptable to all parties, the said Principal
will, within the time required by the Contract, give Performance and Payment Bonds, as required
by the Contract, to secure the performance of the terms and conditions of the Contract, then this
obligation to be void; otherwise the Principal and surety will pay unto the Obligee the difference
in money between the amount of the Guaranteed Maximum Price Proposal of the said Principal
and the amount for which the Obligee legally contracts with another party to perform the work if
the latter amount be in excess of the former, but in no event shall liability hereunder exceed the
penal sum hereof.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under
their several seals this _____ day of _____ in the year _____, the
name and corporate seal of each corporate party being hereto affixed, and these presents duly
signed by its undersigned representative pursuant to authority of its governing body.

(SEAL)

Principal

Draft Print

07/03/2025 10:53:12 AM

ATTEST:

By: _____

(Typed Name and Title)

By: _____

(Typed Name and Title)

(SEAL) _____
Surety

ATTEST:

By: _____
(Typed Name and Title)

By: _____
(Typed Name and Title)

EXHIBIT H

CMAR'S PRECONSTRUCTION PROPOSAL

Informational Meeting

CONSTRUCTION MANAGEMENT AT RISK SERVICES

IHL# 205-362

Riley Campus Student Housing & Academic Building

RFQ NO. 27-06



MISSISSIPPI STATE
UNIVERSITY™

Office of Planning, Design & Construction Administration

Project Team

- Owner
 - Mississippi State University
 - MSU Meridian
 - Office of Planning, Design & Construction Administration
- Design Team
 - Dale Partners – Architect of Record
 - Various consultants
- Construction Manager at Risk
 - Subcontractors
 - Suppliers



MISSISSIPPI STATE
UNIVERSITY™

Office of Planning, Design & Construction Administration

RFQ is for
Construction Manager at Risk (CMAR)
Services

Not Construction Manager at Adviser (CMa)

Not for Program Manager Services

The CMAR will hold the subcontracts.



Construction Manager at Risk in Mississippi is per Mississippi Code Ann. §31-7-13.2. for this project.

MSU highly recommends becoming familiar with §31-7-13.2.



MISSISSIPPI STATE
UNIVERSITY™

Office of Planning, Design & Construction Administration

Important RFQ Information

- Due August 18, 2026, at 2:00 PM in the MSU Office of Procurement and Contracts which is temporarily located at 405 Garrard Road East, Starkville, MS (Digital copies only)
- Email inquiries to Debra Raines
draines@procurement.msstate.edu
- Any addenda associated with this RFQ will be posted at <https://www.procurement.msstate.edu/procurement/bids>



RFQ Evaluation Process

1. Evaluate responses and short-list at least 3 firms
2. Interview firms
3. Score firms based on qualifications
4. Begin negotiations



Contract

MSU Standard Form of Agreement for
Construction Manager at Risk delivery.

Contract available upon request.



MISSISSIPPI STATE
UNIVERSITY™

Office of Planning, Design & Construction Administration

Project Overview



MISSISSIPPI STATE
UNIVERSITY™

Office of Planning, Design & Construction Administration



MISSISSIPPI STATE
UNIVERSITY™

Office of Planning, Design & Construction Administration

Component A: Shared Site Development and Infrastructure

Coordinated site planning and enabling work necessary to support both facilities. Work may include utilities, grading and drainage, stormwater management, parking, vehicular access, pedestrian circulation and connections, landscaping, site lighting, and other supporting infrastructure as established during design. Demolition of existing buildings is underway by Others.

Component B: Student Housing

Design and construction of a facility to house students attending programs at the Riley Campus. The total number of beds and units remains to be determined, and the housing may be delivered in multiple phases. A preliminary study indicates an immediate need for approximately 50 to 75 one-bedroom and two-bedroom efficiency-style apartments to support students enrolled in postgraduate degree programs. The final housing program will be validated during design and may include common, support, service, and management spaces appropriate for the facility.

Component C: Academic Building

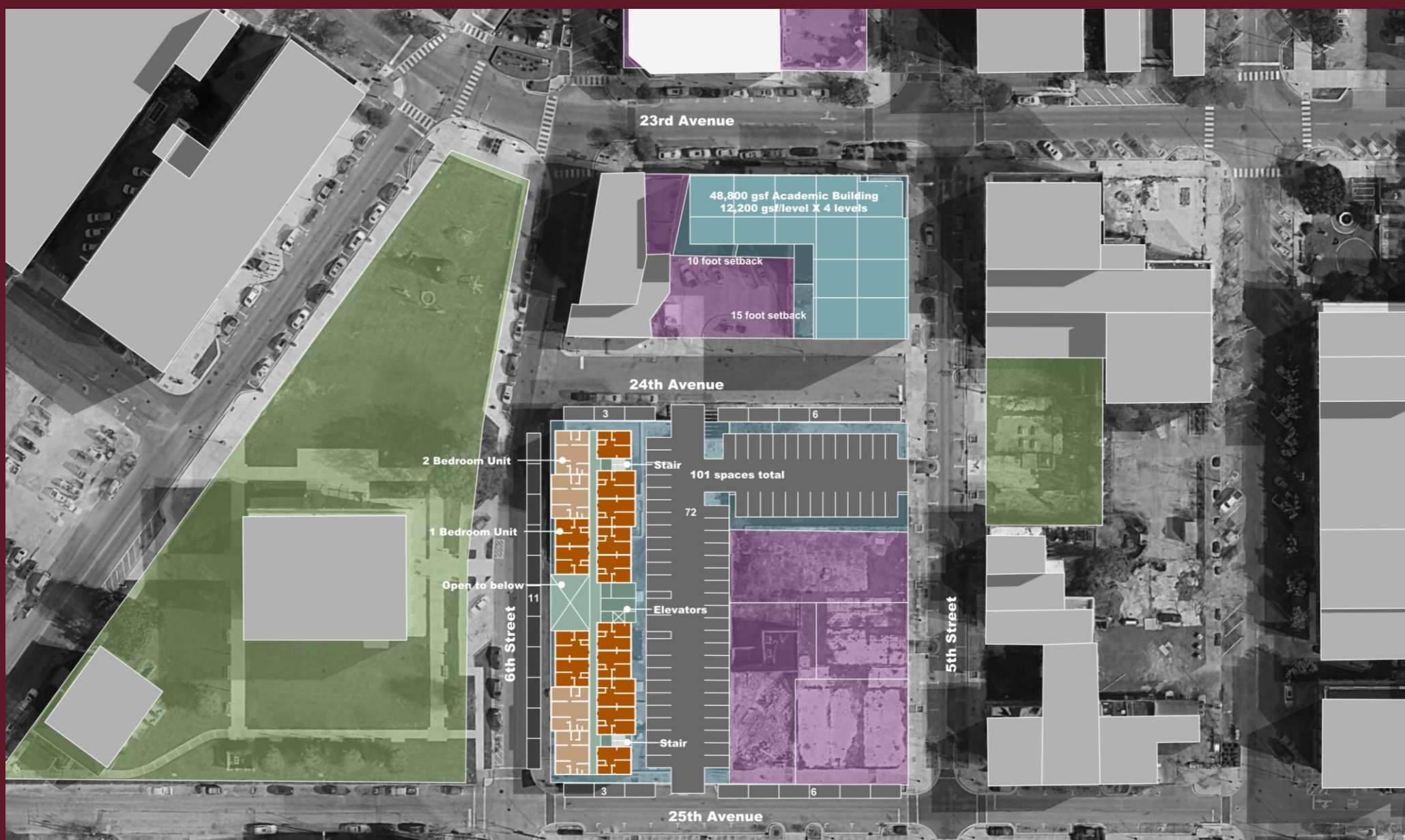
Design and construction of a new academic building on the same development site as the housing facility. The exact size will be determined through programming and design; however, a recent space study identifies an immediate need for 36,000+ assignable square feet. The program is anticipated to include faculty and staff offices, classrooms, specialized laboratories, and related academic and building support spaces. The planning process should evaluate efficient shared-use spaces, future flexibility, and potential expansion.





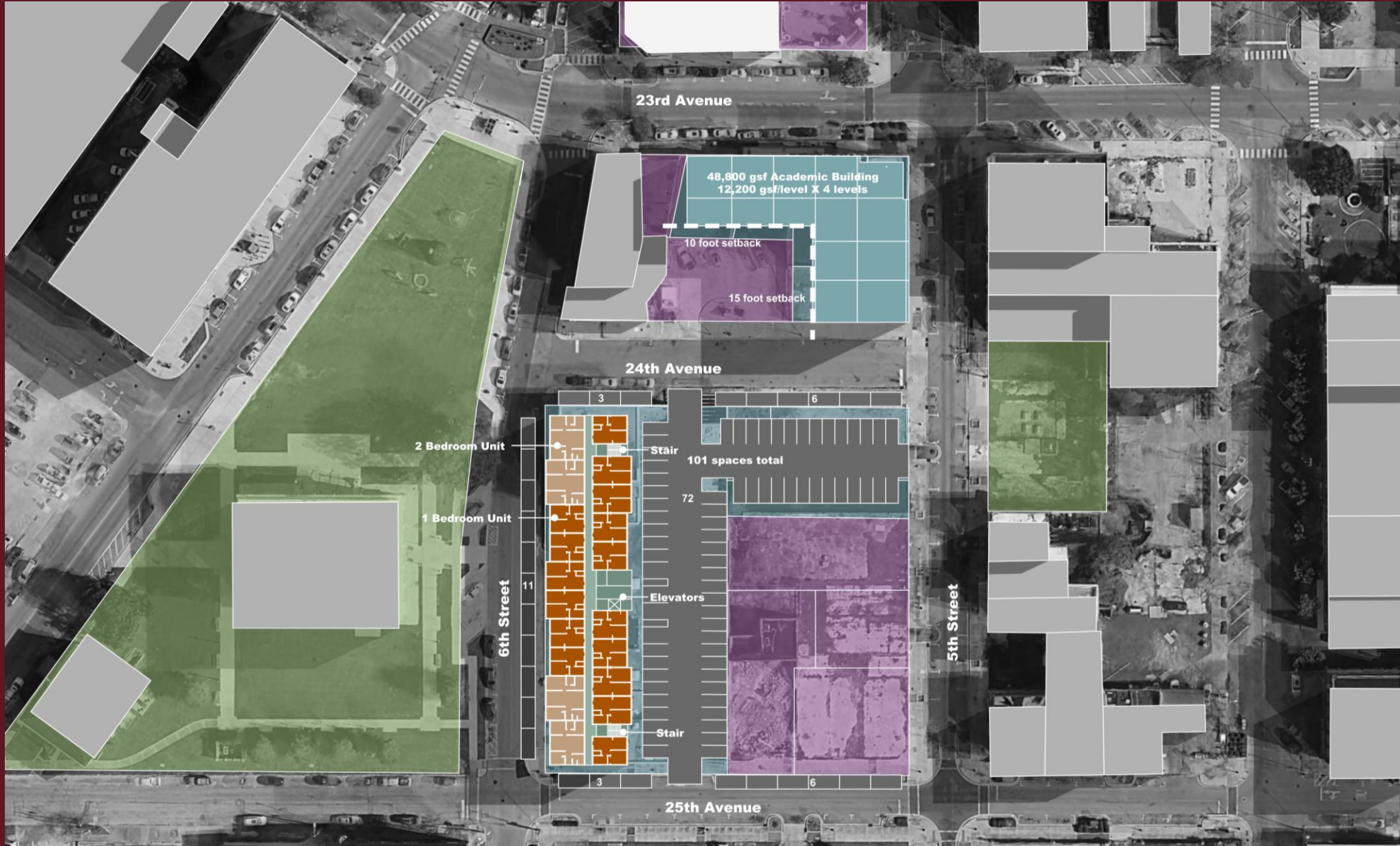
MISSISSIPPI STATE
UNIVERSITY™

Office of Planning, Design & Construction Administration



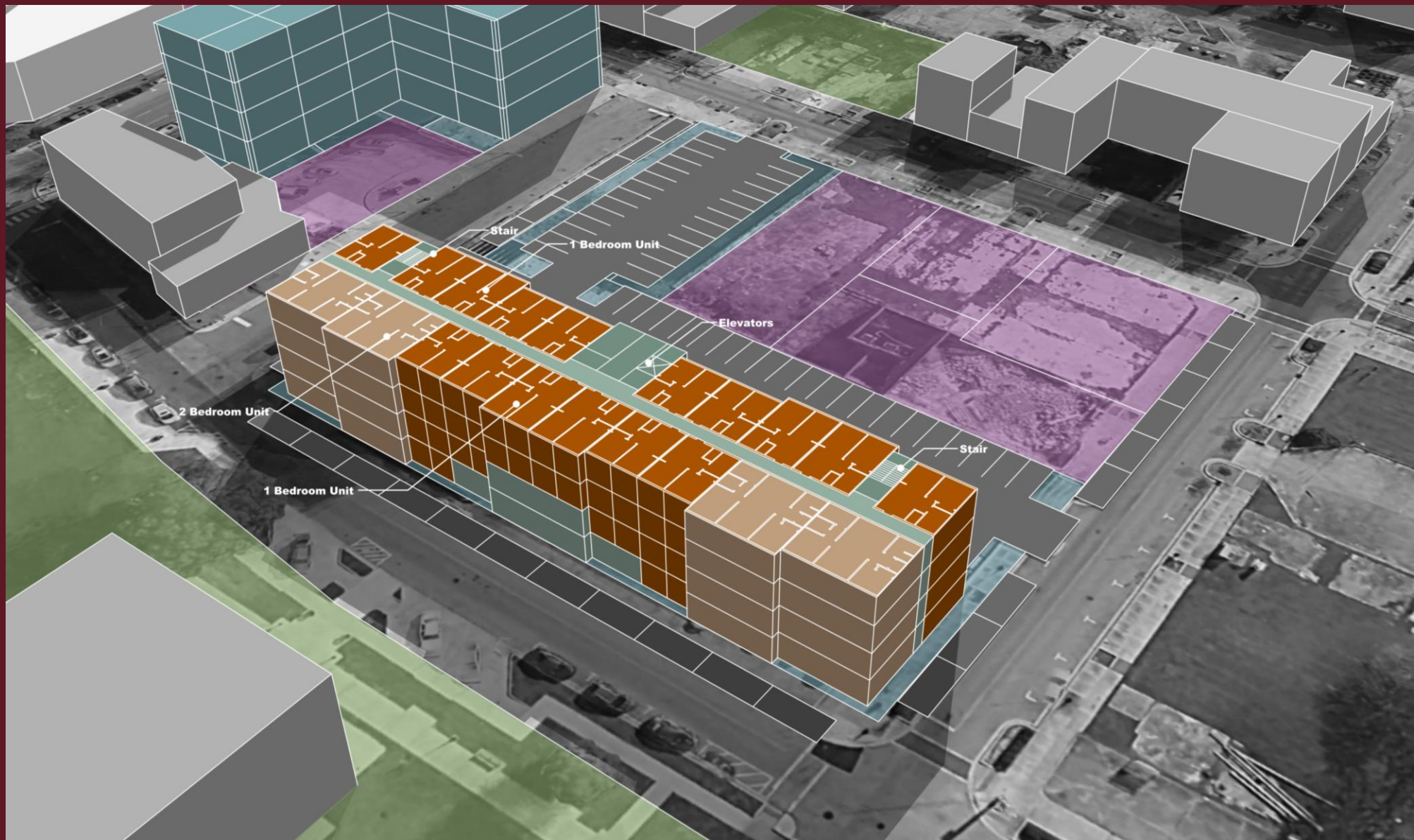
MISSISSIPPI STATE
UNIVERSITY™

Office of Planning, Design & Construction Administration



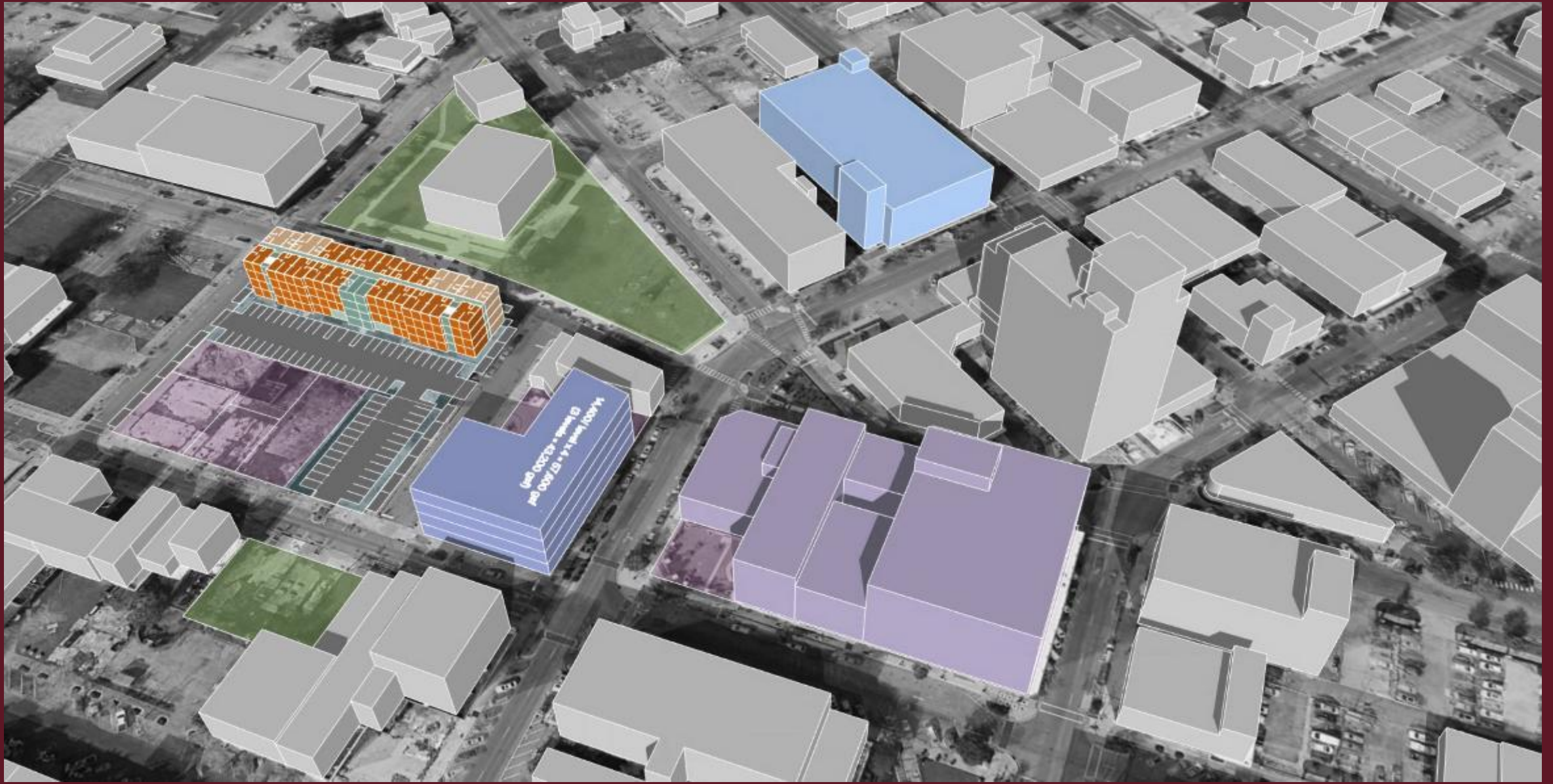
MISSISSIPPI STATE
UNIVERSITY™

Office of Planning, Design & Construction Administration



MISSISSIPPI STATE
UNIVERSITY™

Office of Planning, Design & Construction Administration



MISSISSIPPI STATE
UNIVERSITY™

Office of Planning, Design & Construction Administration



2 Bedroom Unit: Scale = 1/2" = 1'-0"



1 Bedroom Unit: Scale = 1/2" = 1'-0"



Tentative Project Schedules:

Phase	Milestone / Work Package	Housing Facility - Anticipated Dates	Academic Facility - Anticipated Dates
Preconstruction	Programming validation and concept planning	Complete	August 2026 to October 2026
Preconstruction	Schematic Design and initial cost model	August 2026 to October 2026	October 2026 to December 2026
Preconstruction	Design Development and cost validation	October 2026 to December 2026	December 2026 to March 2026
Preconstruction	Construction Documents and GMP development	December 2026 to March 2027	March 2027 to July 2027
Preconstruction	Bidding & Procurement	March 2027 to April 2027	July 2027 to August 2027
Construction	Notice to Proceed	May 2027	September 2027



Questions from Vendors Due	August 5, 2026
MSU Q&A Response Due	August 10, 2026
Proposal Submission Deadline – 2:00 p.m.	August 18, 2026
Shortlist (Estimated)	August 21, 2026
Interviews (Estimated)	September 2, 2026
Notice of Award (Estimated)	September 8, 2026
Contract Effective Date (Estimated)	December 1, 2026



Questions? Comments?



MISSISSIPPI STATE
UNIVERSITY™

Office of Planning, Design & Construction Administration