

**Architect/Engineer Agreement Form for  
Construction Manager at Risk University Project  
State of Ohio Professional Services Agreement  
For Public Facility Construction**

Suite 101 Harbourt Hall • 615 Loop Road • Kent, Ohio 44242-0001  
phone: 330-672-3880 • fax: 330-672-2648 • www.kent.edu/universityarchitect



This Agreement is made as of the date set forth below between the State of Ohio, acting by and through the University, and the Architect/Engineer in connection with the Project.

**Project Number:** KSU-**<insert number>**  
**Project Name:** **<insert name>**  
Site Address: Kent State University **<Campus>** Campus in **<County>** County  
**<insert building name>**  
**<insert street address>**  
**<insert city, state ZIP code>**

**Owner (“University”):** **Kent State University**  
Owner’s Representative: Michael E. Bruder  
Executive Director, Facilities, Planning and Design

**Contracting Authority:** **Kent State University Office of the University Architect**  
Project Manager: **<insert name>**  
Address: Suite 101 Harbourt Hall, 615 Loop Road, P. O. Box 5190  
Kent, Ohio 44242-0001  
Telephone: / Fax: 330-672-3880 / 330-672-2648  
e-Mail address: **<e-address>**@kent.edu

**Architect/Engineer (“A/E”):** **<insert name>**  
A/E’s Principal Contact: **<insert name>**  
Address: **<insert street address>**  
**<insert city, state zip code>**  
Telephone: / Fax: **<000-000-0000>** / **<000-000-0000>**  
e-Mail address: **<e-address@ .com>**

**ARTICLE 1 - SCOPE OF WORK; CONSTRUCTION BUDGET; EDGE COMMITMENT**

1.1 The A/E shall perform and provide all of the Services described in the Agreement.

1.1.1 The project delivery method for the Project shall be **Construction Manager at Risk**.

1.1.2 During the Construction Stage, the A/E and appropriate Consultants shall be present at the Site not less than **insert number of on-Site hours per week during Construction Stage> hours per week** (excluding travel time to and from the Site) whenever any Work is in preparation or progress, unless otherwise expressly provided in writing by the University.

1.2 The Construction Budget is **insert Construction Budget amount dollars (\$0,000.00)**.

1.3 The A/E shall contract with EDGE-certified Business Enterprise(s) for not less than **insert A/E’s EDGE commitment percent (minimum 5%)** of the A/E’s total compensation.

## ARTICLE 2 - COMPENSATION

2.1 The total compensation for the A/E's Services is **insert total compensation amount dollars (\$0,000.00)**, which includes the sum of (1) the Basic Fee, (2) Additional Services Fees, and (3) Reimbursable Expenses. The University shall pay the total compensation amount to the A/E in exchange for the A/E's proper, timely, and complete performance of the Services.

### 2.2 Basic Fee.

2.2.1 For Basic Services provided by the A/E and all Consultants in accordance with the **A/E Scope of Basic Services** attached as **Exhibit B**, the University shall pay the A/E the Basic Fee of **<insert amount of Basic Fee dollars (\$0,000.00)>**, which shall not be exceeded without the prior written approval of the University, and an amendment to this Agreement. The Basic Fee is subject to the following allocation:

Project Stage / Task	Portion of Basic Fee	Associated Fee
Program Verification	< 5>%	\$<insert fee amount>
Schematic Design	<15>%	\$<insert fee amount>
Design Development	<15>%	\$<insert fee amount>
Construction Documents	<20>%	\$<insert fee amount>
GMP Proposal and Amendment	<17>%	\$<insert fee amount>
Construction	<25>%	\$<insert fee amount>
Closeout Deliverables	3%	\$<insert fee amount>
<b>Total Basic Fee</b>	<b>100%</b>	<b>\$&lt;insert fee amount&gt;</b>

### 2.3 Additional Services Fees.

2.3.1 For Additional Services provided by the A/E and all Consultants, the University shall pay the A/E Additional Services Fees of up to **<insert amount of Additional Services Fee dollars (\$0,000.00)>**, which shall not be exceeded without the prior written approval of the University, and an amendment to this Agreement. For Additional Services performed by a Consultant, Additional Services Fees shall be based on the Consultant's associated invoices to the A/E, and may include an A/E mark-up of **<insert percentage>** percent (**x%**). Additional Services Fees are subject to the following allocation:

Description of Additional Services	NTE / LS*	Associated Fee
Special Inspections	<NTE / LS>	\$<insert fee amount>
Geotechnical Investigation	<NTE / LS>	\$<insert fee amount>
<insert description>	<NTE / LS>	\$<insert fee amount>
<insert description>	<NTE / LS>	\$<insert fee amount>
<insert description>	<NTE / LS>	\$<insert fee amount>
<insert description>	<NTE / LS>	\$<insert fee amount>
<b>Total Additional Services Fees</b>		<b>\$&lt;insert fee amount&gt;</b>

\* NTE = Not to Exceed Amount / LS = Lump Sum

### 2.4 Reimbursable Expenses.

2.4.1 For Reimbursable Expenses incurred by the A/E and all Consultants, the University shall pay the A/E up to **<insert amount of Reimbursable Expenses dollars (\$0,000.00)>**, which shall not be exceeded without the prior written approval of the University, and an amendment to this Agreement. No A/E or Consultant mark-up shall be permitted on Reimbursable Expenses. Reimbursable Expenses are subject to the following allocation:

Description	NTE / LS*	Associated Amount
Additional Review Document Printing	NTE	\$<insert fee amount>
Plan Approval Fees	NTE	\$<insert fee amount>

Description	NTE / LS*	Associated Amount
Stormwater Permit Fees	NTE	\$«insert fee amount»
«insert description»	«NTE / LS»	\$«insert fee amount»
«insert description»	«NTE / LS»	\$«insert fee amount»
«insert description»	«NTE / LS»	\$«insert fee amount»
«insert description»	«NTE / LS»	\$«insert fee amount»
<b>Total Reimbursable Expenses</b>		<b>\$«insert fee amount»</b>

\* NTE = Not to Exceed Amount / LS = Lump Sum

### ARTICLE 3 - KEY PERSONNEL

3.1 The A/E's key personnel for the Project are:

- 3.1.1 «insert name», Senior Management Lead;
- 3.1.2 «insert name», Project Management Lead;
- 3.1.3 «insert name», Project Design Lead – «insert discipline name (e.g. Architecture, Interior Design, Mechanical, Electrical, Plumbing, Technology)»;
- 3.1.4 «insert name», «insert Project Architect or Project Engineer»;
- 3.1.5 «insert name», Specification Writer;
- 3.1.6 «insert name», Scheduler;
- 3.1.7 «insert name», Quality Control Lead – «insert discipline name»;
- 3.1.8 «insert name», Construction Administrator.

*Edit the above list as appropriate for the project.*

3.2 The identities of the A/E's key personnel, and the extent of their participation in performing the A/E's services as identified above, shall not be altered without the University's prior written consent.

3.3 The A/E shall dismiss from the Project any individual employed by the A/E or Consultant who the University finds, in its sole discretion, to be incompetent, guilty of misconduct, or detrimental to the Project.

### ARTICLE 4 - CONSULTANTS

4.1 The A/E's Consultants for the Project are:

4.1.1 «insert discipline»:

«insert firm name»  
«insert firm address»  
«insert firm address»

«insert consultant contact name, title»  
«insert consultant contact name, title»

4.1.2 «insert discipline»:

«insert firm name»  
«insert firm address»  
«insert firm address»

«insert consultant contact name, title»

«insert consultant contact name, title»

*Edit the above list as appropriate for the project.*

## ARTICLE 5 - GENERAL PROVISIONS

### 5.1 Effectiveness.

**5.1.1** It is expressly understood by the A/E that none of the rights, duties, and obligations described in the Contract Documents shall be valid and enforceable unless the Director of the Office of Budget and Management first certifies that there is a balance in the University's appropriation not already encumbered to pay existing obligations and until all relevant statutory provisions of the Ohio Revised Code, including ORC Section 126.07, have been complied with, and until such time as all necessary funds are available or encumbered and, when required, such expenditure of such funds is approved by the State Controlling Board, or other applicable approving body.

**5.1.2** In addition, if federal funds are to be used to pay fees and expenses under this Agreement, none of the rights, duties, and obligations contained in this Agreement shall be binding on any party until the University gives the A/E written notice that such funds are available from the University's funding source.

**5.1.3** Subject to **Section 5.1.1**, the Agreement shall become binding and effective upon execution by the University, A/E, and Ohio Attorney General.

**5.1.3.1** If the A/E is a joint venture, **(1)** each individual joint venture shall **(a)** sign the Agreement in its own name and **(b)** be a party to the Contract, and **(2)** the Contract shall be binding on and apply to all joint venturers jointly and severally.

**5.1.3.2** If the A/E is a limited liability company, which the Contracting Authority reasonably believes to be a special purpose or similar entity, the Contracting Authority may in its discretion require the limited liability company and each member of the limited liability company to **(1)** sign the Agreement in its own name and **(2)** be a party to the Contract. In that case, the Contract shall be binding on and apply to the limited liability company and to all its members jointly and severally.

**5.1.4** This Agreement may be executed in several counterparts, each of which shall constitute a complete original Agreement, which may be introduced in evidence or used for any other purpose without production of any other counterparts.

### 5.2 Representations.

**5.2.1** The A/E represents and warrants that it is not subject to an unresolved finding for recovery under ORC Section 9.24. If this representation and warranty is found to be false, the Agreement is void, and the A/E shall immediately repay to the University any funds paid under this Agreement.

**5.2.2** The A/E hereby certifies that neither the A/E nor any of the A/E's partners, officers, directors, shareholders nor the spouses of any such person have made contributions in excess of the limitations specified in ORC Section 3517.13.

**5.2.3** The A/E, by signature on this Agreement, certifies that it is currently in compliance with, and will continue to adhere to, the requirements of Ohio ethics laws and conflict of interest laws and will take no action inconsistent with those laws.

**5.2.4** The A/E affirms to have read and understands Executive Order 2019-12D and shall abide by those requirements in the performance of this Agreement. Notwithstanding any other terms of this Agreement, the State reserves the right to recover any funds paid for services the A/E performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in this Agreement.

**5.2.1** Pursuant to ORC Section 9.76(B), the A/E warrants that it is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

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## ARTICLE 6 - ENUMERATION OF DOCUMENTS

6.1 This Agreement includes the following documents:

6.1.1 **A/E Standard Terms and Conditions** attached as **Exhibit A**;

6.1.2 **A/E Scope of Services** attached as **Exhibit B**;

6.1.3 **Minimum Stage Submission Requirements** attached as **Exhibit C**;

6.1.4 **Contracting Definitions** attached as **Exhibit D**; and

6.1.5 **A/E Special Terms and Conditions** attached as **Exhibit E**.



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**SIGNATURES**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth below:

ARCHITECT/ENGINEER  
 «**INSERT A/E'S NAME**»

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Title*

**STATE OF OHIO**

OWNER  
  
**KENT STATE UNIVERSITY**

ATTORNEY GENERAL'S APPROVAL  
 Approval as to Form  
**DAVE YOST**  
**OHIO ATTORNEY GENERAL**

\_\_\_\_\_  
*Signature*

Mark M. Polatajko. Ph.D., CPA

\_\_\_\_\_  
*Printed Name*

Senior Vice President for  
 Finance and Administration

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

**END OF DOCUMENT**

# Exhibit A - A/E Standard Terms and Conditions

## State of Ohio Professional Services Agreements for Public Facility Construction

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### ARTICLE 1 - A/E'S RESPONSIBILITIES

#### 1.1 Nondiscrimination

1.1.1 The A/E shall comply with Applicable Law regarding equal employment opportunity, including ORC Section 153.59 and all Executive Orders issued by the Governor of the state of Ohio.

1.1.1.1 As required under ORC Section 153.59, the A/E agrees to both of the following:

- 1 "in the hiring of employees for the performance of work under the contract or any subcontract, no contractor, subcontractor, or any person acting on a contractor's or subcontractor's behalf, by reason of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color, shall discriminate against any citizen of the state in the employment of labor or workers who is qualified and available to perform the work to which the employment relates;" and
- 2 "no contractor, subcontractor, or any person on a contractor's or subcontractor's behalf, in any manner, shall discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color."

1.1.1.2 The A/E shall cooperate fully with the State Equal Opportunity Coordinator ("EOC"), with any other official or agency of the state or federal government that seeks to eliminate unlawful employment discrimination, and with all other state and federal efforts to assure equal employment practices under the Agreement.

1.1.1.3 In the event the A/E fails to comply with these nondiscrimination clauses, the Contracting Authority shall deduct from the amount payable to the A/E a forfeiture of the statutory penalty pursuant to ORC Section 153.60 for each person who is discriminated against or intimidated in violation of this **Section 1.1.1**.

1.1.1.4 The Agreement may be terminated or suspended in whole or in part by the Contracting Authority and all money to become due hereunder may be forfeited in the event of a subsequent violation of this **Section 1.1.1**.

#### 1.2 Royalties and Patents

1.2.1 The A/E shall inform the Contracting Authority if the A/E is aware that a particular invention, design, process, or device specified in the Contract Documents is subject to patent rights or copyrights calling for the payment of a license fee or royalty.

#### 1.3 Assignment of Antitrust Claims

1.3.1 Each party to this Agreement recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser of goods and services; in this instance the ultimate purchaser is the Owner. Therefore, the following assignment is made:

1.3.1.1 The A/E hereby assigns, sells, conveys and transfers to the Owner any and all rights, title, and interest in and to any and all claims and causes of action which the A/E may now have or hereafter acquire under the antitrust laws

of the United States of America or the state of Ohio, provided that the claims or causes of action relate to the particular goods, products, commodities, intangibles, or services purchased, procured, or acquired by, or rendered to, the Owner pursuant to this Agreement, and except as to any claims or causes of action which result from antitrust violations commencing after the compensation is established under this Agreement, which are not passed on to the Owner by any means. In addition, the A/E warrants and represents that it will require any and all of its Consultants and suppliers to assign any and all federal and state antitrust claims and causes of action to the Owner, subject to the proviso and exception stated above.

#### **1.4 Use of Domestic Steel**

**1.4.1** The A/E shall comply with ORC Section 153.011 regarding the specification and use of domestically produced steel products. Copies of ORC Section 153.011 may be obtained from the Ohio Facilities Construction Commission or downloaded at <http://codes.ohio.gov/orc/153.011v1>.

#### **1.5 Drug Free Safety Program**

**1.5.1** The A/E shall comply with Applicable Law regarding smoke-free and drug-free workplaces and shall make a good-faith effort to ensure that none of its or its Consultants' employees engaged in the Services purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs in any way while on or about the Project.

#### **1.6 Use of the State's Web-based Project Management Software**

**1.6.1** If the Contracting Authority decides, in its sole discretion, to utilize the State's web-based project management software for the Project, the A/E shall use such software for all compatible Services required under this Agreement.

**1.6.2** All costs for the A/E's use of the State's web-based project management software for the Project shall be included in its Basic Services Fee. If the A/E's staff or its Consultants are unfamiliar with the proper use of such software, the A/E shall provide its staff and Consultants for training without additional compensation.

#### **1.7 EDGE Business Development Program Participation**

**1.7.1** The A/E shall participate in the "Encouraging Diversity, Growth and Equity" Program ("EDGE") by contracting with and using one or more businesses certified as an EDGE Business Enterprise ("EDGE-certified Business") by the EOC.

**1.7.1.1** If the A/E is an EDGE-certified Business, the A/E may include this Agreement amount in the reporting.

**1.7.1.2** The amount of EDGE participation cannot exceed 100 percent of the amount of this Agreement.

**1.7.1.3** The A/E shall include in the reporting only those expenditures to EDGE-certified Businesses that perform a commercially useful function as described in OAC Section 123:2-16-15.

**1.7.2** The A/E shall provide an EDGE Participation Report with each Professional Services Pay Request.

**1.7.2.1** The A/E shall provide status reports, produced by the A/E and each applicable EDGE-certified Business for this Agreement, indicating:

- .1** the name of each EDGE-certified Business;
- .2** the federal tax identification number of each EDGE-certified Business;
- .3** the date of the EDGE-certified Business contract, subcontract, or purchase order;
- .4** the projected and actual start and end dates of the EDGE-certified Business contract, subcontract, or purchase order;
- .5** the original amount of the EDGE-certified Business contract or purchase order with the A/E;
- .6** the current amount of the EDGE-certified Business contract or purchase order;
- .7** the amount invoiced to date;
- .8** the amount paid to date;
- .9** the status of the EDGE-certified Business contract or purchase order (active, complete, or void); and
- .10** a statement describing any substantive product or performance deficiencies.

**1.7.2.2** The A/E shall provide reports for each EDGE-certified Business; however, the reports may be consolidated and submitted as one document.

**1.7.3** The A/E shall provide an EDGE Participation Final Report simultaneously with its final Payment Request.



**1.7.3.1** The A/E and each EDGE-certified Business shall provide in the report certification that the submitted document is a true and accurate accounting of the original contract amount paid to and received by each EDGE-certified Business.

**1.7.4** The A/E shall provide EDGE Participation Reports in detail and form acceptable to the Contracting Authority.

**1.7.4.1** Failure to timely submit EDGE Participation Reports may result in withholding payment from the A/E.

**1.7.5** If the Project is administered using the State's web-based project management software, the A/E shall submit its EDGE Participation Reports, using the "Professional Services Pay Request" or "Applications for Payment" business process.

**1.7.6** The A/E shall cooperate fully with requests for additional EDGE information and documentation from the EOC or Contracting Authority.

## **1.8 A/E's Services**

**1.8.1** The A/E shall provide Services for the Project, customarily furnished in accordance with generally accepted architectural or engineering practice, consistent with the terms of this Agreement.

**1.8.2** The A/E shall provide the Services in accordance with Applicable Law, the applicable announcement issued pursuant to ORC Section 153.67 ("Announcement"), and the Owner's Standards of Design, if any.

**1.8.3** The A/E shall not be responsible for and shall not have control or charge of construction means, methods, techniques, sequences, procedures, or scheduling used by a Contractor to comply with the Contractor's obligations under its Contract for the Project or for safety precautions and programs in connection with the Contractor's Work on the Project.

**1.8.4** The A/E shall not be responsible for or have control or charge over the acts or omissions of Contractors or Subcontractors, any of their agents or employees, or any other persons performing any Work on the Project.

**1.8.5** The A/E shall render interpretations and decisions in connection with a Contractor's responsibilities under the Contract Documents and submit recommendations to the Contracting Authority for enforcement of the Contractor's contract as necessary.

**1.8.5.1** The A/E is the initial interpreter of all requirements of the Contract Documents.

**1.8.5.2** All of the A/E's interpretations and decisions are subject to final determination by the Contracting Authority.

## **1.9 Standard of Care**

**1.9.1** Notwithstanding any other provision of this Agreement to the contrary, the A/E shall perform its Services consistent with the professional skill and care ordinarily provided by registered architects, landscape architects, professional engineers, and professional surveyors in the same or similar locality under the same or similar circumstances.

**1.9.2** The A/E shall perform its Services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

**1.9.3** The A/E shall perform its Services in accordance with the applicable rules established by its respective state board of registration, including the following codes of conduct and/or ethics pursuant to the OAC:

**1.9.3.1** Registered architects: OAC Section 4703-3-07

**1.9.3.2** Landscape architects: OAC Section 4703:1-3-04

**1.9.3.3** Professional engineers and professional surveyors: OAC Section 4733-35

## **1.10 Construction Budget**

**1.10.1** The Owner shall provide written notice to the Contracting Authority and A/E of any change in the Construction Budget.

**1.10.2** The A/E shall perform its Services so that the Project is completed within the Construction Budget.

**1.10.3** The A/E, Contracting Authority, and Owner do not have control over the cost of labor, materials, or equipment, over Contractors' methods of determining prices, or over competitive bidding, market, or negotiating conditions. Accordingly, the A/E does not warrant or represent that competitively bid or negotiated prices will not vary from the Construction Budget or from any estimate of cost or evaluation prepared, or agreed to, by the A/E.

### 1.11 Cooperation

**1.11.1** The A/E shall perform the Services so as not to interfere with, disturb, hinder, or delay the services of Separate Consultants or Work of the Contractors. The A/E shall cooperate and coordinate fully with all Separate Consultants and Contractors and shall freely share all of the A/E's Project-related information with them to facilitate the timely and proper performance of the Services and of the services and work of Separate Consultants and Contractors.

**1.11.2** If the A/E damages the property or work of any Separate Consultant or Contractor, or by failure to perform the Services with due diligence, delays, interferes with, hinders, or disrupts the services of any Separate Consultant or the work of any Contractor who suffers additional expense and damage as a result, the A/E is responsible for that damage, injury, or expense.

**1.11.3** If the proper execution or results of any part of the Services depends upon work performed or services provided by the Owner, a Separate Consultant, or a Contractor, the A/E shall review that other work and appropriate instruments of service, and promptly report to the Contracting Authority in writing any defects or deficiencies in that other work or services that render it unavailable or unsuitable for the proper execution and results of the Services. The A/E's failure so to report will constitute an acceptance of the other work and services as fit and proper for integration with the A/E's Services except for defects and deficiencies in the other work or services that were not reasonably discoverable at the time of the A/E's inspection.

**1.11.4** The A/E shall not delay the Services on account of any claim, dispute, or action between the A/E and Separate Consultant or Contractor.

### 1.12 Records

**1.12.1** The records of all of the A/E's Direct Personnel Expenses, Reimbursable Expenses, and payments to Consultants pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the Contracting Authority and Owner at all times and shall be maintained for seven years after Substantial Completion of all Work.

**1.12.2** All other records kept by the A/E related to the Project shall be available to the Contracting Authority and Owner at all times and shall be maintained for six years after Substantial Completion of all Work.

## ARTICLE 2 - STATE'S RIGHTS AND RESPONSIBILITIES

### 2.1 Contracting Authority

**2.1.1** The Contracting Authority shall designate a Project Manager for the Project. The Project Manager is authorized to act on behalf of the Contracting Authority to perform specific responsibilities under the Agreement.

**2.1.2** The Contracting Authority shall furnish information and services required of it in a timely manner.

### 2.2 Required Actions

**2.2.1** The Contracting Authority and Owner shall review, approve, or take such actions as are required of them by this Agreement, the Contract Documents, and Applicable Law in a reasonable and timely manner.

### 2.3 Owner's Requirements

**2.3.1** The Owner shall provide to the A/E full information regarding the Owner's requirements for the Project including the Program of Requirements, design and construction standards, and work rules, which shall set forth the Owner's use, design, time, and financial objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, time constraints imposed by fiscal and budgetary considerations, special equipment, and systems and Site requirements.

**2.3.2** The Owner shall furnish information and services required of it in a timely manner.

### 2.4 Owner's Representative

**2.4.1** The Owner shall designate an Owner's Representative authorized to act on behalf of the Owner with respect to the Project to the extent provided in the Contract Documents.

## 2.5 Site Description

**2.5.1** If reasonably requested by the A/E as necessary for the Project, the Owner shall furnish a legal description and a certified land survey of the Site, giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the Site; locations, dimensions, and complete data pertaining to existing buildings, other improvements, and trees; and full information concerning available service and utility lines, both public and private, above and below grade, including inverts and depths.

## 2.6 Provided Information

**2.6.1** The Contracting Authority and Owner do not warrant or guarantee the accuracy of Project-related information they provide to the A/E, but the A/E may rely upon that information to the extent consistent with the standard of care described under **Section 1.9**.

## 2.7 Notice to A/E

**2.7.1** If the Owner or Contracting Authority observes or otherwise becomes aware of any Defective Work or other fault or defect in the Project, prompt written notice thereof shall be given to the A/E, and CxA if applicable.

## 2.8 Legal Representation

**2.8.1** The Owner and Contracting Authority shall not be responsible to provide or pay for any legal representation of the A/E.

## 2.9 Limitation of Authority

**2.9.1** The A/E shall not have any authority to bind the Contracting Authority or Owner for the payment of any costs or expenses without the prior express written approval of the Contracting Authority or Owner, as applicable.

**2.9.2** The A/E shall have authority to act on behalf of the Contracting Authority and Owner only to the extent provided in this Agreement and the Contract Documents.

**2.9.3** The A/E's authority to act on behalf of the Contracting Authority and Owner may be modified only by an amendment to this Agreement in accordance with **Section 4.3**.

## 2.10 Approval or Disapproval of A/E's Services

**2.10.1** The Contracting Authority and Owner may disapprove any portion of the Services.

**2.10.2** If the Contracting Authority or Owner disapproves of the Services at any Stage, the A/E shall proceed, when requested by the Contracting Authority, to re-perform the Services to satisfy the objections without additional compensation to the A/E or its Consultants.

**2.10.3** The A/E acknowledges that any review or approval by the Contracting Authority and Owner of any Services shall not relieve the A/E of the A/E's responsibility to properly and timely perform the Services.

## 2.11 Performance Evaluations

**2.11.1** The Contracting Authority may evaluate the A/E during performance of the Services, at completion of a phase of the Project, completion of the Project, or any or all of the foregoing. The Contracting Authority shall retain the evaluation(s).

**2.11.1.1** The A/E may request a copy of the completed evaluation(s). If the A/E wishes to comment or take exception to any rating or remark, the A/E must send a response in writing to the Contracting Authority within 30 days after receiving the evaluation(s).

**2.11.1.2** The Contracting Authority may use the evaluation(s) in determining the qualifications of the A/E for future contracts.

**2.11.1.3** The Contracting Authority may request information from the A/E for use in evaluating the Contractor's or Contracting Authority's performance. If such information is requested, the A/E must comply in a timely and responsive manner.

## ARTICLE 3 - CONSULTANTS

### 3.1 Consultant Services

**3.1.1** The A/E may provide a portion of the Services through one or more Consultants, provided, however, that the A/E shall remain responsible for all of the A/E's duties and obligations under this Agreement.

**3.1.2** By appropriate written agreement, the A/E shall require each Consultant, to the extent of the Consultant's portion of the Services, to be bound to the A/E by the terms of this Agreement, and to assume toward the A/E all of the obligations and responsibilities that the A/E assumes toward the Contracting Authority and Owner.

**3.1.2.1** The A/E shall not retain any Consultant on terms inconsistent with this Agreement.

**3.1.2.2** All agreements between the A/E and a Consultant shall identify the Contracting Authority and Owner as the agreement's intended third-party beneficiaries.

**3.1.2.3** Upon the request of the Contracting Authority or Owner, the A/E shall submit to the Contracting Authority and Owner a copy of the agreement between the A/E and each Consultant.

**3.1.3** The A/E shall obtain the Contracting Authority's written approval before engaging any Consultant not named in the Agreement. The A/E shall not employ any Consultant against whom the Contracting Authority has a reasonable objection. The Contracting Authority's approval or disapproval of any Consultant, however, will not relieve the A/E of the A/E's full responsibility for performance of the Services.

**3.1.4** The A/E shall not remove any Consultant from the Project or reduce the extent of any Consultant's participation in providing the Services without the Contracting Authority's prior written consent. The A/E shall not permit any Consultant to replace any previously identified team member except with the Contracting Authority's prior written consent unless the Consultant ceases to employ that person. On notice from the Contracting Authority, the A/E shall immediately and permanently remove from the Project any Consultant or person under a Consultant's control whose performance is not satisfactory to the Contracting Authority.

**3.1.5** The Contracting Authority may communicate with any Consultant either through the A/E or directly with the Consultant, but the Contracting Authority may not modify the agreement between the A/E and any Consultant. The Contracting Authority will advise the A/E with reasonable promptness of direct communication with any Consultant.

**3.1.6** The A/E hereby assigns to the Contracting Authority each Consultant's agreement provided that the assignment is effective only after the Contracting Authority terminates this Agreement in whole or in part and only for those agreements that the Contracting Authority accepts by notifying the Consultant and A/E in writing. The Contracting Authority may re-assign accepted agreements.

**3.1.6.1** If the Contracting Authority terminates this Agreement in part, the Contracting Authority may **(1)** take assignment of any entire Consultant's agreement affected by the termination or **(2)** take partial assignment of only the portion of any Consultant's agreement associated with the terminated part of this Agreement.

### 3.2 Payments by A/E

**3.2.1** Within ten business days after receipt of payment made pursuant to this Agreement, the A/E shall pay all portions thereof due to Consultants and to persons who provided items, the expenses of which are Reimbursable Expenses.

**3.2.2** The Owner has no obligation to pay or see to the payment of money to any Consultant except as otherwise required under Applicable Law.

## ARTICLE 4 - MODIFICATIONS

### 4.1 Compensation for Extension of Project Time

**4.1.1** If the A/E notifies the Owner and Contracting Authority not less than 30 days before the date for completion of the Project identified in the approved Project Schedule, that the time for completion is reasonably expected to be exceeded by more than ten percent through no fault of the A/E, the A/E's compensation for Services to be rendered during such extended period shall be negotiated to the mutual reasonable satisfaction of the Contracting Authority, Owner, and A/E.

**4.1.2** If, through such negotiation, the Contracting Authority and Owner agree that the A/E shall be paid additional compensation, an amendment to that effect shall be executed in accordance with **Section 4.3**.

**4.1.3** That amendment shall be executed before the A/E renders any Services made necessary by the extension of the time of completion, unless otherwise agreed in writing by the Contracting Authority and Owner.

## 4.2 Compensation for Change of Scope of Project or Construction Budget

- 4.2.1** The Project Scope is defined by the Approved Program of Requirements, as provided in **Exhibit B**.
- 4.2.2** The Construction Budget is defined in the **Agreement Form**.
- 4.2.3** If the Contracting Authority and Owner, through no fault of the A/E, materially change the Project Scope after the Schematic Design Stage or materially change the Construction Budget at any time after the execution of this Agreement, any necessary adjustment in the A/E's compensation shall be negotiated to the mutual reasonable satisfaction of the Contracting Authority, Owner, and A/E.
- 4.2.4** If, through such negotiation, the Contracting Authority and Owner agree that the A/E shall be paid additional compensation, an amendment to that effect shall be executed in accordance with **Section 4.3**.
- 4.2.5** That amendment shall be executed before the A/E renders any Services made necessary by the change in the Project Scope or the Construction Budget, unless otherwise agreed in writing by the Contracting Authority and Owner.

## 4.3 Amendments

- 4.3.1** This Agreement may be modified only by an amendment prepared by the Contracting Authority and signed by both the A/E and Contracting Authority, with concurrence of the Owner.
- 4.3.2** Amendments involving changes to the legal terms and conditions of this Agreement shall require approval by the Attorney General of the state of Ohio.
- 4.3.2.1** Changes to the legal terms and conditions do not include amendments to the scope or cost of the Services governed by this Agreement, which include changes to **Exhibit B**.
- 4.3.3** If the Project is administered using the State's web-based project management software, the A/E shall submit its request for an amendment to the Contracting Authority through the "Professional Services Amendments" or "Contract Modifications" business process.

## 4.4 Allocation Adjustments

- 4.4.1** Without exceeding the total compensation for this Agreement, the allocation of costs, as described in the **Agreement Form**, may be adjusted upon request of the A/E and approval by the Contracting Authority without a formal signed amendment.
- 4.4.2** If the Project is administered using the State's web-based project management software, the A/E shall submit its request for an allocation adjustment to the Contracting Authority through the "Professional Services Amendments" or "Contract Modifications" business process.

# ARTICLE 5 - DISPUTE RESOLUTION

## 5.1 Notice and Filing of Requests

- 5.1.1** Any request by the A/E for additional fees or expenses shall be made in writing to the Contracting Authority and filed prior to payment of the final five percent of the Basic Fee. The A/E's failure to comply with the requirements of this **Section 5.1.1** shall constitute an irrevocable waiver by the A/E of any request for such fees and expenses.

## 5.2 Substantiation of Request

- 5.2.1** In every written request filed pursuant to **Section 5.1**, the A/E shall provide the nature and amount of the request; identification of persons, entities, and events responsible for the request; activities on the Project Schedule affected by the request or new activities created by any delay and the relationship with existing activities; anticipated duration of any delay; and recommended action to avoid or minimize any future delay.

## 5.3 Mutual Waiver of Consequential Damages

- 5.3.1** Except as provided under **Section 5.3.2**, the Owner and A/E each waive against the other all claims for consequential damages that may arise out of or relate to this Agreement.

- 5.3.1.1** The Owner's waiver includes claims for loss of use, income, profit, revenue, financing, cost of capital, business and reputation, management and employee productivity, and consequential damages arising from termination of the Agreement or related to insolvency.

**5.3.1.2** The A/E's waiver includes claims for overhead; delay damages except as otherwise specifically provided for in the Agreement; increased cost of funds for the Project; lost opportunity to work on other projects; losses of financing, business, and reputation; loss of profit except anticipated profit arising directly from properly performed Services; and consequential damages arising from termination of the Agreement or related to insolvency.

**5.3.2** Notwithstanding **Section 5.3.1**, this **Section 5.3**:

**5.3.2.1** does not apply to any damages that would be covered by insurance required or provided in connection with the Project if the Agreement did not include **Section 5.3.1**;

**5.3.2.2** does not apply to the A/E's indemnity obligations for third-party claims against the Indemnified Parties even if those claims are for damages that **Section 5.3.1** would otherwise preclude; and

**5.3.2.3** does not apply to Claims for damages arising from the Owner or A/E's gross negligence or willful misconduct.

**5.3.3** This **Section 5.3** shall survive termination of the Agreement.

#### **5.4 Meeting with the Project Manager**

**5.4.1** Within 30 days after receipt of the request filed with the Contracting Authority pursuant to **Section 5.1**, or other period mutually agreed by the parties, the Project Manager shall schedule a meeting to resolve the request and render a decision on the request promptly thereafter or render a decision on the request without a meeting.

**5.4.2** The meeting scheduled by the Project Manager shall be attended by persons expressly and fully authorized to resolve the request on behalf of the A/E.

#### **5.5 Appeal to Commission or Institutional Designee**

**5.5.1** If the efforts of the Project Manager do not lead to resolution of the request, the A/E may request review of the Project Manager's decision by written notice delivered by certified mail within 14 days after the Project Manager's decision.

**5.5.1.1** If the Project is administered by the Commission, jointly administered by School District Board in conjunction with the Commission, or locally administered by authority granted to an agency of the state of Ohio by the Commission, the written notice shall be delivered to the Executive Director of the Commission.

**5.5.1.2** If the Project is administered by an Institution of Higher Education, the written notice shall be delivered to the Institutional Designee who will review the Project Manager's decision instead of the Commission.

**5.5.2** Within 30 days after receipt of notice or other period mutually agreed by the parties, the Commission or Institutional Designee shall schedule a meeting to resolve the dispute and render a decision on the appeal promptly thereafter or render a decision on the appeal without a meeting.

**5.5.3** The meeting shall be attended by persons expressly and fully authorized to resolve the matters on behalf of the A/E.

**5.5.4** ORC Chapter 119 shall not be applicable to any proceedings of the Commission or Institutional Designee under this **Section 5.5**.

**5.5.5** The decision of the Commission or Institutional Designee, as applicable, shall serve as the Contracting Authority's final and conclusive determination.

#### **5.6 Delegation**

**5.6.1** No provision of this **Article 5** shall prevent the Executive Director from delegating the duties or authorities of the Commission to any other person selected at the Executive Director's sole discretion.

#### **5.7 Alternative Dispute Resolution**

**5.7.1** At any point in Claims and dispute resolution processes, the Project's key stakeholders may agree to enter into non-binding ADR including progressive negotiation, Dispute Review Board, mediation, or another non-binding ADR procedure accepted by all of the Project's key stakeholders.

#### **5.8 Performance**

**5.8.1** The A/E shall proceed with performance of this Agreement during any dispute resolution process, unless otherwise agreed by the A/E and Contracting Authority in writing.

**5.8.2** The Contracting Authority shall continue to make payment, in accordance with this Agreement, of any amounts not in dispute pending final resolution of any dispute.

## ARTICLE 6 - COMPENSATION AND PAYMENT

### 6.1 Basic Fee

**6.1.1** For Basic Services provided by the A/E and all Consultants, the Owner shall pay the A/E a Basic Fee in accordance with the amount identified in the **Agreement Form**.

**6.1.2** A change in the Basic Fee may be made only by an amendment to this Agreement in accordance with **Section 4.3**.

### 6.2 Additional Services Fees

**6.2.1** The Owner shall pay the A/E the Additional Services Fees for the associated Additional Services, when those Services are performed in accordance with the Agreement.

**6.2.1.1** For Additional Services performed by a Consultant, the Additional Services Fees shall be based on the Consultant's associated invoices to the A/E and may include an A/E mark-up negotiated between the Contracting Authority and A/E.

**6.2.2** Except for the Additional Services and Additional Services Fees listed above, Additional Services and any Additional Services Fees shall be approved only by an amendment to this Agreement in accordance with **Section 4.3**.

**6.2.2.1** For Additional Services not included in the original **Agreement Form** that are provided by the A/E and any Consultants in accordance with **Section 4.3**, the Owner shall pay the A/E Additional Services Fees in an amount negotiated to the mutual reasonable satisfaction of the Contracting Authority, Owner and A/E, but in all events, such Additional Services Fees shall not exceed two-and-one-half times the Direct Personnel Expense incurred by the A/E and any applicable Consultant in providing those Additional Services.

### 6.3 Reimbursable Expenses

**6.3.1** The A/E shall use its best efforts to minimize Reimbursable Expenses.

**6.3.2** In all events, total Reimbursable Expenses shall not exceed the amount identified in the **Agreement Form**, without the prior written approval of the Contracting Authority and Owner and an amendment to this Agreement in accordance with **Section 4.3**.

**6.3.3** Reimbursable Expenses shall only be permitted for the items identified in the **Agreement Form** and shall not exceed the respective amounts.

**6.3.4** No A/E or Consultant mark-up shall be permitted on Reimbursable Expenses.

### 6.4 Method and Terms of Payment

#### 6.4.1 Basic Fee.

**6.4.1.1** Payment of the Basic Fee shall be made monthly in proportion to Basic Services performed in each Stage, in accordance with **Section 6.1**, and the percentages of the Basic Fee described in the **Agreement Form**.

**6.4.1.2** The Contracting Authority may, in its sole discretion, waive the withholding of any final balance or part thereof if the A/E has performed to the satisfaction of the Contracting Authority and Owner.

**6.4.1.3** Payment of the last five percent of the Basic Fee for any Stage of the Services shall be made only after all deliverables required for the Stage have been submitted by the A/E to the Contracting Authority or Owner, as applicable, in form and substance reasonably satisfactory to the Contracting Authority and Owner.

**6.4.1.4** The entire Basic Fee is subject to all setoffs for claims against the A/E in favor of the State.

**6.4.1.5** Payments for Basic Services shall be based upon a properly completed Professional Services Pay Request and shall be made within the applicable time limits provided by ORC Section 126.30, which requires payment of interest on overdue payments. The interest rate shall be at the rate per calendar month, which equals one-twelfth of the rate per annum, prescribed by ORC Section 5703.47.

#### 6.4.2 Additional Services Fees and Reimbursable Expenses.

**6.4.2.1** Payments of Additional Services Fees in accordance with **Section 6.2** and for Reimbursable Expenses in accordance with **Section 6.3** shall be made monthly based upon Additional Services performed or expenses incurred, as applicable, and as shown by a properly completed Professional Services Pay Request.

**6.4.3** If the Project is administered using the State's web-based project management software, the A/E shall submit its Professional Services Pay Request to the Owner, through the Contracting Authority, for approval and payment through the "Professional Services Pay Request" or "Applications for Payment" business process.

## ARTICLE 7 - INSURANCE AND INDEMNIFICATION

### 7.1 A/E's General Insurance Requirements

**7.1.1** Throughout the performance of the Services or longer as may be described below, the A/E shall obtain, pay for, and keep in force, the minimum insurance coverage described in this **Article 7**.

**7.1.1.1** Each requirement of this **Article 7** applies to Consultants just as it applies to the A/E.

**7.1.1.2** If a Consultant's usual insurance coverage does not meet the minimum coverage requirements, before entering into an agreement with that Consultant, the A/E shall submit to the Contracting Authority **(1)** a certificate of insurance evidencing the insurance the Consultant will carry without additional compensation and **(2)** if the Contracting Authority requests, a written proposal from the Consultant to provide coverage that meets the minimum coverage requirements. The Contracting Authority will decide whether to accept the non-conforming insurance coverage or the proposal to provide conforming coverage.

**7.1.1.3** Notwithstanding any other provision of this Agreement to the contrary, the A/E will not be entitled to any Fee increase on account of the Contracting Authority's refusal to accept a Consultant's nonconforming insurance coverage.

**7.1.1.4** On a case-by-case basis, the Contracting Authority and A/E may agree to adjust the below requirements for any particular Consultant.

**7.1.2** Before starting the Services, upon renewal of any policy, and upon a change of any insurance carrier, the A/E shall deliver to the Contracting Authority certificates evidencing that the required insurance is in force.

**7.1.2.1** Certificates of insurance for other than government-controlled workers' compensation insurance must identify **(1)** all below-required additional insureds and **(2)** the Project name.

**7.1.3** With the exception of government-controlled workers' compensation coverage:

**7.1.3.1** the A/E shall place the insurance with companies that **(1)** are satisfactory to the Contracting Authority, **(2)** hold an A.M. Best Rating of A-, X, or higher, and **(3)** are authorized to conduct business in Ohio;

**7.1.3.2** the policies shall be endorsed to require the A/E's insurance carrier to **(1)** provide at least 30-days' written notice to the Contracting Authority (as certificate holder) of the cancellation or non-renewal of the insurance and **(2)** provide at least ten-days' written notice to the Contracting Authority (as certificate holder) of the cancellation of the insurance for non-payment of premium; and

**7.1.3.3** within 30 days after the Contracting Authority's request, the A/E shall submit insurance-company certified copies of the policies, the policy endorsements, or both from which the A/E may redact the premium amount.

**7.1.4** The A/E shall pay all deductibles, or self-insured retentions, or both contained in the A/E's policies of insurance required or provided in connection with the Project. The Contracting Authority reserves the right to approve or reject all levels of self-insured retention, captive insurance programs, or other alternative risk financing the A/E may use to comply with any insurance requirement.

**7.1.5** The A/E shall pay a proportionate share of the deductibles, or self-insured retentions, or both contained in any insurance policy the Contracting Authority purchases for the Project. The A/E's proportionate share will derive from the percentage of the associated claim or loss attributable to the negligence of the A/E or a Consultant.

**7.1.6** The Contracting Authority and Owner do not represent that required coverage or limits are adequate to protect the A/E.

**7.1.7** Failure of the Contracting Authority to demand a certificate or other evidence of full compliance with the insurance requirements or failure of the Contracting Authority to identify a deficiency from evidence that is provided shall not be construed as a waiver of the A/E's obligation to maintain the required insurance.

**7.1.8** The Contracting Authority may terminate the Agreement for cause on account of the A/E's failure to maintain the required insurance.



**7.2 A/E’s Minimum Coverage Requirements**

**7.2.1 Workers Compensation.** The A/E shall maintain workers’ compensation coverage meeting the requirements of Applicable Law.

**7.2.2 Employers’ Liability Coverage.** The A/E shall maintain employers’ liability coverage with **(1)** an each-accident limit of not less than \$1,000,000, **(2)** a disease each-employee limit of not less than \$1,000,000, and **(3)** a disease policy limit of not less than \$1,000,000.

**7.2.3 Commercial General Liability.** The A/E shall maintain commercial general liability (“CGL”) coverage that provides **(1)** an each-occurrence limit of not less than \$1,000,000, **(2)** a general-aggregate limit of not less than \$2,000,000, and **(3)** a products and completed-operations aggregate limit of not less than \$2,000,000.

**7.2.3.1** The CGL insurance shall be written on ISO occurrence form CG 00 01 04 13 or a substitute form, providing at least equivalent coverage for liability arising from premises, operations, independent contractors, products/completed-operations, personal and advertising injury, and liability assumed under an insured contract.

**7.2.3.2** The A/E shall include the State, Contracting Authority, and Owner as additional insureds under the CGL policy using ISO endorsement CG 20 10 07 04 and ISO endorsement CG 20 37 07 04 or a substitute form(s) providing equivalent coverage.

**7.2.3.3** The CGL policy shall be endorsed using ISO endorsement CG 25 03 or a substitute form providing equivalent coverage to provide that the general aggregate limit applies separately to each of the insured’s projects.

**7.2.3.4** The CGL insurance shall not exclude coverage for property damage to electronic data.

**7.2.3.5** The CGL insurance shall apply as primary and non-contributory insurance with respect to any other insurance or self-insurance programs that cover the additional insured(s).

**7.2.3.6** The CGL policy shall not exclude coverage to the additional insured(s) for bodily injury or property damage arising out of the products/completed-operations hazard.

**7.2.3.7** The A/E shall maintain the CGL insurance in effect for no less than five years after the earlier of the termination the Agreement or Substantial Completion of all Work.

**7.2.4 Business Automobile Liability.** The A/E shall maintain business automobile (“BA”) coverage written on ISO form CA 00 01 04 13 or a substitute form, providing at least equivalent coverage with a limit of not less than \$1,000,000 each accident.

**7.2.4.1** The coverage shall extend to any auto: owned (if any), non-owned, leased, rented, hired, or borrowed.

**7.2.4.2** The A/E shall include the State, Contracting Authority, and Owner as additional insureds under the BA policy.

**7.2.5 Umbrella/Excess Liability.** The A/E may employ an umbrella/excess liability policy to achieve the above-required minimum coverage.

**7.2.6 Professional Liability.** The A/E shall maintain professional liability (“PL”) insurance with limits not less than as identified in the following table:

<b>Construction Budget</b>	<b>Each Claim</b>	<b>Annual Aggregate</b>
Up to \$25,000,000	\$1,000,000	\$2,000,000
From \$25,000,000.01 to \$50,000,000	\$2,000,000	\$4,000,000
From \$50,000,000.01 to \$100,000,000	\$5,000,000	\$5,000,000
More than \$100,000,000	\$10,000,000	\$10,000,000

**7.2.6.1** The PL policy shall have an effective date on or before the date that the A/E first started to provide any Project-related Services.

**7.2.6.2** Upon submission of the associated certificate of insurance and at each policy renewal, the A/E shall advise the Contracting Authority in writing of any actual or alleged claims that may erode the PL policy’s limits.

**7.2.6.3** The A/E shall maintain the PL insurance in effect for no less than five years after the earlier of the termination of the Agreement or Substantial Completion of all Work.

**7.2.6.4** If the Project is using the design-build project delivery system, the PL policy shall not contain any design-build exclusions.

**7.2.6.5** If the A/E is a joint venture:

- .1 the A/E may meet the requirements of this **Section 7.2.6** by providing a PL policy under which each joint venturer is the insured; or
- .2 each joint venturer shall individually meet the requirements of this **Section 7.2.6** by providing a PL policy **(1)** under which the individual joint venturer is the insured and **(2)** that covers that joint venturer's interests in the joint venture by endorsement or otherwise. The certificate of insurance shall reflect that the PL policy covers the joint venturer's interest in the joint venture.

*Example:* Assume that the A/E **(1)** is the "XY joint venture" of company "X" and company "Y"; and **(2)** is required under **Section 7.2.6** to maintain PL insurance limits of \$1M/\$2M. In order to comply with **Section 7.2.6.5.2**, "X" must maintain PL insurance limits of \$1M/\$2M and "Y" must maintain PL insurance limits of \$1M/\$2M.

**7.2.6.6** If the A/E is a limited-liability company, which members consist of two or more separate firms:

- .1 the A/E may meet the requirements of this **Section 7.2.6** by providing a PL policy under which the limited-liability company is the insured; or
- .2 each member of the limited-liability company shall individually meet the requirements of this **Section 7.2.6** by providing a PL policy **(1)** under which the individual member is the insured and **(2)** that covers that member's interests in the limited-liability company by endorsement or otherwise. The certificate of insurance shall reflect that the PL policy covers the member's interest in the limited-liability company.

*Example:* Assume that the A/E **(1)** is the "XY limited-liability company," the members of which are "X" and "Y"; and **(2)** is required under **Section 7.2.6** to maintain PL insurance limits of \$1M/\$2M. In order to comply with **Section 7.2.6.6.2**, "X" must maintain PL insurance limits of \$1M/\$2M and "Y" must maintain PL insurance limits of \$1M/\$2M.

**7.2.7 Pollution Liability.** If the Services include environmentally sensitive, hazardous types of activities (such as demolition, exterior insulation finish systems, Asbestos abatement, storage-tank removal, or similar activities), or involves Hazardous Materials, the A/E shall maintain a pollution liability ("Pollution") policy with **(1)** a per-claim limit of not less than \$1,000,000 and **(2)** an annual-aggregate limit of not less than \$1,000,000, covering the acts, errors and/or omissions of the A/E for damages (including from mold) sustained by the Owner by reason of the A/E's performance of the Services.

**7.2.7.1** The Pollution policy shall have an effective date, which is on or before the date that the A/E first started to perform any Project-related Services.

**7.2.7.2** Upon submission of the associated certificate of insurance and at each policy renewal, the A/E shall advise the Contracting Authority in writing of any actual or alleged claims that may erode the Pollution policy's limits.

**7.2.7.3** The A/E shall maintain the Pollution insurance in effect for no less than five years after the earlier of the termination of the Agreement or Substantial Completion of all Work.

**7.2.7.4** The A/E may achieve the Pollution insurance requirement through a PL policy, which provides the required pollution coverage or through a contractor's pollution liability policy.

**7.3 Waivers of Subrogation**

**7.3.1** To the fullest extent permitted by Applicable Law, the A/E waives all rights against the Owner, Contracting Authority, and their agents and employees for damages to the extent covered by any insurance (not including professional liability insurance), except rights to the proceeds of that insurance. All policies shall accomplish the waiver of subrogation by endorsement or otherwise.

**7.3.2** To the fullest extent permitted by Applicable Law, the A/E waives all rights against the Owner, Contracting Authority, and their employees for damages to the extent covered by any professional liability insurance, except rights to the proceeds of that insurance. All policies shall accomplish the waiver of subrogation by endorsement or otherwise.

**7.3.3** The Owner, Contracting Authority, and A/E waive all rights against each other for damages caused by fire or other perils to the extent of actual recovery of any insurance proceeds under any property insurance, inland marine insurance, or builder's risk insurance applicable to the Work.

**7.4 Indemnification for Injury or Damage**

**7.4.1 Liability Other than Professional Liability.** To the fullest extent permitted by Applicable Law and with respect to liability other than professional liability claims, the A/E shall indemnify, defend, and hold harmless the Indemnified

Parties from and against all claims, costs, damages, losses, fines, penalties, and expenses (including but not limited to all fees and charges of attorneys and other professionals, and all court, arbitration, or other dispute-resolution costs) arising out of or in connection with the Project, provided that any such claim, cost, damage, loss, fine, penalty, or expense is attributable to:

**7.4.1.1** bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property but only to the extent caused by the negligent acts, errors, or omissions of the A/E or a Person for whom the A/E may be liable;

**7.4.1.2** infringement of patent rights or copyrights by the A/E or a Person for whom the A/E may be liable; or

**7.4.1.3** a violation of Applicable Law but only to the extent attributable to the A/E or a Person for whom the A/E may be liable.

**7.4.2 Professional Liability.** To the fullest extent permitted by Applicable Law and with respect to professional liability claims, the A/E shall indemnify and hold harmless the State, Contracting Authority, Owner, and their respective officers, officials, and employees from and against all claims, costs, damages, losses, fines, penalties, and expenses (including but not limited to all fees and charges of attorneys and other professionals, and all court, arbitration, or other dispute-resolution costs) arising out of or in connection with **(1)** the failure of the A/E or a Person for whom the A/E is legally liable to comply with the standard of care described under **Section 1.9**; and **(2)** infringement of patent rights or copyrights by the A/E or a Person for whom the A/E may be liable.

**7.4.3** The A/E's indemnification obligation under **Section 7.4** exists regardless of whether or not and the extent to which the claim, damage, loss, fine, penalty, or expense is caused in part by a Person indemnified under **Section 7.4**. But nothing in **Section 7.4** obligates the A/E to indemnify any individual or entity from and against the consequences of that Person's own negligence.

**7.4.4** In claims against an a Person indemnified under **Section 7.4** by any direct or indirect employee (or the survivor or personal representative of that employee) of the A/E or a Person for whom the A/E may be liable, the indemnification obligation under **Section 7.4** will not be limited by a limitation on the amount or type of damages, compensation, or benefits payable under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**7.4.5** [Intentionally omitted]

**7.4.6** The A/E's indemnification obligation under **Section 7.4** will not be limited by any insurance policy provided or required in connection with the Project.

**7.4.7** The A/E's obligations under **Section 7.4** shall not negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a Person indemnified under **Section 7.4**.

**7.4.8** The A/E's indemnification obligation under **Section 7.4** will survive termination of the Agreement and Final Acceptance of the Work.

**7.4.9** The Contracting Authority may deduct from the Fee the claims, damages, losses, fines, penalties, and expenses for which the A/E is liable under **Section 7.4**. If those claims, damages, losses, fines, penalties, and expenses exceed the unpaid balance of the Fee, the A/E shall immediately pay the difference to the Owner.

## ARTICLE 8 - SUSPENSION AND TERMINATION

### 8.1 Suspension of the Services

**8.1.1** The Contracting Authority, without cause and without prejudice to any other right or remedy it may have, may order the A/E in writing to suspend, delay, or interrupt the performance of the Services in whole or in part for such period as the Contracting Authority may determine.

**8.1.1.1** If the Contracting Authority suspends the Services under this **Section 8.1.1** and the A/E complies with **Article 4**, the Basic Fee, Additional Services Fee, and Reimbursable Expenses shall be adjusted for increases in the cost and time caused by the suspension, delay, or interruption.

**8.1.1.2** Notwithstanding the foregoing, no adjustment shall be made to the Basic Fee, Additional Services Fee, or Reimbursable Expenses to the extent that:

- .1** performance was or could have been suspended, delayed, or interrupted by a cause for which the A/E is responsible; or
- .2** an equitable adjustment is made or denied under another provision of the Agreement.

**8.1.1.3** If the Contracting Authority suspends the Services under this **Section 8.1.1** and the A/E submits a proper Professional Services Payment Request, but subject to all other provisions of the Agreement, the A/E shall be entitled to payment of compensation due under the Agreement for Services performed before the suspension.

**8.1.2** The Contracting Authority, without prejudice to any other right or remedy it may have, may order the A/E in writing to suspend, delay, or interrupt the performance of the Services in whole or in part for such period as the Contracting Authority may determine on account of the A/E's failure to properly or timely perform the Services.

**8.1.2.1** The Contracting Authority's exercise of its right to suspend the Services under this **Section 8.1.2** shall not entitle the A/E to any adjustment of the Basic Fee, Additional Services Fees, or Reimbursable Expenses.

**8.1.2.2** If the Contracting Authority is adjudged to have improperly or unjustifiably suspended the Services under this **Section 8.1.2**, the suspension shall be deemed to have been a suspension under **Section 8.1.1**.

**8.1.3** Upon receipt of notice of suspension under this **Section 8.1**, the A/E shall cease providing the suspended Services and take all necessary or appropriate steps to limit disbursements and minimize respective costs. The A/E shall furnish a report to the Contracting Authority, within five days after receiving the notice of suspension, describing the status of the Services, including results accomplished, resulting conclusions, and other information as the Contracting Authority may require.

**8.1.4** The Contracting Authority's right to stop the Services shall not give rise to any duty to exercise the right for the benefit of the A/E or any other party, and the Contracting Authority's exercise or failure to exercise the right shall not prejudice any of the Contracting Authority's other rights.

## **8.2 Termination for Convenience**

**8.2.1** The Contracting Authority may at any time terminate the Agreement in whole or in part for the Owner's convenience and without cause, upon written notice to the A/E.

**8.2.2** Upon receipt of the notice of termination for convenience, the A/E shall immediately proceed with performance of the following duties in accordance with instructions from the Contracting Authority:

**8.2.2.1** cease operation as specified in the notice;

**8.2.2.2** not enter into further Consultant agreements except as necessary to complete continued portions of the Project;

**8.2.2.3** terminate all Consultant agreements to the extent they relate to the Services terminated; and

**8.2.2.4** proceed with Services not terminated.

**8.2.3** The Owner shall pay the A/E for Services rendered before the date of termination in accordance with the allocations in the Agreement, including any Reimbursable Expenses incurred, but not in excess of the allocations and caps otherwise provided in the **Agreement Form**.

**8.2.3.1** In no event shall the A/E be entitled to overhead and profit associated with Services the A/E did not perform on account of the termination or otherwise.

**8.2.4** If the Contracting Authority terminates the Services under this **Section 8.2**, the termination shall not affect the rights or remedies of the State against the A/E then existing or which may thereafter accrue for Services performed before the termination.

**8.2.5** Notwithstanding **Section 8.2.3**, if the Contracting Authority terminates the Services under this **Section 8.2**, but there exists an event of the A/E's default, the A/E shall be entitled to receive only such sums as it would be entitled to receive following the occurrence of an event of default as provided in **Section 8.3**.

## **8.3 Contracting Authority's Termination for Cause**

**8.3.1** The Contracting Authority may terminate the Agreement in whole or in part if the A/E commits a material breach of the Agreement including but not limited to:

**8.3.1.1** failure to prosecute the Services with the necessary force or in a timely manner;

**8.3.1.2** refusal to remedy disapproved Services;

**8.3.1.3** failure to properly make payment to Consultants;

**8.3.1.4** performance of any of the Services outside of the United States;

**8.3.1.5** permitting Consultants to perform any of the Services outside of the United States; or

**8.3.1.6** disregarding Applicable Law, or orders of a public authority with jurisdiction over the Project.

**8.3.2** If the Contracting Authority intends to exercise its termination rights under this **Section 8.3**, the Contracting Authority shall notify the A/E in writing of the Contracting Authority's intent to terminate this Agreement and the cause(s) for that termination.

**8.3.3** If the A/E fails to cure the identified cause(s) for termination within seven days after receiving the notice described under **Section 8.3.2**, the Contracting Authority may terminate the Agreement by giving written notice of the termination to the A/E.

**8.3.4** If the Agreement is terminated, the Contracting Authority may complete the Services by any means the Contracting Authority determines appropriate. The Contracting Authority may take immediate possession of all of the A/E's Documents.

**8.3.5** If the Agreement is terminated, the A/E shall not be entitled to further payment.

**8.3.5.1** If the unpaid balance of the sum of the Basic Fee plus Additional Services Fees plus Reimbursable Expenses is exceeded by the costs of finishing the Services, including without limitation the fees and charges of contractors, engineers, architects, attorneys, and other professionals and court costs, and other damages incurred by the Owner and not expressly waived, the A/E shall immediately pay the amount of the insufficiency to the Owner. This obligation for payment shall survive termination of the Agreement.

**8.3.6** If the Contracting Authority terminates the Services under this **Section 8.3**, the termination shall not affect any rights or remedies of the State against the A/E then existing or which may thereafter accrue. The Contracting Authority's retention or payment of funds due the A/E shall not release the A/E from liability for performance of the Services.

**8.3.7** If the Contracting Authority is adjudged to have improperly or unjustifiably terminated the Services under this **Section 8.3**, the termination will be deemed to have been a termination under **Section 8.2**.

## **8.4 A/E Insolvency**

**8.4.1** The Contracting Authority may immediately terminate this Agreement for cause if:

**8.4.1.1** the A/E commences a voluntary case under Title 11 of the United States Code or the corresponding provisions of any successor laws; or

**8.4.1.2** any legal entity commences an involuntary case against the A/E under Title 11 of the United States Code or the corresponding provisions of any successor laws and **(1)** the case is not dismissed within 60 days after its commencement; or **(2)** the court before which the case is pending issues an order for relief or similar order approving the case; or

**8.4.1.3** a court of competent jurisdiction appoints, or the A/E makes an assignment of all or substantially all of its assets to, a receiver, trustee, liquidator, or other similar custodian for the A/E or all or substantially all of the A/E's assets; or

**8.4.1.4** any attachment, execution, or other judicial seizure is levied against all or substantially all of the A/E's assets; or

**8.4.1.5** the A/E takes any action toward the dissolution or winding up of its business; or

**8.4.1.6** the A/E fails generally to pay its debts as they become due (unless those debts are subject to a good-faith dispute as to liability or amount) or it acknowledges in writing that it is unable to do so.

**8.4.2** If the A/E files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it, the A/E, the A/E as the debtor-in-possession, or the trustee of the A/E's bankruptcy estate shall file a motion to assume or reject the Agreement under Bankruptcy Code §365, 11 U.S.C. §365, within 20 days after the filing of the voluntary petition or involuntary petition and shall diligently prosecute that motion to conclusion so as to obtain an order granting or denying that motion within 45 days after the filing of the voluntary or involuntary petition.

**8.4.3** If the Contracting Authority intends to exercise its termination rights under this **Section 8.4**, the Contracting Authority shall notify the A/E in writing of the Contracting Authority's termination of this Agreement and the cause(s) for that termination.

**8.4.4** The A/E agrees to the granting of relief from the automatic stay of the Bankruptcy Code, 11 U.S.C. §362(a), to permit the Contracting Authority to terminate the Agreement for cause in such instance and issue and serve all notices necessary to terminate the Agreement or arising out of the termination of the Agreement and to take any and all other action necessary to terminate the Agreement.

## 8.5 A/E's Termination for Cause

**8.5.1** The A/E may terminate this Agreement for cause if the Owner fails to pay undisputed amounts owed to the A/E when required under this Agreement.

**8.5.2** If the A/E elects to terminate this Agreement for cause, the A/E must give the Contracting Authority and Owner written notice of **(1)** the A/E's intention to terminate the Agreement and **(2)** an accounting of the undisputed amounts owed to the A/E and the date(s) on which the A/E believes payment of those amounts was due. If the Owner does not cure the cause for termination by initiating the process to pay the undisputed amounts owed to the A/E within ten days after receiving the notice, the termination will take effect upon the Owner's receipt of the A/E's written notice of termination, which is in addition to the A/E's notice of intention to terminate.

**8.5.3** If the A/E properly terminates this Agreement for cause, but subject to other provisions of this Agreement, the Owner must pay the A/E for Services performed by the A/E before the date of termination. In no event will the Owner be obligated to pay anything on account of Services the A/E does not perform.

**8.5.4** If the A/E improperly terminates this Agreement under this **Section 8.5**, the A/E shall be obligated to the Owner as described under **Section 8.3.5.1**.

## ARTICLE 9 - GENERAL PROVISIONS

### 9.1 A/E's Documents and Contract Documents

**9.1.1** Except as provided under **Section 9.1.2** and subject to **Section 9.1.6**, the Owner alone owns the A/E's Documents and the Contract Documents and every right, title, and interest in the A/E's Documents and the Contract Documents.

**9.1.2** **Section 9.1.1** does not apply to standard details and specifications regularly used by the A/E or any of its Consultants in its normal course of business that are included in the A/E's Documents. The A/E grants to the Owner an irrevocable, non-exclusive, perpetual, freely assignable, and royalty-free license to copy, reproduce, distribute, and otherwise use those standard details and specifications for all Project-related purposes such as but not limited to owning, financing, constructing, testing, commissioning, decommissioning, using, operating, maintaining, repairing, modifying, selling, obtaining insurance for, and obtaining permits for the Project before, during, and after termination or completion of this Agreement.

**9.1.3** The A/E must execute and deliver and cause its employees and agents and all Consultants to execute and deliver, to the Owner any transfers, assignments, documents, or other instruments (if any) necessary to vest in the Owner complete right, title, interest in and ownership of all of the A/E's Documents under **Section 9.1.1** and the license described under **Section 9.1.2**.

**9.1.4** The A/E may retain copies, including reproducible copies of the A/E's Documents and the Contract Documents for information, reference, and the performance of the Services. The Owner grants to the A/E and its Consultants a non-exclusive, royalty-free license to copy, reproduce, distribute, and otherwise use the A/E's Documents and the Contract Documents in relation to the performance of the Services, including any Additional Services.

**9.1.5** The submission or distribution of the A/E's Documents and the Contract Documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Owner's reserved rights in the A/E's Documents and the Contract Documents. Any unauthorized use of the A/E's Documents and the Contract Documents will be at the sole risk of the entity making the unauthorized use of the A/E's Documents and the Contract Documents.

**9.1.6** Should the Owner desire to use any of the A/E's Documents for an addition to, remodeling or rehabilitation of, or change to any one or more of the Project improvements built on the basis of the A/E's Documents, the Owner shall engage one or more suitably licensed design professionals under terms that require each of those design professionals to independently evaluate any design or related features in the A/E's Documents without reliance on any information in the A/E's Documents that would be inconsistent with the standard of care applicable to that design professional.

**9.1.6.1** Unless the Project is a prototype, neither the Contracting Authority nor the Owner is entitled to use the A/E's Documents on other projects except by prior written agreement with, including mutually acceptable compensation to, the A/E or Consultant, as applicable. The term "other projects" as used in this section does not include additions to, remodeling or rehabilitation of, or change to any one or more of the improvements built on the basis of the A/E's Documents for this Project.

**9.1.7** The A/E shall provide Electronic Files (in native format) to the Contractor, Subcontractors, and Separate Consultants for their use in connection with the Project. The A/E shall provide the Electronic Files **(1)** at no additional

cost to the Contractor, Subcontractors, Separate Consultants, or Owner and **(2)** without requiring the Contractor, Subcontractors, Separate Consultants, or Owner to agree to any terms or conditions concerning the provision, receipt, or use of the Electronic Files that differ in any material respect from the Contract.

#### **9.1.8 Use of Electronic Files.**

**9.1.8.1** The Owner, Contracting Authority, A/E, and Contractor reasonably expect that they will provide Electronic Files to each other to facilitate the design and construction of the Project consistent with current practices and customs in the construction industry.

**9.1.8.2** The Owner, Contracting Authority, A/E, and Contractor acknowledge that the use of Electronic Files involves risks not generally associated with the use of paper documents. Those risks include alteration (inadvertent or intentional) and deterioration, which may not be readily apparent through casual observation.

**9.1.8.3** The Owner, Contracting Authority, A/E, and Contractor do not warrant to each other that any Electronic File they provide **(1)** was not altered through transmission; **(2)** is compatible with the recipient's computer system or software; **(3)** will not be altered through degradation of the recipient's storage media; or **(4)** is suitable for conversion/translation to and subsequent use in a system or format other than the Electronic File's original system or format.

**9.1.8.4** Before relying on any Electronic File it receives, the recipient is responsible for verifying that the Electronic File was not altered through transmission, degradation of the recipient's own storage media, or other causes.

**9.1.8.5** If the recipient of an Electronic File converts/translates the Electronic File from its original system or format to an alternate system or format, the recipient assumes the risk that the conversion/translation created errors in the converted/translated file.

**9.1.8.6** The Owner, Contracting Authority, A/E, and Contractor shall each maintain and operate its own computer systems and storage media in a commercially reasonable way and take reasonable steps to prevent errors in and deterioration of the Electronic Files it creates, provides, and receives.

**9.1.8.7** In the event of a discrepancy between information contained in a paper version of a document and the Electronic File of that document, the paper version will govern.

**9.1.8.8** This **Section 9.1.8** does not relieve the A/E of its responsibility for the preparation, completeness, or accuracy of the A/E's Documents.

## **9.2 Confidentiality of Documents used in Selection of a CM at Risk or Design-Builder**

**9.2.1** All documents submitted to the Owner, Contracting Authority, or A/E in response to a request for qualifications or a request for proposals in the best value selection of a Construction Manager at Risk or Design-Builder are public and will be available for inspection at the conclusion of the selection process; provided, however, that the following information shall be considered Confidential Information for the purposes of this **Section 9.2** and shall not be disclosed by the A/E except as provided below: **(1)** proposal form(s), except for subtotals for cost categories, which will be transferred to the best value rating form; **(2)** financial capacity; and **(3)** bonding/insurance.

**9.2.2** The A/E must restrict circulation of Confidential Information within its organization and then only to people in the A/E's organization that have a need to know the Confidential Information to perform the Services. The A/E may disclose Confidential Information to its Consultants on a need-to-know basis, but the A/E first must obligate the Consultant to the requirements of this **Section 9.2**. The A/E shall be solely liable for the disclosure of the Confidential Information, whether the disclosure is intentional, negligent, or accidental, unless otherwise provided below. Without limiting the generality of the foregoing, if the A/E experiences any breach of data security that exposes the Confidential Information to disclosure or unauthorized use, the A/E shall bear all costs to notify every Person whose Confidential Information may have been compromised and in cases where the A/E experiences that breach of data, the A/E shall also hold the Contracting Authority and Owner harmless from any claim arising from or related to that breach.

**9.2.2.1** The A/E may be liable for any unintentional disclosure of Confidential Information that results despite the A/E's exercise of at least the same degree of care as it normally takes to safeguard its own secrets.

**9.2.3** The A/E's obligation to maintain the confidentiality of the Confidential Information will not apply where the information:

**9.2.3.1** was already in the A/E's possession without an obligation of confidence before the A/E's receipt of the Confidential Information under this Agreement;

**9.2.3.2** is independently developed by the A/E;

**9.2.3.3** is or becomes publicly available without breach of this Agreement;

- 9.2.3.4** is rightfully received by the A/E from a third party without an obligation of confidence;
- 9.2.3.5** is disclosed by the A/E with the written consent of the Contracting Authority;
- 9.2.3.6** is released in accordance with a valid order of a court or governmental agency, provided that the A/E:
- .1** notifies the Contracting Authority of such order promptly, but in no event more than two business days following receipt of the order; and
  - .2** allows the Contracting Authority to give the owner of the Confidential Information an opportunity to make an effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production;
- 9.2.3.7** is limited to Residual Information (“Residual Information” means ideas, concepts, and know-how retained in the unaided memories of employees).

**9.2.4** The A/E shall return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Agreement or the request of the Contracting Authority.

**9.2.5** The A/E must notify the Contracting Authority in writing as soon as the A/E learns that the A/E or its Consultants or agents have disclosed any of the Confidential Information in a manner that is inconsistent with the requirements of this **Section 9.2**.

**9.2.6** The A/E may use Confidential Information only as necessary for the A/E’s performance under or pursuant to rights granted in this Agreement and for no other purpose. The A/E’s limited right to use Confidential Information expires upon expiration or termination of this Agreement for any reason. The A/E’s obligations of confidentiality and non-disclosure survive termination for any reason or expiration of this Agreement.

### **9.3 Public Relations**

**9.3.1 Publicity prior to completion of the Project.** Prior to completion of the Project, public relations or publicity about the Project shall be solely within the control and with the consent of the Owner.

**9.3.2 Publicity after completion of the Project.** After completion of the Project, the A/E may exercise reasonable public relations and marketing efforts related to the Project, provided the A/E properly identifies the Owner and Contracting Authority, and their participation in the Project.

**9.3.3 Professional Photography.** If the A/E commissions photography of the completed Project, the A/E shall include in its photography agreements a release for unrestricted and unlimited use of photographs by the Owner and Contracting Authority, and shall provide the Owner and Contracting Authority with a reasonable quantity of photographs for use in the Owner’s and Contracting Authority’s marketing and awareness activities, including, but not limited to, profiles of the Project on their respective websites.

**9.3.4 Design Awards and Other Recognition.** If the A/E submits the Project for design awards or other similar venues for recognition of the Project, the A/E shall properly identify the Owner and Contracting Authority, and their participation in the Project. In addition, if the Project receives any design award or other recognition, the A/E shall provide duplicate copies of the award plaque or other memento of the award to the Owner and Contracting Authority.

### **9.4 Application and Governing Law**

**9.4.1** This Agreement and the rights of the parties hereunder shall be governed by the laws of the state of Ohio and only Ohio courts shall have jurisdiction over any action or proceeding hereunder or related to the Project. The A/E irrevocably consents to such jurisdiction.

**9.4.2** The parties to the Agreement shall comply with Applicable Law.

**9.4.3** Other rights and responsibilities of the Contractor, A/E, Contracting Authority, and Owner are set forth throughout the Contract Documents and included under different titles, articles, and paragraphs for convenience.

### **9.5 Written Notice**

**9.5.1** Notice under this Agreement shall be validly given if:

**9.5.1.1** delivered personally to a member of the organization for whom the notice is intended;

**9.5.1.2** delivered by trackable delivery service, or sent by registered or certified mail, to the last known business address of the organization; or

**9.5.1.3** sent by facsimile, email, or web-based project management software, provided the original, signed document is delivered within three business days after the date of the electronic transmission.



**9.5.2** When the Owner, Contracting Authority, A/E, or a Contractor gives notice to one of the other three, it shall also simultaneously send a copy of that notice to the others.

**9.5.3** A copy of all notices, certificates, requests, or other communications to the Contracting Authority shall be sent to the Project Manager.

**9.5.4** In the event of an emergency involving the Project, including a fatality, serious injury, fire, collapse, flood, utility, or power loss to occupied facilities, explosion, or environmental damage, the A/E shall immediately notify the Contracting Authority and Owner by the most expedient means available.

**9.5.5** The Contracting Authority, Owner, or A/E may, by written notice given hereunder, designate addresses, telephone numbers, email addresses, or facsimile numbers to which notices, certificates, requests, or communications shall be sent.

## **9.6 Computing Time**

**9.6.1** When this Agreement refers to a period of time by a number of days, the period shall be computed to exclude the first and include the last day of the period. If the last day of the period falls on a Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation and the period shall end on the next succeeding day that is not a Saturday, Sunday, or legal holiday.

**9.6.2** Except as excluded under **Section 9.6.1**, all periods referred to in this Agreement include Saturdays, Sundays, and legal holidays.

**9.6.3** The standard workdays for State projects are Monday through Friday, excluding legal holidays.

## **9.7 Time of the Essence**

**9.7.1** Time limits stated in the Agreement are of the essence of the Agreement and all obligations under the Agreement. By signing the Agreement, the A/E acknowledges that those time limits are reasonable.

**9.7.1.1** The A/E acknowledges that the Contracting Authority and Owner have entered into, or may enter into, other contracts based upon the A/E properly providing the Services in a timely manner.

**9.7.1.2** The A/E shall perform the Services in a reasonable, efficient, and economical sequence, and in the order and time as provided in the Project Schedule.

**9.7.1.3** The A/E acknowledges that it may be subject to interference, disruption, hindrance, or delay in the progress of the Services from any cause including without limitation acts of Nature or the public enemy, acts of the government not arising from the A/E's failure to comply with Applicable Law, fires, floods, epidemics, weather, and labor disputes beyond the A/E's control. The sole remedy for such interference, disruption, hindrance, or delay shall be an extension of the time for performance of the Services, unless otherwise required by ORC Section 4113.62.

## **9.8 Successors and Assigns**

**9.8.1** The Contracting Authority and A/E each bind themselves, their successors, assigns, and legal representatives, to the other party to this Agreement and to the successors, assigns, and legal representatives of the other party with respect to all terms of this Agreement.

**9.8.2** The Contracting Authority and A/E each acknowledge that the Owner is an intended third-party beneficiary of this Agreement.

**9.8.3** The A/E shall not assign or transfer any right, title, or interest in this Agreement without the Contracting Authority's prior written consent.

## **9.9 Extent of Agreement**

**9.9.1** Entire Agreement. This Agreement, including the attached documents, and the Contract Documents represent the entire and integrated agreement between the Contracting Authority and A/E and supersede all prior negotiations, representations, or agreements, either written or oral.

**9.9.1** Multiple Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

**9.9.2** Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections hereof.

**9.9.3** Precedence. If there are any inconsistencies between the provisions of the Contract Documents and the provisions of this Agreement, the provisions of this Agreement shall prevail.

### 9.10 Severability

9.10.1 If any term or provision of this Agreement, or the application thereof to any Person or circumstance, is finally determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement or the application of such term or provision to other Persons or circumstances, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by Applicable Law.

### 9.11 Electronic and Facsimile Signatures

9.11.1 Any party hereto may deliver a copy of its counterpart signature page to this Agreement via electronic signature software, fax, e-mail, or web-based project management software. Each party hereto shall be entitled to rely upon an electronic, scanned, or facsimile signature of any other party delivered in such a manner as if such signature were an original.

### 9.12 No Third-Party Interest

9.12.1 Except as expressly provided under **Sections 3.1** and **9.8.2**, **(1)** no person or entity, other than the Contracting Authority, Owner, and A/E, will have any right or interest under the Agreement, and **(2)** the Agreement does not create a contractual relationship of any kind between any people or entities other than the Contracting Authority, Owner, and A/E.

### 9.13 Ohio Retirement System

9.13.1 All individuals employed by the A/E that provide personal services to the Contracting Authority or Owner are not public employees for the purposes of ORC Chapter 145, as amended.

9.13.2 If the A/E is a PERS retirant, as defined by ORC Section 145.38, the A/E shall notify the Contracting Authority of such status in writing prior to commencement of Work. The Contracting Authority, Owner, or State is not responsible for changes to the A/E's retirement benefits resulting from entering into this Agreement.

### 9.14 No Waiver

9.14.1 The failure of the Contracting Authority or A/E to insist in any one or more instances upon the strict performance of any one or more of the provisions of the Agreement or to exercise any rights under the Agreement or provided by law will not be construed as a waiver or relinquishment of that provision or right or of the right to subsequently demand strict performance or exercise the right and the rights will continue unchanged and remain in full force and effect.

### 9.15 Rights and Remedies

9.15.1 The duties, obligations, rights, and remedies under the Agreement are in addition to and not a limitation of the duties, obligations, rights, and remedies otherwise imposed by or available under Applicable Law.

### 9.16 Survival of Obligations

9.16.1 All representations, indemnity obligations, warranties, guarantees, and necessarily continuing obligations under the Agreement, will survive final payment, completion and acceptance of the Work, and termination or completion of the Agreement.

## ARTICLE 10 - DEFINED TERMS AND ABBREVIATIONS

10.1 For the purposes of this Agreement, the words, terms, and abbreviations set forth below have the following meanings:

10.1.1 "Architect/Engineer" or "A/E" means the Person identified in the Agreement responsible for providing professional design services and construction contract administration for the Project. The A/E shall be **(1)** a registered architect holding a license and certificate of authorization issued by the Ohio Architects Board pursuant to ORC Chapter 4703, **(2)** a landscape architect holding a license and certificate of authorization issued by the Ohio Landscape Architects Board pursuant to ORC Chapter 4703, or **(3)** a professional engineer or professional surveyor holding a license and certificate of authorization issued by the Ohio Engineers and Surveyors Board pursuant to ORC Chapter 4733. As used in the Agreement, the term A/E may include a criteria architect or engineer for a Design-Build project.

10.1.2 "A/E's Documents" means all Project-related documents, including those in electronic form, prepared by the A/E or Consultants.

10.1.3 "Consultant" means a Person engaged by the A/E to provide or perform a portion of the Services.

**10.1.4** “Contractor” means a Person, which is party to a contract for the performance of Work on the Project in cooperation with Separate Contractors and Persons, and in accordance with the Contract Documents. As used in the Agreement, the term Contractor may include a Construction Manager at Risk or a Design-Builder.

**10.1.5** “Direct Personnel Expense” means the portion of direct salaries and wages of all personnel of the A/E or any Consultants, as applicable, including professional, technical, management, administrative and clerical employees, and principals engaged on the Project related to their time devoted to the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto such as employment taxes and other statutory employee benefits, social security contributions, insurance, sick leave, holidays, vacations, pensions, profit sharing, and similar benefits related to their time devoted to the Project.

**10.1.6** “Equal Opportunity Coordinator” means the public official who exercises the duties and responsibilities of the position of the equal employment opportunity coordinator identified in ORC Section 121.04, including issuing certificates of compliance with the State’s affirmative action and EDGE programs.

**10.1.7** “Fee” (as in “Basic Fee,” “Additional Services Fees,” and otherwise) means all of the compensation to be paid by the Owner to the A/E on account of the proper, timely, and complete performance of the associated Services by the A/E or its Consultants, including salaries or other compensation of the A/E’s employees at the principal office, branch offices, and the field office, general operating expenses of the A/E’s principal office, branch offices, and the field office, any part of the A/E’s capital expenses, including interest on the A/E’s capital employed for the Project, overhead or expenses of any kind, except Reimbursable Expenses, any costs incurred due to the A/E’s negligence, the A/E’s general advertising, federal, state or local income, sales or other taxes, state franchise taxes and qualification fees, and membership in trade, business or professional organizations.

**10.1.8** “Indemnified Parties” means the State, Contracting Authority, Owner, and their respective officials, officers, consultants, agents, representatives, and employees, in both individual and official capacities.

**10.1.9** “Life-Cycle Cost” means the sum of present values of investment costs, capital costs, installation costs, energy costs, operating costs, maintenance costs, and disposal costs over the lifetime of the Project, product, or measure.

**10.1.10** “Life-Cycle Cost Analysis” means an economic method for assessing the total cost of facility ownership, taking into account all costs of acquiring, owning, maintaining, and disposing of a building or building system. Life Cycle Cost Analysis is also utilized to compare design alternatives that fulfill the same performance requirements, but differ with respect to initial costs and operating costs, in order to select the one that maximizes net savings.

**10.1.11** “Project Schedule” means a document that, with respect to each Phase of the Project, identifies, coordinates and integrates the anticipated design and construction schedules, the Contracting Authority’s and Owner’s responsibilities, government authority reviews and other activities as are necessary for the timely completion of the Work.

**10.1.12** “Reimbursable Expenses” means actual expenditures incurred by the A/E or its Consultants in the interest of the Project, approved by the Contracting Authority for reproduction of Contract Documents for distribution to Bidders, plan approval fees, building permits, and, if requested by the Owner or Contracting Authority, reformatting Project Record Submittals to a computer medium different than the computer medium used by the A/E.

**10.1.13** “Services” includes all of the A/E’s obligations, individually or collectively, under the Agreement including all items reasonably inferable from the Agreement, whether provided or to be provided by the A/E, a Consultant, or any other entity for whom the A/E is responsible. The Services include both Basic Services and Additional Services as defined in the Agreement.

**10.1.14** “Submittals” means Shop Drawings, Product Data, Samples, and other items for the A/E’s review and action provided by a Contractor for any item required by the Contract Documents, but not fully described in the Contract Documents.

**END OF DOCUMENT**

# Exhibit B - Architect/Engineer's Scope of Services

State of Ohio Professional Services Agreement

Construction Manager at Risk Project

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## ARTICLE 1 - BASIC SERVICES

### 1.1 General

1.1.1 Basic Services to be provided by the A/E shall consist of the activities and stages set forth in **Article 2** through **Article 9**, inclusive, and include usual and customary architectural, civil, structural, mechanical, electrical, and landscape design and engineering services for the Project, any necessary signage and graphics, and any services necessary to comply with the ORC Section 3379.10 Percent for Arts Program.

### 1.2 Sustainability Requirements

1.2.1 This Project shall be designed and constructed in accordance with the requirements of Am. Sub. H.B. 251 of the 126<sup>th</sup> General Assembly and resulting rules, policies, and procedures adopted by the Commission establishing Sustainability Requirements for Capital Improvements Projects, including applicable provisions of OAC 3318-3:

1.2.1.1 The A/E shall incorporate cost-effective, energy-efficient, green-building practices to the maximum extent possible into the Project.

1.2.1.2 If the Owner is an agency of the state of Ohio, the A/E shall design new construction so that fossil-fuel, greenhouse gas emitting, energy consumption of the facility is reduced by 65 percent, as compared to the regional average for that building type as evidenced by the U.S. Environmental Protection Agency's Target Finder calculator.

1.2.1.3 If the Owner is an agency of the state of Ohio, the A/E shall design renovations so that fossil-fuel, greenhouse gas emitting, energy consumption of the facility is reduced by 50 percent, as compared to the regional average for that building type as evidenced by the U.S. Environmental Protection Agency's Target Finder calculator.

1.2.1.4 The Owner may apply to the Commission for a waiver of compliance with the requirements of **Section 1.2.1.2**, **Section 1.2.1.3**, or both.

### 1.3 Best Value Selection of Contractor

1.3.1 To the extent the Contracting Authority requests, the A/E shall assist the Contracting Authority with the selection of the Contractor, which will serve as the Project's construction-manager at risk.

### 1.4 Consultation

1.4.1 The A/E with the Contractor shall jointly schedule and attend regular meetings with the Contracting Authority and Owner. The A/E shall consult with the Contracting Authority, Owner, and Contractor regarding Site use and improvements and the selection of materials, building systems, and equipment. The A/E shall give due consideration to the Contractor's recommendations to the Contracting Authority, Owner, and A/E on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and

construction completion; and factors related to construction cost, including estimates of alternative designs or materials, budgets and possible economies of scale.

**1.4.2** At all appropriate times throughout performance of the Work, the A/E shall contact, meet, consult, and otherwise coordinate with the Contracting Authority, Owner, Contractor, governmental authorities with jurisdiction over the Project, and others for the purpose of facilitating the Project's design and construction.

## **1.5 Design Schedule**

**1.5.1** Within ten days after execution of this Agreement, or other period agreed by the A/E and Contracting Authority, the A/E shall submit, for approval by the Contracting Authority and Owner, a Design Schedule for performance of the A/E's Services.

**1.5.2** The Design Schedule shall include allowances for reasonable periods required for review and approval of items by the Contracting Authority and Owner, and for approvals of governmental authorities that have jurisdiction over the Project.

**1.5.3** Unless the Contracting Authority or Owner notify the A/E of objections to the Design Schedule within 30 days after receiving it, the Contracting Authority and Owner shall be deemed to have approved the Design Schedule.

**1.5.4** The A/E shall coordinate the Design Schedule with the Project Schedule.

**1.5.5** The A/E shall not exceed or adjust the Design Schedule after its initial approval without the prior written consent of the Contracting Authority and Owner.

**1.5.6** The A/E shall perform its Services in a timely manner consistent with the Project Schedule.

## **1.6 Notice of Project Changes after GMP Amendment**

**1.6.1** As the A/E develops the Project after the Owner and the Contractor enter into a GMP Amendment, the A/E shall:

**1.6.1.1** promptly notify the Contracting Authority, Owner, and Contractor in writing of the need for any changes in Project requirements or in construction materials, systems, or equipment and of the need for any adjustments in the Contractor's estimates of Construction Cost and Project Schedule; and

**1.6.1.2** promptly notify the Contracting Authority, Owner, and Contractor in writing of any revision of the Project that would cause a change in the Contract Sum or Contract Times.

- .1** If the Contracting Authority and Owner approve of any such revision, the A/E shall prepare the related Change Order.
- .2** After the Owner and Contractor enter into a GMP Amendment, the A/E is not authorized to change the Project in any way that would cause a change in the Contract Sum or Contract Times except as provided under this **Section 1.6.1.2**.

## **1.7 Estimating**

**1.7.1** In order to facilitate the usefulness and reliability of the A/E's and the Contractor's respective estimating deliverables, **(1)** before the start of estimating, the A/E and the Contractor shall reach agreement on a common estimating protocol and deliverable format for the Project, but **(2)** the A/E shall otherwise complete its estimating Services independent of the Contractor's estimating services.

# **ARTICLE 2 - PROGRAM VERIFICATION**

## **2.1 Commencement**

**2.1.1** The A/E's Services will begin on the date set forth in a notice that the Contracting Authority will issue to the A/E ("Notice to Commence Services").

## **2.2 Organizational Meeting**

**2.2.1** Unless the Contracting Authority agrees otherwise in writing, the A/E's Services will begin with an organizational meeting between the Contracting Authority, Owner, A/E, and Contractor. All of the A/E's key personnel involved in the Project shall attend the organizational meeting.

**2.2.2** During the organizational meeting, the attendees may:

- 2.2.2.1** review the responsibilities of each of the Contracting Authority and Owner's key personnel involved in the Project;
- 2.2.2.2** review the responsibilities of each of the A/E's key personnel involved in the Project;
- 2.2.2.3** review the responsibilities of each of the Contractor's key personnel involved in the Project;
- 2.2.2.4** review and establish lines of communication between the Contracting Authority, Owner, A/E, and Contractor;
- 2.2.2.5** review then-available programming and other documents that reflect the current status of the Project's design;
- 2.2.2.6** review the various time periods established in the General Conditions to determine whether any adjustments are needed in view of the Project's scope, schedule, and budget requirements;
- 2.2.2.7** review and reach agreement on the number and timing of GMP Amendments and GMP Proposal and Amendment processes for the Project in view of the Project's scope, schedule, and budget requirements;
- 2.2.2.8** review and reach agreement on the scope and timing of the A/E's deliverables and other information the Contractor needs to properly prepare its proposed GMP Amendment(s) and to solicit Bids for the Work;
- 2.2.2.9** review and reach agreement on timing and sequencing requirements for the A/E's and Contractor's deliverables and related review and revision periods; and
- 2.2.2.10** determine the need for and schedule follow-up meetings to resolve **(1)** the estimating protocol and deliverable format to be used on the Project; **(2)** adjustments of various time periods established in the General Conditions; **(3)** the number and timing of GMP Amendments and GMP Proposal and Amendment processes; **(4)** the development of the Project schedule, etc.

**2.2.3** If the Contractor has not submitted a proposed Project Schedule to the Contracting Authority, Owner, and A/E before the organizational meeting or if the organizational meeting resulted in changes to a previously submitted Project Schedule, within five days after the organizational meeting is adjourned the Contractor will submit a proposed or revised Project Schedule to the Contracting Authority, Owner, and A/E.

**2.2.3.1** The Contracting Authority, Owner, A/E, and Contractor will promptly thereafter consult with one another as necessary to reach agreement on the Project Schedule, which shall be used as the basis for moving forward with the Project subject to revision.

**2.2.3.2** The A/E shall align the Design Schedule with the agreed-upon Project Schedule.

**2.2.4** Within five days after the organizational meeting is adjourned, the A/E will prepare and distribute the meeting's minutes.

**2.2.4.1** If the Project is administered using the State's web-based project management software, the A/E shall distribute the minutes of the organizational meeting through the "Meeting Minutes" business process.

## **2.3 General Requirements**

**2.3.1** In addition to performing those Services required to comply with **Sections 2.4** through **2.7**, during the Program Verification Stage, the A/E shall:

- 2.3.1.1** review the preliminary Project needs, design, schedule, and budget information furnished by the Contracting Authority and Owner to ascertain the requirements of the Project and arrive at a mutual understanding of the Project's preliminary requirements with the Contracting Authority, Owner, and Contractor;
- 2.3.1.2** verify Owner-provided drawings and information concerning existing buildings, utilities, and other conditions, and prepare measured drawings of existing conditions when necessary to properly perform the Services;
- 2.3.1.3** document and evaluate existing building and utilities systems to be affected during the Project; and
- 2.3.1.4** meet with the Contracting Authority to identify and evaluate Program requirements.

## **2.4 A/E's Program Verification Submission**

**2.4.1** Based upon a mutual understanding of the Project's preliminary requirements, the A/E shall prepare the Program Documents. The A/E shall submit the provisional Program Documents to the Contracting Authority, Owner, and Contractor on or before the date identified in the Project Schedule for that submission.

**2.4.2** The provisional Program Documents shall be in the form of a written report, which may include graphics, but shall include:

**2.4.2.1** an executive summary of the Program Documents;

**2.4.2.2** a narrative description of the Project and the design goals;

**2.4.2.3** a description of space requirements, including a listing of desired spaces and identification of each space's basic criteria such as dimensions, proportions, ceiling heights, and service, equipment, storage, utility, access, flexibility, configuration, security, adjacency, aesthetic, and other requirements;

**2.4.2.4** a description of planning and design criteria such as workstation, office/room standards; clustering and layout criteria; circulation criteria; applicable space-planning modules; dimensional criteria; building systems interface criteria; envelope criteria; accessibility requirements; and a description of performance criteria applicable to building components such as envelope, structure, interior construction, and mechanical, electrical, and plumbing systems;

**2.4.2.5** a preliminary evaluation of the Program, Project Schedule, and Construction Budget requirements, each in terms of the other including a description of the distribution of the Construction Budget between major Project components, contingencies, and other categories the Contracting Authority may designate;

**2.4.2.6** preliminary recommendations regarding selection of materials, building systems, and equipment;

**2.4.2.7** a review of feasible alternative approaches to design and construction of the Project, if any, including the estimated budget and schedule impacts of those alternative approaches;

**2.4.2.8** an identification of Applicable Law; and

**2.4.2.9** all other documents and information required under the **Minimum Stage Submission Requirements** attached as an exhibit to the **Agreement Form**.

**2.4.3** If all of the Work is not subject to an executed GMP Amendment at the time of the A/E's Program Verification submission, the A/E shall prepare a preliminary estimate of Construction Cost ("A/E's Program Estimate") using area, volume or similar conceptual estimating techniques. For any Work that is subject to an executed GMP Amendment at the time of the A/E's Program Verification submission, the A/E shall include in the A/E's Program Estimate the associated Contract Sum. The A/E shall submit the A/E's Program Estimate to the Contracting Authority, Owner, and Contractor no later than the date on which the Contractor is required to submit its Program Verification Stage Submission.

**2.4.4** If the Project is administered using the State's web-based project management software, the A/E shall submit the provisional Program Documents and any revisions through the "Program of Requirements" business process.

## **2.5 Review of Provisional Program Documents**

**2.5.1** The Contractor will review the provisional Program Documents after receiving them. At completion of that review, the Contractor will notify the Contracting Authority, Owner, and A/E in writing if in the Contractor's opinion, the Contractor is unable to represent to the Contracting Authority and the Owner that the A/E's provisional documents are consistent with what the Contractor would reasonably expect to see in documents at a similar stage of completion on a similar project. The Contracting Authority's agreement with the Contractor further defines the criteria of the Contractor's review.

**2.5.2** If it is the Contractor's opinion that the provisional Program Documents do not reflect what the Contractor would reasonably expect to see in program documents on a similar project, the A/E shall immediately meet with the Contracting Authority and Contractor to review the Opinion. The Contracting Authority will thereafter determine an appropriate course of action, which may include the A/E's revision and resubmission of its provisional Program Documents under **Section 2.4** and the Contractor's re-evaluation of them.

## **2.6 Contractor's Program Verification Stage Submission**

**2.6.1** At the completion of the activities described under **Section 2.5** and based on the provisional Program Documents, the Contractor will submit its Program Verification Stage Submission.

**2.6.2** If all of the Work is not subject to an executed GMP Amendment at the time of the Contractor's Program Verification Stage Submission, the Contractor will include in its Program Verification Stage Submission a preliminary estimate of Construction Cost ("Contractor's Program Estimate") using area, volume, or similar conceptual estimating techniques.

**2.6.2.1** If the Contractor's Program Estimate exceeds the Construction Budget or varies from the A/E's Program Estimate, the Contracting Authority may require the A/E to immediately work with the Contractor to develop viable

proposals to reconcile the estimates with each other and the Construction Budget. The Contractor will present those proposals as an addendum to its Program Verification Stage Submission.

**2.6.3** If a GMP Amendment has been entered into at the time of the Contractor's Program Verification Stage Submission, the Contractor shall include with the Contractor's Program Verification Stage Submission a detailed description of any change in the scope of the Work described in the provisional Program Documents as compared to the scope of the Work described in the GMP Documents and an estimate of the cost and time impact of each change.

## **2.7 Program Documents Review**

**2.7.1** After the Contracting Authority and Owner have had a reasonable period to review the provisional Program Documents and the Contractor's Program Verification Stage Submission, the Contracting Authority, A/E, and Contractor shall meet to discuss the provisional Program Documents and the Contractor's Program Verification Stage Submission and reach agreement on any Contracting Authority-authorized adjustments to the Project Schedule, Construction Budget, or Project Budget and any necessary clarifications of the provisional Program Documents and Contractor's Program Verification Stage Submission.

**2.7.2** Unless the Contracting Authority agrees otherwise in writing, within five business days after the review meeting, the A/E and Contractor shall revise their respective Program submissions to reflect the adjustments and clarifications agreed upon in the review meeting, and resubmit those documents to each other, the Owner, and Contracting Authority.

**2.7.3** When the Contracting Authority and Owner approve the revised Program submissions and sign the related Design Review Acceptance form, the revised Program submissions shall become the Approved Program of Requirements.

## **ARTICLE 3 - SCHEMATIC DESIGN**

### **3.1 Commencement**

**3.1.1** Unless the Contracting Authority directs otherwise in writing, the Schematic Design Stage will begin upon completion of the activities described under **Article 2**.

### **3.2 General Requirements**

**3.2.1** In addition to performing those Services required to comply with **Sections 3.3** through **3.7**, during the Schematic Design Stage, the A/E shall:

**3.2.1.1** advise the Contracting Authority, Owner, and Contractor in writing if at any time it appears that the Project Schedule or Construction Budget may be exceeded and make recommendations for corrective action;

**3.2.1.2** meet with the Contracting Authority, Owner, and Contractor at intervals acceptable to the Contracting Authority and Owner, to review drawings and other documents that depict the current status of the Schematic Design Stage of the Project;

**3.2.1.3** further evaluate and refine the Approved Program of Requirements;

**3.2.1.4** identify all issues related to compliance with Applicable Law and participate in related meetings with government authorities that have jurisdiction over the Project;

**3.2.1.5** investigate existing conditions and verify the accuracy of Owner-provided information about existing conditions, as appropriate;

**3.2.1.6** notify the Owner of the need for and assist the Owner in selecting, retaining, and coordinating the professional services of any Separate Consultants required for the Project;

**3.2.1.7** assist the Owner and Contractor with filing documents required for the approvals of governmental authorities with jurisdiction over the Project;

**3.2.1.8** work with the Contractor to locate new grading, drainage, and Site utilities;

**3.2.1.9** review and provide recommendations concerning Site use and improvements and alternative approaches to selection of materials, building systems, and equipment; and

**3.2.1.10** assist the Contractor with the Contractor's obligations to provide recommendations on construction feasibility, availability of materials and labor (including actions designed to minimize adverse effects of labor shortages), time requirements for construction, and factors related to Project cost, including costs of alternative designs or materials, preliminary budgets, and possible economies of scale.



### 3.3 Life-Cycle Cost Analysis

**3.3.1** At the time set forth in the Project Schedule, the A/E shall prepare and submit practical alternative design concepts, considering passive and/or active building components, for the purpose of minimizing future energy consumption, to the Contractor.

**3.3.1.1** The A/E shall estimate the annual energy consumption and associated energy costs of each alternative, analyze their impact on facility life-cycle costs and incorporate cost effective alternatives into the final design.

**3.3.1.2** The A/E shall re-evaluate life-cycle cost as additional alternatives are considered during the continuing design development to assure their cost-effective implementation.

**3.3.1.3** The Contractor shall promptly review, comment on, and forward the alternative design concepts with the Contractor's comments to the Owner and Contracting Authority.

**3.3.2** The A/E shall base the Schematic Design Documents on the Owner's selected design concept.

**3.3.3** If the Project constructs or renovates an area of 5,000 square feet or more, the A/E, assisted by the Contractor, shall submit a design to the Commission that incorporates a life-cycle cost analysis that shall determine the reasonably expected costs of facility ownership, operation, maintenance, and disposal including labor and materials for the economic life of the facility.

### 3.4 A/E's Schematic Design Submission

**3.4.1** The A/E shall submit the provisional Schematic Design Documents to the Contracting Authority, Owner, and Contractor on or before the date identified in the Project Schedule for that submission.

**3.4.2** The provisional Schematic Design Documents shall include:

**3.4.2.1** a conceptual site plan and preliminary building plans, sections, and elevations illustrating the Project's scale and the relationship of Project components to one another and the relationship of the Project to surrounding properties;

**3.4.2.2** if not noted on the drawings, a written description of preliminary selections of major building systems and construction materials;

**3.4.2.3** cost evaluations of alternative building systems and construction materials;

**3.4.2.4** an identification of any unresolved issues related to compliance with Applicable Law;

**3.4.2.5** a written description of all modifications of the Approved Program of Requirements;

**3.4.2.6** if agreed in writing by the Contracting Authority, the A/E will develop study models, perspective sketches, electronic modeling, or combinations of those media; and

**3.4.2.7** all other documents and information required under the **Minimum Stage Submission Requirements** attached as an exhibit to the **Agreement Form**.

**3.4.3** If all of the Work is not subject to an executed GMP Amendment at the time of the A/E's Schematic Design submission, the A/E shall prepare an estimate of Construction Cost ("A/E's Schematic Design Estimate") using area, volume, or similar conceptual estimating techniques. For any Work that is subject to an executed GMP Amendment at the time of the A/E's Schematic Design submission, the A/E shall include in the A/E's Schematic Design Estimate the associated Contract Sum. The A/E shall submit the A/E's Schematic Design Estimate to the Contracting Authority, Owner, and Contractor no later than the date on which the Contractor is required to submit its Schematic Design Stage Submission.

**3.4.4** If the Project is administered using the State's web-based project management software, the A/E shall submit the provisional Schematic Design Documents and any revisions through the "Design Review" business process.

### 3.5 Review of Provisional Schematic Design Documents

**3.5.1** The Contractor will review the provisional Schematic Design Documents after receiving them. At completion of that review, the Contractor will notify the Contracting Authority, Owner, and A/E in writing if in the Contractor's opinion, the Contractor is unable to represent to the Contracting Authority and the Owner that the A/E's provisional documents are consistent with what the Contractor would reasonably expect to see in documents at a similar stage of completion on a similar project. The Contracting Authority's agreement with the Contractor further defines the criteria of the Contractor's review.

**3.5.2** If it is the Contractor's opinion that the provisional Schematic Design Documents do not reflect what the Contractor would reasonably expect to see in schematic design documents on a similar project, the A/E shall

immediately meet with the Contracting Authority and Contractor to discuss the Opinion. The Contracting Authority will thereafter determine an appropriate course of action, which may include the A/E's revision and resubmission of its provisional Schematic Design Documents under **Section 3.3.3** and the Contractor's re-evaluation of them.

### **3.6 Contractor's Schematic Design Stage Submission**

**3.6.1** At the completion of the activities described under **Section 3.5** and based on the provisional Schematic Design Documents, the Contractor will submit its Schematic Design Stage Submission.

**3.6.2** If all of the Work is not subject to an executed GMP Amendment at the time of the Contractor's Schematic Design Stage Submission, the Contractor will include in its Schematic Design Stage Submission the Contractor's estimate of Construction Costs ("Contractor's Schematic Design Estimate").

**3.6.2.1** If the Contractor's Schematic Design Estimate exceeds the Construction Budget or varies from the A/E's Schematic Design Estimate, the Contracting Authority may require the A/E to immediately work with the Contractor to develop viable proposals to reconcile the estimates with each other and the Construction Budget. The Contractor will present those proposals as an addendum to its Schematic Design Stage Submission.

**3.6.3** If a GMP Amendment has been entered into at the time of the Contractor's Schematic Design Stage Submission, the Contractor shall include with the Contractor's Schematic Design Stage Submission a detailed description of any change in the scope of the Work described in the provisional Schematic Design Documents as compared to the scope of the Work described in the GMP Documents and an estimate of the cost and time impact of each change.

### **3.7 Schematic Design Documents Review**

**3.7.1** After the Contracting Authority and Owner have had a reasonable period to review the provisional Schematic Design Documents, the Contracting Authority, A/E, and Contractor shall meet to discuss the provisional Schematic Design Documents and Contractor's Schematic Design Stage Submission and reach agreement on any Contracting Authority-authorized adjustments to the Approved Program of Requirements, Project Schedule, Construction Budget, or Project Budget and any necessary clarifications of the provisional Schematic Design Documents and Contractor's Schematic Design Stage Submission.

**3.7.2** Unless the Contracting Authority agrees otherwise in writing, within five business days after the review meeting, the A/E and Contractor shall revise their respective Schematic Design submissions to reflect the adjustments and clarifications agreed upon in the review meeting, and resubmit those documents to each other, the Owner, and Contracting Authority.

**3.7.3** When the Contracting Authority and Owner approve the revised Schematic Design submissions and sign the related Design Review Acceptance form, the revised Schematic Design submissions shall become the final Schematic Design Documents.

## **ARTICLE 4 - DESIGN DEVELOPMENT**

### **4.1 Commencement**

**4.1.1** Unless the Contracting Authority directs otherwise in writing, the Design Development Stage will begin upon completion of the activities described under **Article 3**.

### **4.2 General Requirements**

**4.2.1** In addition to performing those Services required to comply with **Sections 4.3** through **4.6**, during the Design Development Stage, the A/E shall:

**4.2.1.1** advise the Contracting Authority, Owner, and Contractor in writing if at any time it appears that the Project Schedule or Construction Budget may be exceeded and make recommendations for corrective action;

**4.2.1.2** meet with the Contracting Authority, Owner, and Contractor at intervals acceptable to the Contracting Authority and Owner, to review drawings and other documents that depict the current status of the Design Development Stage of the Project;

**4.2.1.3** further evaluate and refine the Approved Program of Requirements;

**4.2.1.4** prepare and submit a sole-source justification letter describing any materials, products, or systems included in the Work that are only available from a single manufacturer, supplier, or contractor to the Contracting Authority for its approval in writing;

- 4.2.1.5 resolve all issues related to compliance with Applicable Law (except to the extent stated otherwise in writing by the A/E for necessary variances and waivers at the time of the A/E's provisional Design Development Document submission) and participate in related meetings with government authorities that have jurisdiction over the Project;
- 4.2.1.6 investigate existing conditions and verify the accuracy of Owner-provided information about existing conditions, as appropriate;
- 4.2.1.7 notify the Owner of the need for and assist the Owner in selecting, retaining, and coordinating the professional services of any Separate Consultants required for the Project;
- 4.2.1.8 assist the Owner and Contractor with filing documents required for the approvals of governmental authorities with jurisdiction over the Project;
- 4.2.1.9 review and provide recommendations concerning Site use and improvements and alternative approaches to selection of materials, building systems, and equipment; and
- 4.2.1.10 assist the Contractor with the Contractor's obligations to provide recommendations on construction feasibility, availability of materials and labor (including actions designed to minimize adverse effects of labor shortages), time requirements for construction, and factors related to Project cost, including costs of alternative designs or materials, preliminary budgets, and possible economies of scale.

### 4.3 A/E's Design Development Submission

- 4.3.1 The A/E shall submit the provisional Design Development Documents to the Contracting Authority, Owner, and Contractor on or before the date identified in the Project Schedule for that submission.
- 4.3.2 The provisional Design Development Documents shall include:
  - 4.3.2.1 plans, sections, elevations, typical construction details, and equipment layouts that illustrate and describe refinement of the Project's design and the size and character of the Project in terms of architectural, structural, mechanical, plumbing, and electrical systems, materials, and other elements as may be appropriate;
  - 4.3.2.2 specifications sufficient to identify the quality and other characteristics of the proposed or selected materials, equipment, finishes, fixtures, and systems;
  - 4.3.2.3 a draft Design Intent Statement unless (1) the A/E is already required to submit a Design Intent Statement under **Section 6.2.2** at this Stage of the Project or (2) all of the Work is subject to an executed GMP Amendment at the time of the A/E's submission;
  - 4.3.2.4 a written description of all proposed or previously agreed upon Alternates, which description may be included in the specifications rather than as a separate document;
  - 4.3.2.5 a written description of all proposed or previously agreed upon Allowances;
  - 4.3.2.6 an identification of any unresolved issues related to compliance with Applicable Law;
  - 4.3.2.7 a written description of all modifications of the Approved Program of Requirements; and
  - 4.3.2.8 all other documents and information required under the **Minimum Stage Submission Requirements** attached as an exhibit to the **Agreement Form**.
- 4.3.3 If all of the Work is not subject to an executed GMP Amendment at the time of the A/E's Design Development submission, the A/E shall prepare a detailed estimate of Construction Cost ("A/E's Design Development Estimate"). For any Work that is subject to an executed GMP Amendment at the time of the A/E's Design Development submission, the A/E shall include in the A/E's Design Development Estimate the associated Contract Sum. The A/E shall submit the A/E's Design Development Estimate to the Contracting Authority, Owner, and Contractor no later than the date on which the Contractor is required to submit its Design Development Stage Submission.
- 4.3.4 If the Project is administered using the State's web-based project management software, the A/E shall submit the provisional Design Development Documents and any revisions through the "Design Review" business process.
- 4.3.5 If the Owner is a cabinet agency of the state of Ohio and the Project consists of new construction, addition, or major renovation, the A/E shall also submit one copy of the following provisional Design Development Documents as PDF files to the Ohio Homeland Security Infrastructure Protection and Technology Unit (Department of Public Safety, Strategic Analysis and Information Center, 1970 West Broad Street, Second Floor, Columbus, Ohio 43223) through the Contracting Authority for review and written comment:
  - 4.3.5.1 site plan with walkways, roadways, and parking lots shown;
  - 4.3.5.2 building egress plan showing emergency egress routes, exits, and entrances;

- 4.3.5.3 major elevations including fresh air intake locations;
- 4.3.5.4 security plan with camera locations and access control facilities; and
- 4.3.5.5 symbol legends for each type of drawing requested.

#### 4.4 Review of Provisional Design Development Documents

4.4.1 The Contractor will review the provisional Design Development Documents after receiving them. At completion of that review, the Contractor will notify the Contracting Authority, Owner, and A/E in writing if in the Contractor's opinion, the Contractor is unable to represent to the Contracting Authority and the Owner that the A/E's provisional documents are consistent with what the Contractor would reasonably expect to see in documents at a similar stage of completion on a similar project. The Contracting Authority's agreement with the Contractor further defines the criteria of the Contractor's review.

4.4.2 If it is the Contractor's opinion that the provisional Design Development Documents do not reflect what the Contractor would reasonably expect to see in design development documents on a similar project, the A/E shall immediately meet with the Contracting Authority and Contractor to discuss the Opinion. The Contracting Authority will thereafter determine an appropriate course of action, which may include the A/E's revision and resubmission of its provisional Design Development Documents under **Section 4.3** and the Contractor's re-evaluation of them.

#### 4.5 Contractor's Design Development Stage Submission

4.5.1 At the completion of the activities described under **Section 4.4** and based on the provisional Design Development Documents, the Contractor will submit its Design Development Stage Submission.

4.5.2 If all of the Work is not subject to an executed GMP Amendment at the time of the Contractor's Design Development Stage Submission, the Contractor will include in its Design Development Stage Submission the Contractor's estimate of Construction Costs ("Contractor's Design Development Estimate").

4.5.2.1 If the Contractor's Design Development Estimate exceeds the Construction Budget or varies from the A/E's Design Development Estimate, the Contracting Authority may require the A/E to immediately work with the Contractor to develop viable proposals to reconcile the estimates with each other and the Construction Budget. The Contractor will present those proposals as an addendum to its Design Development Stage Submission.

4.5.3 If a GMP Amendment has been entered into at the time of the Contractor's Design Development Stage Submission, the Contractor shall include with the Contractor's Design Development Stage Submission a detailed description of any change in the scope of the Work described in the provisional Design Development Documents as compared to the scope of the Work described in the GMP Documents and an estimate of the cost and time impact of each change.

#### 4.6 Design Development Documents Review

4.6.1 After the Contracting Authority and Owner have had a reasonable period to review the provisional Design Development Documents, the Contracting Authority, Owner, A/E, and Contractor shall meet to discuss the provisional Design Development Documents and the Contractor's Design Development Stage Submission and reach agreement on any Contracting Authority-authorized adjustments to the Approved Program of Requirements, Project Schedule, Construction Budget, or Project Budget and any necessary clarifications of the provisional Design Development Documents and Contractor's Design Development Stage Submission.

4.6.2 Unless the Contracting Authority agrees otherwise in writing, within five business days after the review meeting, the A/E and Contractor shall revise their respective Design Development submissions to reflect the adjustments and clarifications agreed upon in the review meeting (including any comments from the Ohio Homeland Security Infrastructure Protection and Technology Unit, which have been reviewed and approved by the Owner), and resubmit those documents to each other, the Owner, and Contracting Authority.

4.6.3 When the Contracting Authority and Owner approve the revised Design Development submissions and sign the related Design Review Acceptance form, the revised Design Development submissions shall become the final Design Development Documents.

## ARTICLE 5 - CONSTRUCTION DOCUMENTS

### 5.1 Commencement

5.1.1 Unless the Contracting Authority directs otherwise in writing, the Construction Documents Stage will begin upon completion of the activities described under **Article 4**.

## 5.2 General Requirements

**5.2.1** In addition to performing those Services required to comply with **Sections 5.3** through **5.7**, during the Construction Documents Stage, the A/E shall:

- 5.2.1.1** advise the Contracting Authority, Owner, and Contractor in writing if at any time it appears that the Project Schedule or Construction Budget may be exceeded and make recommendations for corrective action;
- 5.2.1.2** meet with the Contracting Authority, Owner, and Contractor at intervals acceptable to the Contracting Authority and Owner, to review drawings and other documents that depict the current status of the Construction Documents Stage of the Project;
- 5.2.1.3** if professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor, specify all performance and design criteria that those services must satisfy;
- 5.2.1.4** incorporate into the Construction Documents the design requirements of government authorities with jurisdiction over the Project;
- 5.2.1.5** prepare the Drawings and Specifications to support the Contractor's plan for subcontracting the Work and to encourage competition considering general market conditions and any analysis of labor provided by the Contractor;
- 5.2.1.6** compile the Project Manual;
- 5.2.1.7** resolve all issues related to compliance with Applicable Law (except to the extent stated otherwise in writing by the A/E for necessary variances and waivers at the time of the A/E's Construction Documents submission) and participate in related meetings with government authorities that have jurisdiction over the Project;
- 5.2.1.8** ensure that the Work on the various building systems is coordinated, and proper coordination has been provided for phased construction, if any;
- 5.2.1.9** work with the Contractor to identify areas of the Project that have incomplete documentation or uncoordinated multi-discipline work and thereafter resolve those issues;
- 5.2.1.10** with the Contractor's assistance, develop and include Alternates in the Contract Documents;
- 5.2.1.11** notify the Owner of the need for and assist the Owner in selecting, retaining, and coordinating the professional services of any Separate Consultants required for the Project; and
- 5.2.1.12** assist the Owner and Contractor with filing documents required for the approvals of governmental authorities with jurisdiction over the Project.

## 5.3 A/E's Construction Documents Submission

**5.3.1** The A/E shall submit the provisional Construction Documents to the Contracting Authority, Owner, and Contractor on or before the date identified in the Project Schedule for that submission.

**5.3.1.1** If a portion of the Work is subject to an executed GMP Amendment at the time of the A/E's Construction Documents submission, the Contracting Authority, Owner, Contractor, and A/E may mutually agree to waive the requirements of **Sections 5.3** through **5.6** for that portion of the Work, subject to the provisions of **Section 6.2.4.1**.

**5.3.2** The provisional Construction Documents shall include:

- 5.3.2.1** Drawings setting forth in detail the requirements for construction of the Project;
- 5.3.2.2** Specifications prepared in accordance with the most-current CSI *MasterFormat*;
- 5.3.2.3** the Project Manual; and
- 5.3.2.4** all other documents and information required under the **Minimum Stage Submission Requirements** attached as an exhibit to the **Agreement Form**.

**5.3.3** The A/E shall prepare a detailed estimate of Construction Cost ("A/E's Construction Documents Estimate") unless all of the Work is subject to an executed GMP Amendment at the time of the A/E's Construction Documents submission. If the A/E prepares an A/E's Construction Documents Estimate, the A/E shall include in that estimate the Contract Sum associated with the Work that is subject to an executed GMP Amendment at the time of the A/E's Construction Documents submission. The A/E shall submit the A/E's Construction Documents Estimate to the Contracting Authority, Owner, and Contractor no later than the date on which the Contractor is required to submit its Construction Documents Stage Submission.

**5.3.4** If the Project is administered using the State's web-based project management software, the A/E shall submit its provisional Construction Documents and any revisions through the "Design Review" business process.

## 5.4 Review of Provisional Construction Documents

**5.4.1** The Contractor will review the provisional Construction Documents after receiving them. At completion of that review, the Contractor will notify the Contracting Authority, Owner, and A/E in writing if in the Contractor's opinion, the Contractor is unable to represent to the Contracting Authority and the Owner that the A/E's provisional documents are consistent with what the Contractor would reasonably expect to see in documents at a similar stage of completion on a similar project. The Contracting Authority's agreement with the Contractor further defines the criteria of the Contractor's review.

**5.4.2** If it is the Contractor's opinion that the provisional Construction Documents do not reflect what the Contractor would reasonably expect to see in construction documents on a similar project, the A/E shall immediately meet with the Contracting Authority and the Contractor to discuss the Opinion. The Contracting Authority will thereafter determine an appropriate course of action, which may include the A/E's revision and resubmission of its provisional Construction Documents under **Section 5.3** and the Contractor's re-evaluation of them.

## 5.5 Contractor's Construction Documents Stage Submission

**5.5.1** At the completion of the activities described under **Section 5.4** and based on the provisional Construction Documents, the Contractor will submit its Construction Documents Stage Submission.

**5.5.2** If all of the Work is not subject to an executed GMP Amendment at the time of the Contractor's Construction Documents Stage Submission, the Contractor will include in its Construction Documents Stage Submission the Contractor's estimate of Construction Costs ("Contractor's Construction Documents Estimate").

**5.5.2.1** If the Contractor's Construction Documents Estimate exceeds the Construction Budget or varies from the A/E's Construction Documents Estimate, the Contracting Authority may require the A/E to immediately work with the Contractor to develop viable proposals to reconcile the estimates with each other and the Construction Budget. The Contractor will present those proposals as an addendum to its Construction Documents Stage Submission.

**5.5.3** If a GMP Amendment has been entered into at the time of the Contractor's Construction Documents Stage Submission, the Contractor shall include with the Contractor's Construction Documents Stage Submission a detailed description of any change in the scope of the Work described in the provisional Construction Documents as compared to the scope of the Work described in the GMP Documents and an estimate of the cost and time impact of each change.

## 5.6 Construction Documents Review

**5.6.1** After the Contracting Authority and Owner have had a reasonable period to review the provisional Construction Documents, the Contracting Authority, A/E, and Contractor shall meet to review the provisional Construction Documents and the Contractor's Construction Documents Stage Submission and to reach agreement on any Contracting Authority-authorized adjustments to the Approved Program of Requirements, Project Schedule, Construction Budget, or Project Budget and any necessary clarifications of the provisional Construction Documents and the Contractor's Construction Documents Stage Submission.

**5.6.2** Unless the Contracting Authority agrees otherwise in writing, within five business days after the review meeting, the A/E and Contractor shall revise their respective Construction Documents submissions to reflect the adjustments and clarifications agreed upon in the review meeting, and resubmit those documents to each other, the Owner, and Contracting Authority.

**5.6.3** When the Contracting Authority and Owner approve the revised Construction Documents submissions and sign the related Design Review Acceptance form, the revised Construction Documents submissions shall become the final Construction Documents, subject to **(1)** execution of an appropriate Modification to incorporate the adjustments into the Contract and **(2)** further revisions as provided in the General Conditions.

## 5.7 Government Approvals

**5.7.1** Plan Approval. The A/E shall secure the required structural, plumbing, HVAC, and electrical plan approvals.

**5.7.1.1** The A/E shall attend all intermediate and final inspections required for any permit applicable to the Work including the life safety inspection for occupancy permits.

**5.7.2 Local Permits.** The A/E shall attend all intermediate and final inspections required for any local permit applicable to the Work.

**5.7.3 National Pollutant Discharge Elimination System (“NPDES”) Storm Water General Permit.**

**5.7.3.1** The A/E shall secure the NPDES general permit by submitting a Notice of Intent (“NOI”) application form to the Ohio Environmental Protection Agency at least 45 days prior to the start of construction. The Contractor shall be a “co-permittee” if required under Applicable Law.

**5.7.3.2** The A/E shall prepare and certify a storm water pollution prevention plan to provide sedimentation and erosion controls at the Project.

**5.7.3.3** The A/E shall prepare and process the required Notice of Termination (“NOT”) prior to Contract Completion.

## ARTICLE 6 - GMP PROPOSAL AND AMENDMENT

### 6.1 Commencement

**6.1.1** Unless the Contracting Authority agrees otherwise in writing as provided under **Section 2.2.2.7** or **Section 6.1.1.1**, the GMP Proposal and Amendment process will begin on the date on which the A/E notifies the Contracting Authority, Owner, and Contractor that the Construction Documents are 50 percent complete.

**6.1.1.1** This **Article 6** and related provisions of this Agreement are based upon the assumption that there will be only one GMP Amendment for the Project. The parties recognize, however, that during the Preconstruction Stages, the Contracting Authority and Contractor may decide to use more than one GMP Amendment for the Project in order to accommodate Phased construction. In that case, the Contracting Authority and Contractor will execute a GMP Amendment for each Phase with each amendment after the first one supplementing the previous amendment(s).

### 6.2 A/E’s Services

**6.2.1** The A/E shall meet with the Contracting Authority, Owner, and Contractor to review the GMP Proposal and to agree on necessary clarifications or adjustments of the GMP Proposal. Unless the Contracting Authority agrees otherwise in writing, within five business days after the review meeting, the Contractor shall revise the GMP Proposal to reflect the clarifications and adjustments, and resubmit it to the Contracting Authority, Owner, and A/E. Thereafter, the Contracting Authority, Owner, A/E, and Contractor shall meet to review the revised GMP Proposal and to agree on necessary clarifications or adjustments of the GMP Proposal.

**6.2.2** If the GMP Proposal and Amendment process takes place before the completion of the Construction Documents Stage for the associated Work, within 14 days after the start of the GMP Proposal and Amendment process, the A/E shall prepare and submit the Design Intent Statement to the Contracting Authority, the Owner, and Contractor.

**6.2.3** If the Contractor’s proposed Contract Sum exceeds the Construction Budget, the Contracting Authority may in its complete discretion **(1)** require the A/E to re-perform previously completed Services as necessary to reconcile the Contract Sum with the Construction Budget; or **(2)** terminate the Agreement.

**6.2.3.1** If the Contracting Authority chooses to proceed under **Section 6.2.2** clause **(1)**, the Contracting Authority may require the A/E to re-perform previously completed Services as many times as necessary to reconcile the proposed Contract Sum with the Construction Budget.

**6.2.4** Before the Contracting Authority, Owner, and Contractor sign the GMP Amendment, the Contracting Authority may direct the A/E to revise the A/E-prepared Basis Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Proposal or agreements reached by the Contracting Authority, Owner, and Contractor to change or further define the Project.

**6.2.4.1** After the Contracting Authority, Owner, and Contractor sign the GMP Amendment, the Contracting Authority may direct the A/E to revise the A/E-prepared Basis Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Amendment.

## ARTICLE 7 - SUBCONTRACTOR BUYOUT

### 7.1 Prequalification Process

**7.1.1** During the Prequalification Process, the Contractor shall, as appropriate, submit questions to the A/E. The A/E shall promptly respond to those questions.

7.1.2 If required by the Contracting Authority, the A/E shall meet with the Contracting Authority, Owner, and Contractor to review the qualifications of the prospective Bidders on the list the Contractor submits to the Contracting Authority.

## 7.2 Subcontract Bidding Process

7.2.1 During the Subcontract Bidding Process, the Contractor shall, as appropriate, forward questions from Bidders to the A/E. The A/E shall promptly respond to those questions.

7.2.2 During the Subcontract Bidding Process, the A/E shall prepare addenda for issuance to the prospective Bidders through the Contractor.

7.2.3 Before Work is to be performed by any Subcontractor, the Contractor shall submit to the A/E a Subcontractor and Material Supplier Declaration form through which the Contractor identifies the Subcontractor. After receiving the form, the A/E shall verify that it is complete and deliver it to the Contracting Authority and Owner. If the A/E finds the form incomplete, the A/E shall return it to the Contractor and identify the incomplete information.

7.2.3.1 If the Project is administered using the State's web-based project management software, the A/E shall review and recommend approval or disapproval to the Contracting Authority of each Subcontractor through the "Subcontractor Supplier Declaration" business process.

## 7.3 Evaluation of Lower-Tier Subcontractors

7.3.1 As used in this Section 7.3, a "lower-tier Subcontractor" is any Subcontractor not in privity with the Contractor.

7.3.2 Before Work is to be performed by any lower-tier Subcontractor, the Contractor shall submit to the A/E a **Subcontractor and Material Supplier Declaration** form through which the Contractor identifies the lower-tier Subcontractor. After receiving the form, the A/E shall verify that it is complete and deliver it to the Contracting Authority and Owner. If the A/E finds the form incomplete, the A/E shall return it to the Contractor and identify the incomplete information.

7.3.2.1 If the Project is administered using the State's web-based project management software, the A/E shall review and recommend approval or disapproval to the Contracting Authority of each proposed lower-tier Subcontractor through the "Subcontractor Supplier Declaration" business process.

## 7.4 Self-Performed Work

7.4.1 During the preparation of the Subcontracting Plan, the Contractor shall notify the Contracting Authority that the Contractor or a Contractor Affiliated Entity may Bid on a portion of the Work. The Contracting Authority, the Contractor, and the A/E shall review that Work in detail and agree on its scope before the Contractor finalizes the Subcontracting Plan.

# ARTICLE 8 - CONSTRUCTION

## 8.1 Duration; Extent, Access

8.1.1 Unless the Contracting Authority agrees otherwise in writing, the Construction Stage will commence with the Contracting Authority's issuance of the Notice to Proceed and will terminate upon Contract Completion.

8.1.2 The A/E shall have access, at all times, to the Project whenever any Work is in preparation or in progress.

## 8.2 Progress of the Project

8.2.1 The A/E shall assist the Contractor to record the progress of the Project and provide written reports to the Contracting Authority and Owner on a monthly basis, unless otherwise agreed in writing. Such reports shall include information on the Contractor's Work, as well as completion status on the entire Project, showing percentages of completion.

8.2.1.1 If the Project is administered using the State's web-based project management software, the A/E shall issue written reports to the Contracting Authority, Owner, and Contractor through the "Field Reports" business process.

## 8.3 Construction Progress Schedule

8.3.1 The A/E shall review the Construction Progress Schedule for conformance with the Contract Documents, and provide a copy of the Construction Progress Schedule and schedule of submittals to the Contracting Authority and Owner.



**8.3.1.1** If the Project is administered using the State's web-based project management software, the A/E shall receive initial and updated schedules from the Contractor, and forward them to the Contracting Authority and Owner, through the "Schedule Approvals" business process.

**8.3.2** The A/E shall periodically inform the Contracting Authority and Owner of the need to update the Project Schedule as required to show current conditions, including conformance to the Construction Progress Schedule, as updated from time to time.

**8.3.2.1** If such conditions indicate that Milestone completion dates shown on the Project Schedule may not be met, the A/E shall recommend corrective action to the Contracting Authority and Owner and carry out the directions of the Contracting Authority so that the Milestone completion dates may be met, unless the Contracting Authority and Owner agree in writing to revise the Milestone completion dates.

## **8.4 Meetings**

**8.4.1** The A/E shall schedule, conduct, and participate in weekly progress meetings with the Contracting Authority, Owner, appropriate Consultants, Contractor, Subcontractors, and any other parties involved in the Project to discuss such matters as procedures, progress, problems, and scheduling.

**8.4.1.1** The A/E shall prepare and distribute written agendas and minutes of all progress meetings to the Contracting Authority, Owner, Contractor, and any other parties involved. The A/E shall not delegate the duty to prepare such agendas and minutes and shall distribute the written minutes of each meeting within three business days after the meeting.

**.1** If the Project is administered using the State's web-based project management software, the A/E shall distribute meeting agendas and minutes to the Contractor, Contracting Authority, and Owner through the "Meeting Minutes" business process, and document issues identified during progress meetings that require resolution by one or more construction participants through the "Action Items" business process.

**8.4.1.2** The A/E shall attach the minutes of each progress meeting to the Contractor's weekly written report as submitted to the A/E, describing progress on the Contractor and its Subcontractors' past, current, and upcoming activities.

**8.4.1.3** The minutes of each progress meeting shall reflect any objection made to the minutes of the previous meeting and any response.

**8.4.1.4** The A/E shall notify the Contractor, and other Persons involved in the Project of the time and place of the progress meetings that shall thereafter be the same day and hour of the week for the duration of the Project, unless the A/E notifies the Contractor and other persons involved in the Project of a different day and hour at least two days in advance.

**8.4.2** The A/E shall attend and participate in preconstruction, quality-control, pre-installation, and special meetings with the Contracting Authority, Owner, appropriate Consultants, Contractor, Subcontractors, and any other parties involved in the Project.

## **8.5 Site Visits and Observation**

**8.5.1** The A/E shall notify, advise, and consult with the Contracting Authority and Owner and protect the State against Defective Work throughout the completion of the Project, which includes the Correction Period.

**8.5.2** The A/E shall designate a field representative, subject to the Contracting Authority's approval, to review the Work of the Contractor for Defective Work, to maintain familiarity with the progress and quality of the Work on the Project, to observe and check the progress and quality of the Work, and to take action as necessary or appropriate to achieve conformity with the Contract Documents.

**8.5.3** The A/E, and appropriate Consultants, shall also visit the Project at such intervals as the Contracting Authority requires, to review the Work of the Contractor for Defective Work, to become familiar with the progress and quality of the Work on the Project, and to determine if the Work is proceeding in conformity with the Contract Documents.

**8.5.3.1** Such visits shall specifically include those listed in the Agreement, observation of large excavations, observation of footings during placement of concrete and observation of masonry work, structural steel erection, roofing work and interior finishes.

**8.5.4** In all events, the A/E and appropriate Consultants, shall be at the Site for such purposes not less than the number of hours per week identified in the Agreement whenever any Work is in preparation or progress, unless otherwise expressly provided in writing by the Contracting Authority.

**8.5.5** If the A/E becomes aware, either through such visits or otherwise, of any Defective Work on the Project, then the A/E shall immediately report the Defective Work to the Contracting Authority and Owner, together with recommendations for correction thereof, and shall deliver written notice to the Contractor to correct such Defective Work. Such written notice shall specify the time within which the Contractor shall correct the Work (“72-Hour Notice”).

**8.5.5.1** If the Project is administered using the State’s web-based project management software, the A/E shall issue written notice of Defective Work to the Contractor with copies to the Contracting Authority and Owner, through the “72 Hour Notice” business process.

**8.5.6** The A/E may disapprove or reject any item of Work that it believes will not produce a Project that conforms to the Contract Documents or will prejudice the integrity of the design concept of the Project as a functioning whole as indicated by the Contract Documents.

**8.5.7** The A/E shall immediately notify the Contracting Authority and Owner any time the A/E disapproves or rejects an item of Work.

## **8.6 Investigation of Conditions for Renovation or Remodeling**

**8.6.1** For renovation and remodeling, the A/E shall, as portions of the Project become accessible, investigate existing conditions, and verify the accuracy of information provided by the Owner about such existing conditions.

## **8.7 Interpretations**

**8.7.1** The A/E shall render interpretations of the Contract Documents necessary for the proper execution or progress of the Work on the Project.

**8.7.2** The A/E shall respond to the Contractor’s Request for Information (“RFI”) within three days after receiving the RFI.

**8.7.3** All interpretations shall be in writing, shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be delivered to the Contracting Authority, Owner, and Contractor.

**8.7.4** The A/E shall keep a log of all RFIs and their respective responses.

**8.7.5** If the Project is administered using the State’s web-based project management software, the A/E shall render its interpretations to the Contracting Authority, Owner, and Contractor through the “Requests for Interpretation” business process.

## **8.8 Differing Site Condition Investigation**

**8.8.1** Promptly after receiving notice of a Differing Site Condition from the Contractor, the A/E shall investigate to determine whether the Contractor has encountered a Differing Site Condition.

**8.8.2** The A/E shall give written notice of its determination to the Contracting Authority and Contractor within ten days after completing the investigation.

**8.8.3** If the A/E determines that the Contractor has encountered a Differing Site Condition, the A/E shall prepare (as appropriate) a resulting Change Order or Change Directive through which the Contracting Authority may convey its disagreement with the A/E’s determination.

## **8.9 Submittal Review**

**8.9.1** The A/E shall review Submittals such as Shop Drawings, Product Data, and Samples for conformity with design intent and conformity with the Contract Documents within 14 days after receiving Submittals or in accordance with the approved submittal schedule, or other period as mutually agreed by the A/E and Contractor.

**8.9.2** The A/E shall also review drawings, calculations, and designs required of the Contractor and its Subcontractors and provided with such Submittals (except calculations and designs of manufacturers of original equipment and systems to be installed in the Project and except calculations and designs that the Contract Documents expressly make the sole responsibility of the Contractor or one or more Subcontractors, Material Suppliers, or other persons).

**8.9.3** The A/E shall act upon resubmission of corrected Submittals within 14 days after receiving them, or another period as mutually agreed by the A/E and Contractor.

**8.9.4** The Contractor shall review and stamp “approved” all Submittals before forwarding them to the A/E. If it is apparent to the A/E that the Contractor has not reviewed the Submittals, or has conducted an incomplete review of them, the A/E may reject the Submittals.

**8.9.5** The A/E may hold samples and other Submittals used to coordinate finishes, colors, patterns, textures, or other characteristics until Submittals for adjacent materials are available. Within seven days after receiving the Submittal, the A/E shall issue a written notice to the Contractor stating that the Submittal is being held.

**8.9.6** If the Project is administered using the State's web-based project management software, the A/E shall receive and forward submittals to its Consultants, and return reviewed submittals to the Contractor, using the "Submittals" business process.

## **8.10 Additional Tests and Inspections**

**8.10.1** If the A/E determines that any portion of the Work requires inspection, testing, or approval not otherwise required under the Contract Documents, the A/E shall order the inspection, testing, or approval.

**8.10.2** Within five days after completion of an inspection, test, or approval, the A/E shall provide an original report of the inspection, test, or approval to the Contractor and Contracting Authority with a recommendation for or against acceptance of the results therein.

**8.10.3** The Owner shall reimburse the A/E for the special inspection, test, or approval as a change in the Services.

**8.10.4** The A/E shall not be reimbursed or otherwise compensated for any special inspection, testing, or approval made necessary by the act or omission of the A/E or any Consultant of the A/E.

## **8.11 Change Order Procedure**

### **8.11.1 Paperwork Consolidation.**

**8.11.1.1** Related Modifications, with the same or similar justification (e.g., Owner Request or field resolution), may be consolidated into the same change-related document.

**8.11.1.2** Add and deduct Modifications, with the same or similar justification, may be included on the same Change Order.

**8.11.1.3** Modifications resulting from errors or omissions shall not be combined with other Modifications.

### **8.11.2 Change Order Numbering.**

**8.11.2.1** The A/E shall assign a number to each Modification, which shall uniquely identify it.

**8.11.2.2** The A/E shall not duplicate or reuse any number throughout the Project or reuse assigned numbers for Proposal Requests that are initiated but cancelled in process.

**8.11.2.3** The number for each Change Order shall be coordinated with any associated Proposal Request or Change Directive.

**8.11.3 Modification Log.** The A/E shall create and maintain a Modification Log for the Project, which shall contain the following minimum information:

**8.11.3.1** number of the Modification;

**8.11.3.2** a brief description of the Modification;

**8.11.3.3** cost of the Modification;

**8.11.3.4** schedule impact of the Modification; and

**8.11.3.5** dates sent to, and received from, the parties.

### **8.11.4 Reconciliation of Unit Price Items.**

**8.11.4.1** The Contracting Authority may increase, decrease, or delete entirely the scheduled quantities of Work to be performed and materials to be furnished by Change Order.

**8.11.4.2** The A/E shall issue a Change Order to reconcile the difference between the scheduled and actual quantities of Work performed and materials furnished.

**8.11.4.3** If the actual quantity of a Unit Price item differs from the scheduled quantity by 20 percent or more, so that application of the Unit Price to the quantities of Work proposed would create an undue hardship on either the Owner or Contractor, the A/E shall issue a Proposal Request and subsequent Change Order to adjust the Unit Price.

- .1** If a Unit Price is adjusted as described under **Section 8.11.4.3**, the new Unit Price will only apply to the units of Work performed that are **(1)** less than the 20 percent threshold if the Unit Price is changed on account of an over-estimation of the scheduled quantity of a Unit Price item involved in the Work or **(2)** in

excess of the 20 percent threshold if the Unit Price is changed on account of an under-estimation of the scheduled quantity of a Unit Price item involved in the Work.

**8.11.4.4** If the actual quantity of a Unit Price item exceeds the scheduled quantity by 20 percent or more, the Contractor shall immediately notify the A/E, who shall issue a Change Directive and subsequent Change Order to authorize an adjustment in the scheduled quantity.

**8.11.5** Change Orders.

**8.11.5.1** The A/E shall prepare each Change Order form, attach the supporting documentation, and issue the Change Order form to the Contractor for signature.

**8.11.5.2** When the A/E receives the Change Order signed by the Contractor, the A/E shall recommend approval by signing the form and transmitting the Change Order and the revised Change Order Log to the Owner.

**8.11.5.3** If the Project is administered using the State's web-based project management software, the A/E shall prepare and recommend Change Orders for approval, using the "Change Order" or "Contract Modifications" business process.

**8.11.6** Proposal Requests.

**8.11.6.1** The A/E shall prepare Proposal Requests with estimated costs and other necessary documentation seeking Proposals from the Contractor for adjustments of the Contract Sum or Contract Times, or both, associated with potential and proposed changes in the Work.

**8.11.6.2** If the Project is administered using the State's web-based project management software, the A/E shall prepare and distribute Proposal Requests using the "Change Order" or "Contract Modifications" business process with the "Proposal Request" workflow.

**8.11.7** Request for Change Order.

**8.11.7.1** The Contractor may initiate a change in the Work by submitting written notice to the A/E accompanied by a Proposal. The A/E shall promptly evaluate the Request for Change Order and submit a written recommendation to the Contracting Authority and Owner.

**8.11.7.2** If the Project is administered using the State's web-based project management software, the A/E shall respond to the Contractor's Request for Change Order using the "Change Order" or "Contract Modifications" business process.

## **8.12 Change Directives**

**8.12.1** A Change Directive may, if necessary:

**8.12.1.1** State a proposed basis for adjustment, if any, in the Contract Sum or Contract Times, or both;

**8.12.1.2** State the Contracting Authority's determination of the adjustments of the Contract Sum or Contract Times, or both; or

**8.12.1.3** Limit the scope of the change in the Work by a fixed adjustment of the Contract Sum.

**8.12.2** If a change in the Contractor's Work must start immediately to avoid an imminent impact to the schedule of the Project, the A/E shall prepare a Change Directive, for the Contracting Authority and Owner's signatures pursuant to **Section 8.12.1**, authorizing the Contractor to proceed.

**8.12.3** A Change Directive shall be used to direct a change in a Contractor's Work in the absence of total agreement on the terms of a Change Order.

**8.12.3.1** A Change Directive may also be used in the absence of agreement as to whether the subject of the Change Directive actually constitutes a change in the Work.

**8.12.4** If the Project is administered using the State's web-based project management software, the A/E shall prepare and recommend Change Directives for approval, using the "Change Order" or "Contract Modifications" business process with the "Change Directive" workflow.

## **8.13 Orders for Minor Changes in the Work**

**8.13.1** The A/E may order minor changes in the Work not involving adjustment of the Contract Sum or extension of the Contract Times and not inconsistent with the intent of the Contract Documents.

**8.13.2** The A/E shall issue orders for minor changes in the Contractor's Work by written order to the Contractor. The A/E shall keep a log of all Orders for Minor Change in the Work.

**8.13.3** If the Project is administered using the State's web-based project management software, the A/E shall prepare and recommend Orders for Minor Changes in the Work for approval, using the "Action Items" business process.

#### **8.14 Claims Analysis**

**8.14.1** The A/E, in consultation with the Contracting Authority, shall respond to the Contractor's written notice of a Claim within a reasonable time of receipt, but not to exceed ten days.

**8.14.2** The A/E shall review each Contractor Claim, prepare a written analysis of its content, and submit the written analysis to the Project Manager no more than 30 days after receiving the Contractor's substantiated and certified Claim. The written analysis shall include:

**8.14.2.1** a narrative of the A/E's examination of the facts giving rise to the Claim;

**8.14.2.2** identification of relevant Contract Documents and language;

**8.14.2.3** an analysis of whether the Contractor complied with the requirements of the Contract Documents pertaining to Claim initiation and substantiation including the issues of entitlement to, and calculation of, adjustments of the Contract Sum, Contract Times, or both;

**8.14.2.4** an analysis of claimed additional labor, materials, and equipment for the scope of the Work items described;

**8.14.2.5** an analysis of any time extension for any interference, disruption, hindrance, impact, or delay claimed (to include the calculation of any concurrent delays affecting entitlement);

**8.14.2.6** a concluding opinion regarding the Contractor's entitlement to, and the appropriateness and reasonableness of all, or any part of, the Claim; and

**8.14.2.7** an appendix containing copies of contemporaneous documentation supporting the concluding opinion.

**8.14.3** The A/E shall attend dispute resolution meetings convened by the Contracting Authority related to each Claim.

#### **8.15 Project Costs**

**8.15.1** The A/E shall monitor Project cost accounting records on Work performed by the Contractor under unit costs, actual costs for labor and materials, or other appropriate basis. The A/E shall afford the Contracting Authority and Owner access to these records at all times.

#### **8.16 Schedule of Values**

**8.16.1** The Contractor shall submit to the A/E a Schedule of Values with separate amounts shown for labor and materials for each branch of the Contractor's Work.

**8.16.2** The A/E shall review and may return the Schedule of Values to the Contractor for re-submittal if it does not meet the requirements or contains insufficient items or details of the Work, or approve the Schedule of Values if the A/E determines that it conforms to the requirements in the General Conditions.

**8.16.3** If the Project is administered using the State's web-based project management software, the A/E shall receive and process the Contractor's Schedule of Values, using the "Contract Schedule of Values" business process.

#### **8.17 Payments**

**8.17.1** The Contractor may submit a Payment Request to the A/E each month or upon another interval approved by the Contracting Authority. When the rate of Work and amount involved is sufficient that it is considered appropriate by the Contracting Authority, the Contractor may submit Payment Requests twice a month.

**8.17.1.1** If the Project is not administered using the State's web-based project management software, the Contractor shall submit one draft copy of its Payment Request ("Pencil Copy") to the A/E not less than 1 week prior to submitting multiple copies of its Payment Request.

**8.17.1.2** The A/E shall review the Pencil Copy and provide comments to the Contractor within three days after receiving it.

**8.17.1.3** The Contractor shall incorporate the A/E's comments into its Payment Request prior to submitting multiple copies for payment.

**8.17.2** Based upon the A/E's review of the applicable Work and evaluations of the Payment Request, the A/E shall review and approve, modify, or reject the amounts shown on such Payment Request as being due to the Contractor.

**8.17.3** The A/E may request from a Contractor additional documentation in connection with each payment to the Contractor.

**8.17.4** If the A/E determines that it will recommend payment of a Payment Request, the A/E shall sign that Payment Request and deliver it to the Contracting Authority.

**8.17.5** The A/E may recommend to the Contracting Authority that payments be withheld from, or Liquidated Damages be assessed against, a Payment Request.

**8.17.6** If the Project is administered using the State's web-based project management software, the A/E shall receive and approve the Contractor's Payment Request, using the "Contractor Pay Request" or "Applications for Payment" business process.

## ARTICLE 9 - CLOSEOUT

### 9.1 Substantial Completion

**9.1.1** Within three business days after receipt of the Contractor's request for the Substantial Completion inspection of the Work, the A/E shall notify the Contractor of acceptance or rejection of the request, stating reasons for any rejection.

**9.1.2** Within seven days after its acceptance of a Contractor's request, the A/E shall conduct the Substantial Completion inspection to determine whether the Contractor's Work, or the designated portion, is Substantially Complete.

**9.1.3** The A/E shall notify the Contractor, Contracting Authority, and Owner of the scheduled time of the Substantial Completion inspection.

**9.1.4** If the A/E determines that the Work is Substantially Complete, within three business days after the Substantial Completion inspection, the A/E shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion and include a list of Defective, incomplete, or unacceptable Work ("A/E's Punch List"). The A/E's Punch List shall include **(1)** the items on the Contractor's Punch List that are not yet completed or corrected as of the date of the Substantial Completion inspection, and **(2)** comments from the Contracting Authority and Owner.

**9.1.5** The A/E shall submit the Certificate of Substantial Completion to the Contracting Authority, Owner, and Contractor for their written acceptance.

**9.1.5.1** If the Project is administered using the State's web-based project management software, the A/E shall receive the Contractor's Punch List and distribute the A/E's Punch List, using the "Punch List" business process.

**9.1.6** If the A/E accepts the request for the Substantial Completion inspection and subsequently determines that the Work is not Substantially Complete, the A/E may request compensation for expenses related to excessive Punch List activities.

### 9.2 Partial Occupancy

**9.2.1** The A/E shall assist the Contracting Authority and Owner **(1)** in determining dates of Partial Occupancy of the Work or portions thereof designated by the Owner; **(2)** in obtaining any certification required by Applicable Law; and **(3)** in providing written notice of the Partial Occupancy to the insurers providing builder's risk property insurance for the Project.

**9.2.2** Before the Owner commences Partial Occupancy, the A/E shall prepare and execute a Certificate of Substantial Completion for the designated area listing incomplete or Defective Work under the Contract.

**9.2.2.1** If the Project is administered using the State's web-based project management software, the A/E shall process the partial Certificate of Contract Completion, using the "Closeout - Contractor" business process.

### 9.3 Contract Completion

**9.3.1** Within three business days after receipt of the Contractor's notice that all Punch List items have been completed, the A/E shall complete a Final Inspection of the Work for compliance with the Contract Documents.

**9.3.2** If multiple inspections of items on the A/E's Punch List are required because of the Contractor's failure to properly and timely complete them, the A/E may request compensation for expenses related to excessive Punch List activities.

**9.3.3** When all items on the A/E's Punch List have been completed to the A/E's satisfaction and all requirements of the Contract Documents have been completed, the A/E shall prepare and recommend execution of a Certificate of Contract Completion.

**9.3.3.1** When items of Work cannot be completed until a subsequent date, the A/E may recommend that these items be deferred and the Contracting Authority may release payment to the Contractor, as determined in the Contracting Authority's sole discretion. The A/E shall list deferred items on a Partial Certificate of Contract Completion with the dates the items are to be completed.

**9.3.3.2** If the Project is administered using the State's web-based project management software, the A/E shall process the Certificate of Contract Completion, using the "Closeout - Contractor" business process.

**9.3.4** Upon execution of a Certificate of Contract Completion, the A/E shall receive, review for conformity with the requirements of the Contract Documents, and transmit to the Contracting Authority any affidavits and turn over to the Owner any keys, manuals and the originals of any guarantees, warranties, releases, bonds, and waivers.

**9.3.5** The A/E shall transmit a copy of any guarantees, warranties, releases, bonds, and waivers to the Contracting Authority.

## 9.4 Record Documents

**9.4.1** The A/E shall prepare the Record Documents by revising the Contract Documents and related electronic files on the basis of the information contained on the As-Built Documents submitted by the Contractor and the A/E's observations during the progress of the Project. The Record Documents shall detail the actual construction of the Project and contain such annotations by the A/E as may be necessary for someone unfamiliar with the Project to understand the changes that were made to the Contract Documents.

**9.4.2** The A/E shall label the revised Contract Documents and related electronic files as "Record Documents" and reflect the date on which the A/E finished preparing them.

**9.4.3** The A/E shall furnish to the Owner one set of Record Documents in the form of paper documents and one set in the form of electronic files.

**9.4.4** By submitting the Record Documents to the Owner, the A/E certifies that the Record Documents are complete, correct, and accurate, to the best of the A/E's knowledge based upon the As-Built Documents delivered to the A/E by the Contractor and the A/E's observations during the progress of the Project.

## 9.5 Post-Occupancy

**9.5.1** During the Correction Period, the A/E shall work with the Contracting Authority, Owner, and Contractor to investigate suspected Defective Work and to design and coordinate its repair or completion. The Owner shall not be obligated to compensate the A/E for the A/E's performance of the A/E's services under this **Section 9.5.1** unless it has been determined that the Defective Work was not the result of the A/E's failure to meet its obligations under the Agreement.

**9.5.2** The A/E shall participate in a walk-through of the Project with the Owner one month prior to the expiration of each Correction Period. The A/E shall consult with the Owner to address any issue identified in the walk-through according to the procedures specified in the General Conditions. The A/E shall notify the Contractor of such defects in writing with a request that the Contractor correct the Defective Work, prior to the end of the Correction Period.

# ARTICLE 10 - ADDITIONAL SERVICES

## 10.1 General

### 10.1.1 Services Not Included in Basic Services.

**10.1.1.1** The A/E shall provide the services listed in **Sections 10.1.2** through **10.1.19** as Additional Services only when identified in the **Agreement Form** and approved in writing by the Contracting Authority in consultation with the Owner.

**10.1.1.2** The Fee for the Additional Services listed in **Sections 10.1.2** through **10.1.19** shall be paid as provided in the **Agreement Form**, in addition to payment for the Basic Services; however, the A/E shall not be compensated for any of the Additional Services listed in **Sections 10.1.2** through **10.1.19** made necessary by any act or omission of the A/E or any of the A/E's Consultants.

**10.1.1.3** Unless waived by the Contracting Authority in writing, authorization to provide Additional Services must be obtained prior to providing the Additional Services.

- 10.1.2 Specialized Services.** Providing specialized design and engineering services, including services for acoustical analysis or design, computer services, communication consultant services, design or specification of unusual or large volumes of fixtures, furnishings, and equipment.
- 10.1.3 Additional On-Site Services.** Providing administration or observation of construction beyond the Basic Services provided pursuant to **Exhibit B.**
- 10.1.4 Extensive Change Orders.** Preparing Drawings, Specifications, cost estimates, and other documents and supporting data in connection with Change Orders beyond those services to be reasonably provided as Basic Services, pursuant to **Exhibit B.**
- 10.1.5 Partnering and Scheduling Consultants.** Serving as a partnering or construction scheduling consultant or providing such consulting services.
- 10.1.6 Perspectives, Models, Renderings.** Preparing professional perspectives, physical models, or renderings, which are not otherwise useful or necessary to the A/E in providing the Basic Services required hereunder and are provided at the prior written request of the Contracting Authority in consultation with the Owner.
- 10.1.7 Grant Applications.** Preparing applications and supporting documents for governmental grants, loans, or advances.
- 10.1.8 Special Studies.** Providing planning services, site evaluations, environmental studies, or comparative studies of prospective sites, preparing special surveys, studies, and submissions required under Applicable Law.
- 10.1.9 Surveys.** Providing surveying services, including land surveys and rights-of-way studies.
- 10.1.10 Investigation of Conditions for New Construction.** Providing services for new construction to investigate existing conditions or facilities, to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the Owner.
- 10.1.11 Constructability and Cost Analyses.** Preparing extensive analyses of the construction feasibility of the Project or of owning and operating costs, or preparing detailed quantity surveys or inventories of material, equipment, and labor beyond those services to be reasonably provided as Basic Services in **Exhibit B.**
- 10.1.12 Off-Site Services.** Providing planning or design services for off-site utilities, which are not adjacent to the Project, building connections, or roadways.
- 10.1.13 Certain Revisions.** Making revisions in Drawings, Specifications, or other Contract Documents at the request of the Contracting Authority when such revisions are inconsistent with written approvals or instructions previously given or are required by the enactment or revision of Applicable Law subsequent to the preparation of such documents.
- 10.1.14 Replacement Work.** Providing consultation and other services in connection with replacement of any Work damaged by fire, casualty, or other incident not caused by negligence of the A/E or any Consultant of the A/E.
- 10.1.15 Contractor Default.** Providing services made necessary by a Contractor's default.
- 10.1.16 Additional Documents.** Providing more sets of Contract Documents than the number required as Basic Services pursuant to **Exhibit B.**
- 10.1.17 Prototype Design.** Use of the A/E's Documents for one or more prototype projects as described in the A/E Standard Terms and Conditions.
- 10.1.18 Special Inspections Required by the Ohio Building Code.**
- 10.1.18.1** The special inspections indicated in the current edition of the OBC Chapter 17 are not included as Basic Services; however, in the event such special inspections are required as a condition of the plan approval issued by the Building Authority that has jurisdiction over the Project, the A/E shall provide the special inspections and be compensated for such as Additional Services, and shall provide written notice to the Contractor, Owner, and Contracting Authority of the Special Inspection to be performed.
- 10.1.18.2** The A/E shall not be compensated for any such Additional Services made necessary by the act or omission of the A/E or any Consultant of the A/E.
- 10.1.19 Quality Assurance Testing.**
- 10.1.19.1 General Requirements.** The Quality Assurance ("QA") Testing services listed under **Sections 10.1.19.2** through **10.1.19.10**, which is not intended to be an exhaustive list, are not included as Basic Services, however, the



A/E shall provide such services when identified in the **Agreement Form** either itself (if qualified) or through a Consultant properly licensed to perform the required inspections and all related testing services.

- .1 Unless otherwise specified in the Contract Documents, the A/E shall apply for, secure, and pay for the costs of quality assurance testing, structural testing, and special inspections required under the current edition of Ohio Building Code (“OBC”) Chapter 17.
- .2 Such testing and inspections shall include geotechnical analysis, environmental testing and analysis, concrete, masonry, structural steel, reinforcing steel, welding, bolts, steel connections, HVAC systems and controls, plumbing and piping, air and water balancing and testing, or other testing (e.g., medical gases testing, lead shielding, etc.); or approval required by Applicable Law.
- .3 The A/E shall identify the name or names of the Consultants it intends to use for all quality assurance and special inspections that would be reasonably anticipated for the Project and shall provide a Schedule of Fees for Typical Services for each Consultant.

**10.1.19.2 Geotechnical Analysis.** Sampling and analysis of soils and hydrologies, and subsequent reporting and recommendations, upon which architectural and engineering designs may be based. Applicable to Construction Stage observation, testing, and reporting of soils conditions, including testing for types and quality of fill material and its installation, compaction, soil density testing, caisson borings inspections, cut and fill monitoring, etc.

**10.1.19.3 Environmental Testing and Analysis.** Sample and analysis of existing conditions or materials for any of a variety of environmental materials, including Hazardous Materials and suspected Hazardous Materials, and subsequent reporting.

**10.1.19.4 Concrete.** Test for general quality, such as: slump, air entrainment, cylinder test, core test, Swiss hammer.

**10.1.19.5 Masonry.** Includes such testing as prism tests, mortar cube, grout tests, water infiltration.

**10.1.19.6 Structural Steel, Reinforcing Steel, Welding, Bolts and Connections.** Includes any testing and reporting of any type of steel, including those listed above.

**10.1.19.7 HVAC Systems and Controls.** Includes testing and balancing of any or all HVAC components including controls systems.

**10.1.19.8 Plumbing and Piping.** Includes testing of water, waste, vent and process piping, and provide associated reporting.

**10.1.19.9 Air and Water Testing and Balancing.** Includes testing and balancing of various pneumatic and hydronic piping, and provide associated reporting.

**10.1.19.10 Other.** (e.g., Medical Gases testing, Lead Shielding, etc.)

**END OF DOCUMENT**



**OFFICE OF THE UNIVERSITY ARCHITECT**

**Exhibit C - Minimum Stage Submission Requirements (CMR Project)**

A/E _____	Date _____
Owner <u>Kent State University Office of the University Architect</u>	Campus _____
Project Name _____	Project Number <u>KSU-</u>
Address _____	Construction On-Site Hours/Week _____
Construction Budget \$ _____	Advertised Target Fee Range <sup>1</sup> _____ %
Construction Contingency \$ _____	Actual Negotiated Total Fee <sup>1</sup> <u>#DIV/0!</u> %
Total Funds \$ _____	

**Part I - Fee Breakdown**

A. Fee for Basic Services	Notes			
1. Program Verification Stage	5 %			\$
2. Schematic Design Stage	15 %			\$
3. Design Development Stage	15 %			\$
4. Construction Documents Stage	20 %			\$
5. GMP Proposal and Amendment	17 %			\$
6. Construction Stage	25 %			\$
7. Closeout Deliverables	3 %			\$
	100 %		<sup>1</sup> Subtotal (A)	\$ _____

B. Fee for Additional Services	Notes			
1. Quality Control Tests & Inspection <sup>2</sup>				\$
2. Geotechnical Investigation <sup>2</sup>				\$
3.				\$
4.				\$
5.				\$
6.				\$
7.				\$
8.				\$
9.				\$
10.				\$
11.				\$
12.				\$
13.				\$
			<sup>1</sup> Subtotal (B)	\$ _____

C. Reimbursable Expenses	Notes			
1. Plan Approval Fees				\$
2. Additional Review Document Printing				\$
3. Stormwater Permit Fees				\$
4. LEED Certification Fees				\$
5. Other Regulatory Fees				\$
6. Liability Insurance Rate Increase				\$
7.				\$
8.				\$
9.				\$
10.				\$
			<sup>1</sup> Subtotal (C)	\$ _____
<b>Total Architect/Engineer Agreement Amount (A + B + C)</b>				<b>\$ _____</b>

<sup>1</sup>Percentage of construction budget.    <sup>2</sup>Attach breakout detail.

  
**KENT STATE**  
UNIVERSITY  
**OFFICE OF THE UNIVERSITY ARCHITECT**

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**Part II - Project Description**

[Insert a brief description of the Project]

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**Part III - Consultants**

<u>Type of Consulting Service:</u>	<u>Type of Consulting Service:</u>	<u>Type of Consulting Service:</u>
Insert Name of Business	Insert Name of Business	Insert Name of Business
Insert Address	Insert Address	Insert Address
Insert City, State ZIP Code	Insert City, State ZIP Code	Insert City, State ZIP Code
Insert Contact Name	Insert Contact Name	Insert Contact Name
Insert Role on Project	Insert Role on Project	Insert Role on Project

---

**Part IV - Special Terms and Conditions**

[Insert any Project-specific terms and conditions or "Not Applicable." Substantive terms that are included in the technical proposal that are not relevant to the scope of work and/or that conflict with the terms of the A/E Agreement should not be included in this Exhibit C, but should be added and documented as "Exhibit E".]

**ACCEPTED AND APPROVED:**

**INSTITUTIONAL ARCHITECT OR DESIGNEE**

<p><b>KENT STATE UNIVERSITY</b> <b>OFFICE OF THE UNIVERSITY ARCHITECT</b></p> <p>By: _____</p> <p>Name: <u>Joseph A. (Jay) Graham</u> Associate Director</p> <p>Title: <u>Architecture and Engineering</u></p> <p>Date: _____</p>
---

**ARCHITECT/ENGINEER**

<p><b>ARCHITECT/ENGINEER FIRM</b></p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>
--

**INSTITUTIONAL ENGINEER**

<p><b>KENT STATE UNIVERSITY</b> <b>OFFICE OF THE UNIVERSITY ARCHITECT</b></p> <p>By: _____</p> <p>Name: <u>Gerald L. (Jerry) Eveleth, Jr.</u> Assistant Director</p> <p>Title: <u>Engineering</u></p> <p>Date: _____</p>
--

**OWNER'S REPRESENTATIVE**

<p><b>KENT STATE UNIVERSITY</b> <b>OFFICE OF THE UNIVERSITY ARCHITECT</b></p> <p>By: _____</p> <p>Name: <u>Michael E. Bruder</u> Executive Director</p> <p>Title: <u>Facilities Planning and Design</u></p> <p>Date: _____</p>
--

## ARTICLE 1 – ELEMENTS OF PROGRAM VERIFICATION STAGE SUBMISSION

### 1.1 Purpose

1.1.1 The purpose is to define the scope of the work. It should define the Owner’s expectations by addressing the issues of location, space requirements, time, furniture, equipment, and budget.

### 1.2 Owner Deliverables

1.2.1 The Owner shall provide the following information to A/E:

- 1.2.1.1 A list of spatial needs with adequate parameters such as area/space, number of people to use space at a given time, etc.
- 1.2.1.2 A project budget showing the breakdown of construction, fees, furnishings, equipment, etc.
- 1.2.1.3 An anticipated timeline required for delivery of the project.
- 1.2.1.4 The site plat of the property on which the project is to be located.
- 1.2.1.5 A list of Owner’s “design standards” if existing.
- 1.2.1.6 A list of any environmental, historical issues that may affect the project.

### 1.3 Project Scope and Parameter Verification

1.3.1 The A/E shall provide the following confirmations to the Project Core (Design) Team:

- 1.3.1.1 Receipt of the Contract for the described work outlining the responsibilities of each party.
- 1.3.1.2 Verification of budget adequacy for the program presented.
- 1.3.1.3 Schedule for completion and/or phasing of the work is achievable.
- 1.3.1.4 Site appears adequate for meeting the program requirements.
- 1.3.1.5 Special relationships between spatial needs have been noted.
- 1.3.1.6 Property survey has been contracted.
- 1.3.1.7 Preliminary geotechnical information has been contracted.
- 1.3.1.8 Environmental Phase I & II have been contracted.
- 1.3.1.9 Code and zoning authority identified.
- 1.3.1.10 Utility suppliers identified.
- 1.3.1.11 Project Core Team contacts identified.
- 1.3.1.12 Bidding requirements identified.

## ARTICLE 2 - ELEMENTS OF SCHEMATIC DESIGN STAGE SUBMISSION

### 2.1 Purpose

2.1.1 The purpose is to produce a design solution illustrating the scale and relationship of the project components based on the program, schedule, budget, and other project requirements.

### 2.2 Project Scope and Parameter Verification

- 2.2.1 Program and Program deliverables have been reviewed for completeness. Owner notified of any data missing and potential to affect project schedule and budget. Written approval of program provided by Owner.
  - 2.2.1.1 Program tabulation and area analysis per design requirements of authorities have been documented.

2.2.2 Project budget has been reviewed for adequacy of program requirements. Verified funds have been encumbered.

2.2.3 Contract requirements and Scope of Services for Schematic Design have been reviewed.

2.2.4 Deliverables for Schematic Design have been reviewed and verified.

2.2.5 Document standards required have been reviewed and verified.

2.2.6 Delivery of site survey showing existing site constraints, utilities, topography and other existing physical conditions.

2.2.7 Delivery of the geo-technical report with determination of any impact on scope (foundations/pavements) and/or schedule determined.

2.2.8 Delivery of Phase I and Phase II Environmental reports, as applicable.

2.2.9 Completion of field measurement/verification of any existing related and/or adjoining built conditions.

2.2.10 Code parameters have been determined and documented.

2.2.11 Zoning requirements have been reviewed and documented. Any potential variances discussed with local authorities and process to resolve initiated.

2.2.12 Consultants required for the project have been identified, contracted, and submitted to the Contracting Authority for approval.

## 2.3 Deliverables

### 2.3.1 Documents.

2.3.1.1 Program: Written program with program tabulation and area analysis.

2.3.1.2 Code: Reviews with governing authority and/or consultant, show type and occupancy information.

2.3.1.3 Zoning: Review with governing authority.

2.3.1.4 Special Requirements: Reviews with authorities having jurisdiction covering issues like environment, historical limitations, utility services, etc.

2.3.1.5 Survey: Copy of the property topographical survey showing existing conditions, utilities, and other constraints such as easements.

2.3.1.6 Geotechnical Report: Copy of site subsurface investigation report.

2.3.1.7 Narrative: Commentary covering site improvements, circulation, organization of building space in relation to program requirements, building materials, special features, building systems (HVAC, plumbing, fire protection, structural, security, and video voice and data).

2.3.1.8 Cost Estimate: An estimate of the total project cost including but not limited to direct expenses, indirect expenses, land cost, and capital expenses.

- .1 Direct Expenses: Construction, hazardous abatement, technology, contingencies.
- .2 Indirect Expenses: A/E fee, survey, geotechnical, permits, testing, reimbursables, project management, special inspections, utility connections, insurance, relocation expenses, etc.
- .3 Capital Expenses: Furnishings, equipment, contingencies.
- .4 Input from consultants on MEP, kitchen, civil work, etc.

2.3.1.9 Project Schedule: A schedule showing major milestones for the project, estimated project delivery date and phasing plan if appropriate.

### 2.3.2 Drawings and Specifications.

#### 2.3.2.1 Site/Civil:

- .1 Plan at same scale as survey showing new and existing buildings or structures, principle features such as drives, walks, parking, drainage, play field, athletic fields, landscape features, retaining walls, etc.

- 2 Plan at same scale as survey showing new grade contours, storm water retention, and utility services.

#### 2.3.2.2 Architectural:

- 1 Scaled building plan(s) indicating spatial relationships, basic dimensions, circulation areas, doors and window openings, and location of fire rated elements.
- 2 Scaled primary elevations same scale as plan, noting principle materials.
- 3 Preliminary building cross sections through all floor and/or roof changes in elevation.
- 4 An outline specification with selection of building materials and systems.
- 5 A list of alternate options that may affect the cost, quality, and/or schedule of the project for consideration by the Owner.

#### 2.3.2.3 Interiors:

- 1 Space planning of major or typical interior spaces indicating basic furniture, fixtures, and equipment layout.
- 2 Preliminary color schemes for discussion with the Owner.

#### 2.3.2.4 Structural:

- 1 A constructability review with the engineer and a narrative input.
- 2 Input of structural systems for architectural plans and cross sections.

#### 2.3.2.5 Heating, Ventilating and Air Conditioning:

- 1 Plans showing building systems in diagrammatic form.
- 2 Concurrence with sizes and location of mechanical rooms.
- 3 Narrative input on basic systems description.
- 4 Notes of consultations with public agencies and authorities on utility services and requirements.
- 5 Input on basic clearances required for distribution systems.
- 6 Input on cost estimate for HVAC work.

#### 2.3.2.6 Plumbing and Fire Protection:

- 1 Plans showing building systems in diagrammatic form.
- 2 Concurrence with sizes and location of mechanical rooms.
- 3 Narrative input on basic systems description.
- 4 Notes of consultations with public agencies and authorities on utility services and requirements.
- 5 Input on basic clearances required for fixtures and distribution and drain systems.
- 6 Input on cost estimate for plumbing and fire protection work.

#### 2.3.2.7 Electrical:

- 1 Plans showing building systems in diagrammatic form.
- 2 Concurrence with sizes and location of electrical rooms.
- 3 Narrative input on basic systems description.
- 4 Notes of consultations with public agencies and authorities on utility services and requirements.
- 5 Input on basic clearances required for panels, fixtures, and distribution systems.

#### 2.3.2.8 Approval:

- 1 Documented approval of Schematic Design Stage by Owner.

## ARTICLE 3 - ELEMENTS OF DESIGN DEVELOPMENT STAGE SUBMISSION

### 3.1 Purpose

3.1.1 The purpose is to complete the design and provide sufficient information so others could prepare the contract documents. The design decisions are resolved and accepted by the Owner. Any changes beyond this point may constitute additional fees and additional time to the project schedule.

### 3.2 Project Scope and Parameter Verification

- 3.2.1 Schematic Design deliverables have been reviewed by project team and is verified as to completeness.
- 3.2.2 Received Owner's written approval of Schematic Design documentation.
- 3.2.3 Program tabulation and area analysis per design requirements of authorities have been updated and documented.
- 3.2.4 Project budget has been verified for schematic design adequacy.
- 3.2.5 Contract requirements and scope of services for Design Development stage have been reviewed.
- 3.2.6 Deliverables for the Design Development stage have been reviewed.
- 3.2.7 Drawing numbering system has been established and is in compliance with any Owner requirement(s) standards.
- 3.2.8 The geotechnical report has been reviewed, and any impact on scope (foundations) and/or schedule has been determined.
- 3.2.9 Additional field measuring/verification of any existing related and/or adjacent building conditions caused by the schematic design completed.
- 3.2.10 Code parameters have been reviewed, updated, and documented.
- 3.2.11 Zoning requirements have been reviewed, updated, and documented. Variances required have been resolved with local authorities and are scheduled for hearing.
- 3.2.12 Interior design, furniture, fixtures, and equipment needs and Owner Standards (finishes, etc.) have been established. Basic layouts for furniture, fixtures, equipment, and casework have been completed.
- 3.2.13 Project schedule for any potential phasing of the work established (if necessary).
- 3.2.14 Utility service confirmation is documented including any off site upgrades required. Responsibility for funding off site utility work has been identified and signed off on by responsible party.
- 3.2.15 Bidding requirements for the project has been established (separate primes, construction manager, special conditions, etc.).

### 3.3 Deliverables

#### 3.3.1 Documentation.

- 3.3.1.1 Program: Written program with revised program area tabulation and analysis.
- 3.3.1.2 Code: Documentation of code and zoning reviews with governing authority.
- 3.3.1.3 Zoning: Documentation of resolution of any zoning issues or variances from jurisdiction.
- 3.3.1.4 Special Requirements: Documentation for resolution with special authorities for issues like the environment, historical limitations, utility services, etc.
- 3.3.1.5 Cost Estimate: A detailed estimate of the total project cost including but not limited to the following:
  - .1 Direct expense: construction, hazardous abatement, technology, contingencies
  - .2 Indirect expenses: A/E fees, survey, geotechnical, permits, testing, reimbursables, project management, special inspections, utility connections, insurance, moving expenses, etc.
  - .3 Capital expense: furnishings, equipment, contingencies
  - .4 Input from consultants on MEP, food service, civil work, etc.
- 3.3.1.6 Project Schedule: A schedule confirming major milestones for the project, estimated project delivery date, and phasing plan if appropriate.

#### 3.3.2 Drawings and Specifications.

##### 3.3.2.1 Site/Civil:

- .1 Site plan at same scale as site survey showing all property constraints (setbacks, easements, etc.), utilities and connections/taps, topography, site drainage, parking, walks, retaining walls, storm water management design, etc. *If the Owner is a cabinet agency of the state of Ohio, a PDF of this drawing will be submitted, through the Project Manager, to the Ohio Homeland Security Infrastructure and Technology Unit for comments.*
- .2 Site plan showing building footprint, dimensions, finish floor elevation(s), and dimensions locating the building on the site.
- .3 Landscaping plan showing major features and materials.
- .4 Symbol legend

#### 3.3.2.2 Architectural:

- .1 Scaled building plan(s) with dimensions, location of fire rated elements, wall thicknesses, ingress and egress locations, door swings with numbers, casework/millwork, equipment and fixture locations and room numbers. *If the Owner is a cabinet agency of the state of Ohio, a PDF of this drawing will be submitted, through the Project Manager, to the Ohio Homeland Security Infrastructure and Technology Unit for comments.*
- .2 Reflected ceiling plans with ceiling heights.
- .3 Roof Plan(s) with principal mechanical and electrical items.
- .4 Elevations are drawn to same scale as plans with dimensions of all basic design features (grade/windows/fascias/brick patterns/mechanical screens/louvers/etc.) with fresh air intake louvers clearly identified. *If the Owner is a cabinet agency of the state of Ohio, a PDF of this drawing will be submitted through the Project Manager to the Ohio Homeland Security Infrastructure and Technology Unit for comments.*
- .5 Building cross sections and primary wall sections are further developed for all change in floor levels and wall conditions.
- .6 Larger scale plans of key areas showing furniture and equipments layouts, and any floor wall or ceiling treatments. Include mechanical equipment room layouts for required clearances and kitchen area.
- .7 Finish Schedule for all spaces.
- .8 Opening schedule showing sizes, materials, fire ratings, special construction (i.e. sound isolation).
- .9 Wall sections and typical construction details for the various conditions.
- .10 Sections delineating special features such as stage equipment, acoustical treatments, etc.
- .11 Symbol legend
- .12 Outline specifications for all building materials and systems indicating a minimum of 3 acceptable manufacturers and/or suppliers. Outline of front end specification items covering bidding requirements, special project conditions, phasing of the work, allowances, unit prices, alternates, etc.

#### 3.3.2.3 Interiors:

- .1 Scaled plans showing furniture and equipment
- .2 Preliminary selections for furniture and equipment
- .3 Color schemes/patterns for major finish elements

#### 3.3.2.4 Structural:

- .1 Foundation plan same scale as Architectural plan with floor elevations, bottom of footing elevations, typical details, special conditions, slab thickness, etc.
- .2 Framing plans same scale as architectural plans for each level and roof showing dimensions, location and sizes of structural members, principal top of framing elevations.
- .3 Location of building expansion joints.
- .4 Typical sections and details.
- .5 Outline specifications including a minimum of 3 acceptable manufacturers.



### 3.3.2.5 HVAC:

- .1 Floor plan(s) same scale as architectural plans showing distribution systems and equipment locations. Show all piping, ductwork and equipment sizes, required clearances and weights. Show locations of all accessories such as diffusers, dampers, louvers, etc.
- .2 Enlarged plan of mechanical equipment rooms showing equipment layouts.
- .3 Major structural penetrations coordinated with structural.
- .4 Details of roof and ground mounted equipment (size and weight, etc.).
- .5 Acoustical treatment recommendations where necessary.
- .6 Heating and cooling load calculations for each individual space.
- .7 Equipment schedules indicating size and capacity.
- .8 Symbol legend
- .9 Outline specifications including a minimum of 3 acceptable manufacturers.

### 3.3.2.6 Plumbing/Fire Protection:

- .1 Floor plan(s) showing water, sanitary waste, compressed air, acid waste, special traps (i.e. plaster, grease) and gas piping with sizes; location of all fixtures. Show meter locations, sizes.
- .2 Roof drainage system/connections to storm water system
- .3 Plumbing fixture schedule
- .4 Symbol legend
- .5 Plan showing fire protection piping, devices, valves, etc.
- .6 Outline specifications including a minimum of 3 acceptable manufacturers.

### 3.3.2.7 Electrical:

- .1 Site Plan same scale as architectural site plan showing site lighting, utility service, utility connections and power to other outdoor facilities such as athletic facilities, signs, etc.).
- .2 Floor plan(s) same scale as architectural plans showing distribution systems (i.e. transformers, switch gear, panelboards, etc.) lighting, power, and power consuming equipment locations with preliminary camera locations and access control facilities clearly identified. *If the Owner is a cabinet agency of the state of Ohio, a PDF of this drawing will be submitted, through the Project Manager, to the Ohio Homeland Security Infrastructure and Technology Unit for comments.*
- .3 Schedules for fixtures, panels, equipment, food service equipment, etc. showing electrical characteristics, design loads, capacities, etc. as appropriate.
- .4 Symbol legend
- .5 Outline specifications including a minimum of 3 acceptable manufacturers.

### 3.3.2.8 Approval:

- .1 Documented approval of Design Development Stage by Owner.

## ARTICLE 4 - ELEMENTS OF CONSTRUCTION DOCUMENTS STAGE SUBMISSION

### 4.1 Purpose

4.1.1 The purpose of this stage is to prepare legal and binding documentation of the project requirements for the Owner and the Contractor that defines the scope of work, conditions under which the work will be performed, and any special Owner expectations for requirements necessary to prepare a proposal for and execution of the work.

### 4.2 Project Scope and Parameter Verification

4.2.1 CD Stage deliverables have been reviewed by the project team (A/E and Consultants) and are complete.

4.2.2 Received written approval of the Design Development Stage from the Owner.

4.2.3 Project budget has been reviewed and appears adequate for the work.

- 4.2.4 Contract requirements, scope of services and in-house project budget for CD Stage have been reviewed.
- 4.2.5 The deliverables for the CD Stage have been reviewed by the Project Team.
- 4.2.6 The drawing numbering system has been established.
- 4.2.7 Any additional field measuring/verification of any existing related and/or adjoining building conditions required by the design development have been completed.
- 4.2.8 Code parameters (fire rated walls/ceilings/etc.) have been clearly documented.
- 4.2.9 Interior design, furniture/equipment needs and Owner standards (finishes, etc.) have been established, All layouts have been developed for furniture, equipment and casework.
- 4.2.10 Project schedule for any potential phasing of the work has been established.
- 4.2.11 Utility company/companies services confirmation is documented including any off site upgrades required.
- 4.2.12 Bidding methods(s) for the project have been determined.
- 4.2.13 Design and construction schedule are complete and adequate for the work.

### 4.3 Deliverables

#### 4.3.1 Drawings.

##### 4.3.1.1 Architectural:

- .1 Code Information/Data
- .2 Survey
- .3 Site Plan
- .4 Floor Plan(s) (each level including mechanical mezzanines)
- .5 Enlarged Plans – special areas
- .6 Building Elevations
- .7 Building Cross Sections
- .8 Building Wall Sections
- .9 Stair and Elevator Sections
- .10 Special details
- .11 Interior finish details
- .12 Room Finish Schedule
- .13 Door, Frame, and Hardware Schedule
- .14 Equipment/Casework Plans/Elevations/Details
- .15 Special Construction Plans/Details (Pools/Auditoriums/etc)
- .16 Sequence of the Work Plan (Phasing)

##### 4.3.1.2 Structural:

- .1 Foundation Plan
- .2 Framing Plans.
- .3 Typical details
- .4 Special details
- .5 Structural Schedules (columns, lintels, etc.)

##### 4.3.1.3 Plumbing/Mechanical/Electrical:

- .1 Site Plan(s)
- .2 Floor Plans
- .3 Detailed Equipment Room Plans
- .4 Detailed Equipment Room Sections

- .5 Special details
- .6 Equipment and Fixture Schedules

4.3.2 Specifications. (organized according to current version of CSI/CSC *MasterFormat*)

4.3.2.1 Complete Standard Requirements (Division 00)

- .1 Table of Contents
- .2 Solicitation
- .3 Instructions to Bidders (include Supplementary Instructions if applicable)
- .4 Bid Form
- .5 Bid Security Form
- .6 Bidder's Qualifications
- .7 EDGE Affidavit
- .8 Contract Form
- .9 Performance and Payment Bond Form
- .10 Contracting Definitions
- .11 General Conditions (include Supplementary Conditions if applicable)
- .12 Wage Rate Requirements

4.3.2.2 Complete General Requirements Specification (Division 01)

4.3.2.3 Complete Technical Specifications (Divisions 02 through 49)

4.3.3 Miscellaneous:

- 4.3.3.1 Final code check
- 4.3.3.2 Technical review of the documents
- 4.3.3.3 Construction cost estimate
- 4.3.3.4 Construction schedule
- 4.3.3.5 Permits

**END OF DOCUMENT**

# Document 00 71 00 - Contracting Definitions (CM at Risk Project)

## State of Ohio Standard Requirements for Public Facility Construction

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<b>Acceptable Component</b>	A component listed in the Specifications after the Basis of Design Component.
<b>Addenda or Addendum</b>	Written or graphic instrument issued prior to the Proposal deadline which modifies or interprets the proposed Contract Documents by additions, deletions, clarifications, or corrections. Addenda become part of the Contract Documents when the Agreement is executed.
<b>ADR</b>	See “Alternative Dispute Resolution.”
<b>A/E</b>	See “Architect/Engineer.”
<b>Affiliated Entity</b>	See “CM Affiliated Entity.”
<b>Agreement</b>	The form furnished by the Contracting Authority (including all of its exhibits) that, when completed and signed by the CM and Contracting Authority evidences entry into the Contract.
<b>Allowance</b>	A sum stipulated in the Contract Documents for a particular scope of the Work that may not be completely defined at the time the parties enter into the GMP Amendment. Allowance amounts do not include the CM’s Fee on account of the associated Work.
<b>Alternate</b>	A potential change in the scope of the Work, which may include but is not limited to alternate materials or methods of construction, and an adjustment stated in the GMP Amendment to be made to the Contract Sum or Contract Times or both if the corresponding Alternate is incorporated into the Contract.
<b>Alternative Dispute Resolution</b>	A voluntary and non-binding process for the administrative review, consideration, and attempted settlement of a dispute, without resort to judicial process, including but not limited to partnering, negotiation, mediation, impartial fact-finding, dispute review board, and mini-trials, but shall not include arbitration.
<b>Applicable Law</b>	All federal, state, and local codes, statutes, ordinances, and regulations that apply to the performance of the Work or the A/E’s Services on the Project.
<b>Approved Program of Requirements</b>	A written document approved by the Owner and Contracting Authority that details the functional requirements of the Project and the expectations of how it will be used and operated. These requirements and expectations include project goals, measurable performance criteria, cost considerations, benchmarks, success criteria, and supporting information.
<b>Architect/Engineer</b>	The Person responsible for providing professional design services and construction contract administration for the Project as provided in the Contract Documents. The A/E shall be a <b>(1)</b> registered architect holding a license and certificate of authorization issued by the Ohio Architects Board pursuant to ORC Chapter 4703, <b>(2)</b> landscape architect holding a license and certificate of authorization issued by the Ohio Landscape Architects Board pursuant to ORC Chapter 4703, or <b>(3)</b> professional engineer or professional surveyor holding a license and certificate of authorization issued by the Ohio Engineers and Surveyors Board pursuant to ORC Chapter 4733.
<b>As-Built Documents</b>	Documents, including but not limited to Drawings, Addenda, Specifications, Modifications, and other elements of the Contract Documents which the CM annotates and otherwise modifies to indicate changes made during the construction process, the location of concealed and buried items, and other information useful to the Owner throughout the life of the completed Project.

<b>Basis Documents</b>	All of the Drawings, Specifications, and other documents (including without limitation the Design Intent Statement), <b>(1)</b> upon which the CM relied to prepare the associated GMP Amendment, and <b>(2)</b> which are identified in Exhibit A to the associated GMP Amendment.
<b>Basis of Design</b>	A document that records the concepts, calculations, decisions, and product selections used to meet the Owner's Project Requirements and to satisfy applicable regulatory requirements, standards, and guidelines. The document includes both narrative descriptions and lists of individual items that support the design process.
<b>Basis of Design Component</b>	A component listed first in the Specifications.
<b>Bid</b>	A written proposal to perform the scope of Work allocated to a Subcontract, which meets the definition of "Trade Contract" under OAC Section 153:1-7-01.
<b>Bidder</b>	A Person that submitted a Bid.
<b>BIM</b>	See "Building Information Model."
<b>Bond</b>	The Performance Bond, Payment Bond, or both.
<b>Building Information Model</b>	A digital representation of physical and functional characteristics of a facility; a shared knowledge resource for information about a facility forming a reliable basis for decisions during its life-cycle, which is defined as existing from earliest conception to demolition; electronic files used to design and coordinate the Project; and may be used to describe a single model or multiple models used in the aggregate.
<b>Certificate of Contract Completion</b>	A form used to document the CM's achievement of Contract Completion. This form may also be used to document partial Contract Completion.
<b>Certificate of Substantial Completion</b>	A form used to document <b>(1)</b> that the CM has achieved Substantial Completion of the Work or a designated portion of the Work for which the Contracting Authority and the Owner have agreed to take Partial Occupancy, and <b>(2)</b> the date on which the associated Substantial Completion of the Work was achieved.
<b>Change Directive</b>	A written order prepared by the A/E and executed by the Contracting Authority that directs a change in the Work.
<b>Change Order</b>	A written instrument prepared by the A/E and executed by the Contracting Authority and the CM that modifies the Contract.
<b>Claim</b>	A demand or assertion, initiated by written notice, certified by one of the parties to the Contract seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract.
<b>CM</b>	See "Construction Manager."
<b>CM Affiliated Entity</b>	Any entity related to or affiliated with the CM or with respect to which the CM has direct or indirect ownership or control, including without limitation any entity owned in whole or part by the CM; any holder of more than ten percent of the issued and outstanding shares of, or the holder of any interest in, the CM; any entity in which any officer, director, employee, partner or shareholder (or member of the family of any of the foregoing persons) of the CM or any entity owned by the CM has a direct or indirect interest, which interest includes but is not limited to that of a partner, employee, agent or shareholder.
<b>CM Payment Request</b>	The form furnished by the Commission that is to be used by the CM in requesting payments and which, when signed by the CM, shall serve as an affidavit that payments requested are in proportion to the Work completed as shown on the Schedule of Values.

<b>CM's Contingency</b>	A portion of the Contract Sum reserved for the CM's exclusive use (subject to the concurrence of the Owner and Contracting Authority) on account of certain unexpected events described in the General Conditions.
<b>CM's Documents</b>	All Project-related documents, including those in electronic form, prepared by the CM, Consultants, and Subcontractors.
<b>CM's Fee</b>	The portion of the Contract Sum attributable to the aggregate of the CM's Overhead and profit related to the CM's proper, timely, and complete performance of the Work in the Construction Stage. The CM's Fee does not include the CM's Preconstruction Stage Compensation.
<b>CM's Punch List</b>	A document prepared by the CM that consists of a list of items of Work to be completed or corrected by the CM as a condition precedent to Contract Completion.
<b>Commission</b>	See "Ohio Facilities Construction Commission."
<b>Commissioning Agent</b>	The Person identified by the Contracting Authority who leads, plans, schedules, and coordinates the commissioning team to implement the Commissioning Process for the Project.
<b>Commissioning Plan</b>	A document that outlines the organization, schedule, allocation of resources, and documentation requirements of the Commissioning Process.
<b>Commissioning Process</b>	A quality-focused process for enhancing the delivery of a project. The process focuses on verifying and documenting that the facility and all of its systems are planned, designed, installed, tested, operated, and maintained to meet the Owner's Project Requirements.
<b>Commissioning Report</b>	A document that records the activities and results of the Commissioning Process. The Commissioning Report is developed from the final Commissioning Plan with its attached appendices.
<b>Construction Budget</b>	The budget for Construction Costs for the Project established by the Contracting Authority and the Owner.
<b>Construction Cost</b>	The total cost for the CM's performance of the Work in the Construction Stage including all elements of the Project designed or specified by the A/E (at current market rates of labor and materials), plus CM's Contingency, plus CM's Fee. Construction Cost does not include the following: Preconstruction Stage Compensation, A/E fees, the cost of the land, right-of-way acquisition costs, or financing costs.
<b>Construction Manager</b>	The party identified as such in the Agreement.
<b>Construction Progress Schedule</b>	The critical path schedule for performance of the Contract; showing the time for completing the Work within the Contract Times; the planned sequence for performing the various components of the Work; the interrelationship between the activities of the Subcontractors, A/E, CM, Contracting Authority, and Owner; and the Subcontractors' resource and cost loading information; as periodically updated during the performance of the Work.
<b>Construction Stage Personnel Costs</b>	The Personnel Costs the CM earns and the Owner pays to the CM during the Construction Stage.
<b>Consultant</b>	A Person engaged by the CM or a Subcontractor to provide professional services of various types for the Project including without limitation the Preconstruction Stage services of a Design-Assist Firm. The term includes the Consultant's authorized representatives, successors, assigns, and subconsultants regardless of tier.
<b>Contingency</b>	See "CM's Contingency."

<b>Contract</b>	The state of legal obligation entered into by the State and CM, whereby they have agreed to an exchange of certain acts, materials, equipment, and services for certain monetary consideration, under all terms and conditions specified in the Contract Documents, which shall remain in full force and effect until such time as all obligations under the Contract have been lawfully and completely discharged, or the Contract is terminated under other conditions specified in the Contract Documents.
<b>Contract Completion</b>	The stage in the progress of any Phase when the Work is completed in accordance with the terms of the Contract Documents and the CM has satisfied all of its other obligations under the Contract, including without limitation <b>(1)</b> all governmental authorities have given final, written approval of the Work, <b>(2)</b> a final unconditional certificate of occupancy has been granted and issued to the Owner by the appropriate governmental authorities, and <b>(3)</b> all Punch List items have been completed or corrected.
<b>Contract Documents</b>	Collectively, the documents that constitute the substance of the Contract including the Agreement, GMP Documents, final Drawings, final Specifications, Addenda if any, General Conditions, Supplementary Conditions if any, Project Manual, and Modifications if any.
<b>Contract Sum</b>	The amount stipulated as such in the GMP Amendment. The Contract Sum is the CM's entire compensation for the CM's proper, timely, and complete performance of the Work during the Construction Stage and is subject to adjustment as provided in the Contract. The Contract Sum does not include the Preconstruction Stage Compensation.
<b>Contract Times</b>	The periods stipulated in the GMP Amendment for the achievement of associated Milestones, in consecutive days, beginning on the date established by the Notice to Proceed, including adjustments as provided in the Contract.
<b>Contracting Authority</b>	The party identified as such in the Agreement, which may be the Ohio Facilities Construction Commission; an agency of the state of Ohio; an Institution of Higher Education or division thereof; a School District Board; or the legislative body of a political subdivision.
<b>Coordination Drawings</b>	Drawings and Electronic Files prepared by the CM and Subcontractors to demonstrate how multiple-system and interdisciplinary work will be coordinated. Clash reports generated by BIM authoring software may be included in the Coordination Drawing submittals on certain projects.
<b>Correction Period</b>	A period of one year commencing on the date of Substantial Completion of the Work or a designated portion of the Work which the Contracting Authority and Owner have agreed to take Partial Occupancy.
<b>Cost of the Work</b>	The Cost of the Work is the sum of (without duplication): <b>(1)</b> General Conditions Costs, <b>(2)</b> Construction Stage Personnel Costs, <b>(3)</b> Subcontract Costs, and <b>(4)</b> the cost of Self-Performed Work. The Cost of the Work does not include any portion of the CM's Fee, CM's Contingency, or Preconstruction Stage Compensation.
<b>CxA</b>	See "Commissioning Agent."
<b>Date of Commencement</b>	The date established in a Notice to Proceed issued by the Contracting Authority to the CM to mark the start of the Construction Stage and the beginning of the running of the Contract Times.
<b>day</b>	A calendar day of 24 hours measured from midnight to midnight, unless otherwise expressly specified to mean a business day.
<b>Defective Work</b>	Work that does not conform to the Contract Documents; or does not meet the requirements of any applicable statute, rule or regulation, inspection, reference standard, test or approval; or has been damaged prior to the A/E's recommendation of final payment, unless responsibility for the protection thereof has been expressly assumed by the Owner; or that is not free from defects in workmanship, materials, or equipment during the period of any warranty or guarantee.

<b>Design-Assist Firm</b>	A Person capable of monitoring and assisting in the completion of the plans and specifications under ORC Section 153.50, who the CM engages to provide design-assist services.
<b>Design Intent Statement</b>	An A/E-prepared document intended to clarify the A/E's stage submission (e.g., the A/E's Design Development Stage submission) upon which the GMP Amendment may be based. The Design Intent Statement shall include a detailed description of all materially incomplete design elements and the intended scope, quantity, quality, and other characteristics of those elements that the A/E intends to describe in subsequent Drawings and Specifications for the Work.
<b>Differing Site Condition</b>	Either <b>(1)</b> a subsurface or otherwise concealed physical condition encountered at the Site that differs materially from the conditions indicated in the Contract Documents or <b>(2)</b> an unknown physical condition of an unusual nature encountered at the Site that differs materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents.
<b>Dispute Review Board</b>	A form of Alternative Dispute Resolution that is typically comprised of three members, selected jointly by the CM and the Contracting Authority, to monitor the progress of construction and provide recommended resolutions to disputes that are brought before them.
<b>Drawings</b>	Graphic portions of the Contract Documents, showing the design, type of construction, location, dimension, and character of the Work to be provided by the CM, which generally includes plans, elevations, sections, details, schedules, diagrams, notes, and text.
<b>Electronic File</b>	Information maintained in a computer system or format that is intended to facilitate a Person's use and manipulation of the information including but not limited to Word, Excel, PDF, Primavera, CAD, and BIM files all in their native format.
<b>Enclosure, Permanent</b>	The condition in which the permanent exterior walls and roofs are in place, insulated and weathertight, and permanent windows and entrances are in place.
<b>Enclosure, Temporary</b>	The condition in which the permanent exterior walls and roofs are in place, insulated and weathertight, and windows and entrances are provided with suitable temporary enclosures.
<b>Extra Materials</b>	Materials required by the Contract Documents that are not incorporated into the Project but are given to the Owner to be used for future maintenance or repairs.
<b>Fee</b>	See "CM's Fee."
<b>Final Inspection</b>	The final review of the Work by the A/E to determine whether issuance of the Certificate of Contract Completion is appropriate.
<b>furnish</b>	Supply and deliver to the Site, or other specified location, ready for installation.
<b>General Conditions</b>	The State's Standard General Conditions in effect as of the date of the Agreement.
<b>General Conditions Costs</b>	General Conditions Costs include only the CM's costs to provide the General Conditions Work including without limitation the costs of all of the following Site-related items: telephone, telephone charges, facsimile, telegrams, postage, photos, photocopying, hand tools, simple scaffolds (one level high), tool breakage, tool repairs, tool replacement, tool blades, tool bits, and pre-approved travel, lodging, and parking costs. General Conditions Costs also include <b>(1)</b> Bond premiums, <b>(2)</b> premiums for subcontractor default insurance to the extent incurred on account of Subcontractors enrolled for the Project, and <b>(3)</b> premiums for builder's risk insurance if the CM purchases the builder's risk policy for the Project.
<b>General Conditions Work</b>	The Work defined as such in the General Conditions Costs Description exhibit to the Agreement and referred to under the definition of "General Conditions Costs."
<b>GMP</b>	See "Guaranteed Maximum Price."



<b>GMP Amendment</b>	The amendment to the Contract establishing the Contract Sum, Contract Times, and other Contract terms for a Project Phase.
<b>GMP Documents</b>	The GMP Amendment (including all of its exhibits) signed by the Owner, Contracting Authority, and CM.
<b>Guaranteed Maximum Price</b>	Synonymous with Contract Sum and does not refer to a cost-reimbursable financial arrangement (e.g., cost-plus, cost-plus with a guaranteed maximum price, target price, etc.).
<b>Hazardous Materials</b>	Any material, substance, pollutant, or contaminant that is defined, regulated, referenced, or classified in the Comprehensive Environmental Response, Compensation and Liability Act, Federal Water Pollution Control Act, Resource Conservation and Recovery Act, Clean Air Act, Hazardous Materials Transportation Uniform Safety Act, Toxic Substances Control Act, or any other Applicable Law relating to any hazardous, toxic, or dangerous waste, substance, or material. Any substance or material that, after release into the environment or upon exposure, ingestion, inhalation, or assimilation, either directly from the environment or directly by ingestion through food chains, will, or may reasonably be anticipated to, cause death, disease, behavior abnormalities, cancer or genetic abnormalities and specifically includes but is not limited to asbestos, polychlorinated biphenyls ("PCBs"), radioactive materials, including radon and naturally occurring radio nuclides, natural gas, natural gas liquids, liquefied natural gas, synthetic gas, oil, petroleum and petroleum-based derivatives and urea formaldehyde.
<b>Indemnified Parties</b>	The State, Contracting Authority, Owner, A/E, other Separate Consultants, and their respective officials, officers, consultants, agents, representatives, and employees, in both individual and official capacities.
<b>install</b>	Put into use or place in final position, complete and ready for intended service or use.
<b>Institutional Designee</b>	The party identified in the Agreement empowered with a level of authority similar to the Executive Director of the Commission, which may be the university architect or engineer, director of capital facilities, or an institution vice president.
<b>Institution of Higher Education</b>	Any state institution of higher education as defined in ORC Section 3345.011, including any state university or college, community college, state community college, technical college, university branch, community college district, technical college district, university branch district, and the applicable board of trustees or, in the case of a university branch district, any other managing authority.
<b>Liquidated Damages</b>	A sum established in the Contract Documents, pursuant to the statutory delay forfeiture authorized under ORC Section 153.19, to be paid to the Owner due to the CM's failure to complete the Work within the Contract Time for achievement of Substantial Completion, or any applicable portion of the Work on or prior to any associated Milestone.
<b>Material Supplier</b>	A Person under a contract with the CM to furnish materials or supplies in furtherance of the Work during the Construction Stage of the Project, including all such Persons in any tier. Material Supplier does not include any Separate Contractor unless expressly assigned in writing to the CM by the Owner and accepted by the CM.
<b>mediation</b>	A voluntary process in which a neutral third party meets with the parties who have a disagreement or dispute and attempts to facilitate a mutually satisfactory resolution.
<b>Milestone</b>	A principal event specified in the Contract relating to a completion date or time.
<b>Modification</b>	A <b>(1)</b> written amendment to the Contract signed by both parties, <b>(2)</b> Preconstruction Services Amendment, <b>(3)</b> Change Order, <b>(4)</b> Change Directive, or <b>(5)</b> an order for a minor change in the Work.
<b>negotiation</b>	A form of Alternative Dispute Resolution in which all parties involved are represented by those invested with the authority to agree to a determination of an adjustment in the Contract Sum, Contract Times, or both.

<b>Neutral Facilitator</b>	An nonpartisan third-party without decision-making authority who is engaged to assist the Project's key stakeholders in developing cooperative relationships, achieving project objectives, avoiding or minimizing disputes, and nurturing a more-collaborative ethic characterized by trust, cooperation, and teamwork.
<b>Notice of Commencement</b>	A notice prepared by the Contracting Authority identifying the Project, CM, Separate Contractors, and their respective Sureties; and the name of the Contracting Authority's representative upon whom a claim affidavit may be served.
<b>Notice to Proceed</b>	A written notice provided by the Contracting Authority to the CM to establish the Date of Commencement and to authorize the CM to proceed with the Construction Stage of the Work.
<b>OAC</b>	Ohio Administrative Code
<b>Ohio Facilities Construction Commission</b>	The authorized contracting agent for public improvement projects in accordance with ORC Chapters 123 and 153, acting by and through its Executive Director.
<b>ORC</b>	Ohio Revised Code
<b>Overhead</b>	The term "Overhead" includes all of the following costs: <b>(1)</b> home-office payroll, which includes (except where specifically allowed as a Personnel Cost): payroll costs and all other compensation (including without limitation membership in trade, business, or professional organizations; professional licenses; training; and bonuses or similar plans/arrangements related to performance on, or profit from, the Project) of the CM's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by the CM in the CM's principal or a branch office (not including the CM's Site office) for general administration of the Work; <b>(2)</b> home-office expenses, which include (except where specifically allowed as a Reimbursable Expense or General Conditions Cost): all expenses of the CM's principal and branch offices including without limitation home-office telephone, telephone charges, computers, fax, postage, photos, copies, legal services, and accounting services; <b>(3)</b> all of the CM's capital expenses, including without limitation interest on the CM's capital employed for the Work and charges against the CM for delinquent payments; <b>(4)</b> except where specifically allowed as a use of the CM's Contingency, all costs due to the negligence or breach of contract of the CM, a Subcontractor, a Consultant, or anyone for whom they may be liable, including without limitation the correction of Defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property; <b>(5)</b> all costs related to insurance provided by the CM, whether required under the Contract or not, except <b>(a)</b> premiums for subcontractor default insurance in the Construction Stage if those insurance premiums are included as a General Conditions Cost and <b>(b)</b> premiums for builder's risk insurance in the Construction Stage if those insurance premiums are included as a General Conditions Cost and the CM is required to provide the builder's risk insurance described in the General Conditions; <b>(6)</b> all travel, lodging, and parking costs, except where specifically allowed as a pre-approved Reimbursable Expense or General Conditions Cost; <b>(7)</b> all applicable taxes of every kind (including but not limited to commercial activity tax ("CAT")) except where otherwise specifically allowed; <b>(8)</b> all other overhead or general administrative expenses of any kind and the costs of any item not specifically allowed: <b>(a)</b> as a Personnel Cost or a Reimbursable Expense in the Preconstruction Stage, or <b>(b)</b> as a Cost of the Work in the Construction Stage.
<b>Owner</b>	The state of Ohio agency, Institution of Higher Education or division thereof, School District Board, or other instrumentality for whom the Project is being constructed.
<b>Owner's Project Requirements</b>	A written document that details the functional requirements of the Project and the expectations of how it will be used and operated. These requirements include project goals, measurable performance criteria, cost considerations, benchmarks, success criteria, and supporting information.

<b>Partial Occupancy</b>	The condition that occurs when the Owner occupies or uses a portion of the Project prior to Contract Completion, partial occupancy is approved by authorities with jurisdiction over the Project and the insurer(s) providing the builders risk insurance, and items of Work cannot be completed until a subsequent date.
<b>partnering</b>	A voluntary dispute prevention process involving team building activities to help define common goals, improve communication, and foster a problem solving attitude among a group of contracting parties that must work together throughout Contract performance to be less adversarial and more cooperative.
<b>Payment Bond</b>	A written guaranty from a Surety to the Owner providing financial assurance that the CM will make the required payments to Subcontractors and Material Suppliers for all labor, materials, and other services related to the Project.
<b>Payment Request</b>	See "CM Payment Request."
<b>Performance Bond</b>	A written guaranty from a Surety to the Owner providing financial assurance that the CM will perform the Work in accordance with the Contract Documents.
<b>Person</b>	An individual, corporation, business trust, estate, partnership, association, or other public or private entity.
<b>Personnel Costs</b>	The rates and fees to be paid by the Owner to the CM on account of the proper, timely, and complete performance of certain Preconstruction Services or Work by the CM's employees, which rates and fees are fully loaded and include without limitation: <b>(1)</b> the portion of direct salaries and wages of the CM's personnel (whether stationed at the CM's principal or branch offices or stationed at the Site, including professional, technical, management, administrative and clerical employees, and principals engaged on the Project) to the extent of their time devoted to the Project, and <b>(2)</b> the portion of the cost of their mandatory and customary contributions and benefits (such as employment taxes and other statutory employee benefits, social security contributions, insurance, sick leave, holidays, vacations, pension and profit sharing pursuant to plans qualified under federal law, and similar benefits) related to their time devoted to the Project. Personnel Costs also include the costs of personal protective equipment (e.g., hard hats, safety glasses, hearing protection, etc.). The term "Personnel Cost(s)," when used without a modifier, refers to either a Preconstruction Stage Personnel Cost or a Construction Stage Personnel Cost.
<b>Phase</b>	A separation in the Work of the Project by sequence or time intervals, which may include different Subcontractors for each Phase.
<b>Preconstruction Fee</b>	The portion of the CM's Preconstruction Stage Compensation attributable to the aggregate of the CM's Overhead and profit related to the CM's proper, timely, and complete performance of the Preconstruction Stage Services. The Preconstruction Fee does not include the CM's compensation for Preconstruction Personnel Costs or Reimbursable Expenses.
<b>Preconstruction Services</b>	The CM's services in the Preconstruction Stage as set forth in the Contract Documents. The Preconstruction Services include services performed during the Preconstruction Stage by any Design-Assist Firm the CM engages on the Project.
<b>Preconstruction Services Amendment</b>	A written instrument executed by the Contracting Authority and CM that modifies the Contract as it pertains to the Preconstruction Stage.
<b>Preconstruction Stage Compensation</b>	The amount stipulated as such in the Agreement. The Preconstruction Stage Compensation <b>(1)</b> is the CM's entire compensation for the CM's proper, timely, and complete performance of the Preconstruction Services, which includes Preconstruction Services performed by any Design-Assist Firm the CM engages on the Project and <b>(2)</b> is subject to adjustment as provided in the Contract.

<b>Preconstruction Stage Personnel Costs</b>	The Personnel Costs the CM earns and the Owner pays to the CM during the Preconstruction Stage.
<b>Preconstruction Stage Reimbursable Expenses</b>	Preconstruction Stage Reimbursable Expenses include only the following items: <b>(1)</b> travel, lodging, and parking costs when incurred in connection with the Project and approved in writing by the Contracting Authority before the cost is incurred, and <b>(2)</b> expenses described in the Preconstruction Stage Reimbursable Expenses Schedule attached to the Agreement.
<b>Product Data</b>	Standard illustrations, schedules, diagrams, performance charts, instructions, and brochures that illustrate physical appearance, size, and other characteristics of materials and equipment.
<b>Progress Status Report</b>	A monthly progress report prepared by the CM and containing the following information for each Project Phase: <b>(1)</b> listing of actual costs for completed activities, estimates for uncompleted tasks and projections for anticipated funding requirements based on the most recently updated Project Schedule and/or Construction Progress Schedule; <b>(2)</b> identification of variances between actual and budgeted or estimated costs; <b>(3)</b> the updated Construction Progress Schedule; <b>(4)</b> progress photos; <b>(5)</b> an executive summary; <b>(6)</b> a discussion of pending items and existing or anticipated problems, status of RFIs; <b>(7)</b> a safety and accident report; <b>(8)</b> information on each Subcontractor and each Subcontractor's work as well as the entire Work, showing percentages of completion and the number and amounts of Change Orders and Change Directives and relating such information to the Construction Progress Schedule and the Contract Sum; <b>(9)</b> a list of all identified Claims, any threatened claims and issues that, in the reasonable judgment of CM, may potentially become Claims and any potential Change Orders that have been submitted to the Owner by the CM; <b>(10)</b> status of the CM's Contingency; <b>(11)</b> information on compliance with the EDGE participation goals established for the Project; <b>(12)</b> monthly procurement decisions regarding furnishings, fixtures and equipment; <b>(13)</b> status of compliance with required LEED components, if applicable; and <b>(14)</b> such other relevant information as may be reasonably required by the Owner from time to time.
<b>Project</b>	The public improvement, of which the Work performed under the Contract Documents may be the whole or a part.
<b>Project Manager</b>	A permanent employee of the Contracting Authority assigned to the Project and authorized to perform specific responsibilities.
<b>Project Manual</b>	That part of Construction Documents which consists of bound volume(s) of primarily written material which generally contain Division 00 - "Procurement and Contracting Requirements," and Divisions 01 through 49 - "Specifications," and other documents pertaining to the Project.
<b>Project Schedule</b>	A project schedule prepared by the CM that, with respect to each Phase of the Project, identifies, coordinates and integrates the anticipated design and construction schedules, the Contracting Authority's and Owner's responsibilities, government authority reviews and other activities as are necessary for the timely completion of the Work.
<b>Proposal</b>	The offer of the CM to perform the Work set forth in a Proposal Request.
<b>Proposal Request</b>	A document issued after execution of the GMP Amendment requesting a Proposal from the CM, which may initiate a Change Order to modify the Contract.
<b>provide</b>	Furnish and install, complete and ready for intended use.
<b>Punch List</b>	A document listing items of Work requiring correction or completion by the CM as a condition precedent to Contract Completion.
<b>Punch List Milestone</b>	The date 30 days after the achievement of Substantial Completion of all or a portion of the Work.

<b>Record Documents</b>	Electronic files and printed documents of all nature prepared by the A/E, which incorporate the information shown on the CM's As-Built Documents. They consist of the "Record Drawings" and "Record Project Manual," Record Model, Certificate of Substantial Completion, Certificate of Contract Completion (as complete), manufacturers' warranties, certificate(s) of occupancy, approved shop drawings and other action submittals, responses to Requests for Information, Modifications, balancing reports, and the final version of the approved Construction Progress Schedule.
<b>Record Drawings</b>	The Drawings, which have been revised by the A/E to show the changes made during the construction process, conformed to represent the Work as executed by the CM.
<b>Record Model</b>	The Building Information Model, which has been revised by the A/E to show the changes made during the construction process, conformed to represent the Work as executed by the CM.
<b>Record Project Manual</b>	The Project Manual of the Contract Documents, which has been revised by the A/E to show the changes made during the construction process, based on the As-Built Project Manual furnished by the CM.
<b>Reimbursable Expenses</b>	See "Preconstruction Stage Reimbursable Expenses."
<b>Request for Change Order</b>	A written notice from the CM accompanied by a Proposal for a change in the Work.
<b>Request for Information</b>	A written request to the A/E seeking an interpretation or clarification of the Contract Documents.
<b>RFI</b>	See "Request for Information."
<b>Samples</b>	Physical examples, color selection items, field samples, and mock-ups furnished by the CM to illustrate functional and aesthetic characteristics of products, materials, equipment, or workmanship and establish criteria by which the Work shall be judged.
<b>Schedule of Values</b>	A full, accurate, and detailed statement furnished by the CM reflecting a defined breakdown of the Contract Sum.
<b>School District</b>	A local, exempted village, or city school district as defined in ORC Chapter 3311, or a joint vocational school established pursuant to ORC Section 3311.18, performing essential governmental functions of state government pursuant to ORC Sections 3318.01 to 3318.20.
<b>School District Board</b>	The board of education of a School District.
<b>Self-Performed Work</b>	Work performed by direct employees of the CM or a CM Affiliated Entity, which does not include Work performed by direct employees of a Subcontractor. Notwithstanding the foregoing sentence, Self-Performed Work may include: <b>(1)</b> a Material Supplier's provision to the CM or a CM Affiliated Entity of materials or supplies used in the performance of the Self-Performed Work, and <b>(2)</b> a Subcontractor's lease to the CM or a CM Affiliated Entity of tools or equipment used in the performance of the Self-Performed Work.
<b>Separate Consultant</b>	A Person engaged by the Owner or the Contracting Authority to provide Project-related professional services other than the services under this Contract. The term includes the Separate Consultant's authorized representatives, successors, assigns, and subconsultants regardless of tier.
<b>Separate Contract</b>	The contract between the Owner or Contracting Authority and a Separate Consultant or a Separate Contractor.
<b>Separate Contractor</b>	A Person under contract with the Owner or Contracting Authority to provide Project-related work other than the Work under this Contract. The term includes the Separate Contractor's authorized representatives, successors, assigns, and subcontractors regardless of tier.

<b>Shop Drawings</b>	Drawings, diagrams, illustrations, and schedules specifically prepared for the Project provided by the CM or a Subcontractor to illustrate some portion of the Work. Shop Drawings are not Contract Documents. Shop Drawings on equipment shall include a written statement from the manufacturer of the equipment certifying the equipment is in compliance with the Contract Documents.
<b>Site</b>	The location designated for the Project.
<b>Specifications</b>	Those portions of the Contract Documents consisting of detailed written administrative, procedural, and technical requirements, included in Divisions 01 through 49, for the construction of the Work, whether physically on the Drawings or bound in separate volumes, including identification of acceptable materials, methods, equipment, quality, and workmanship.
<b>Staffing Plan</b>	The CM's detailed plan for staffing the Project during the Construction Stage.
<b>Stage</b>	A distinct period in the life cycle of a facility from concept through construction, to use and deconstruction or demolition. Typical Stages include the Preconstruction Stage, which includes the Program Verification, Schematic Design, Design Development, and Construction Documents stages; and the Construction Stage, which includes Construction and Closeout activities.
<b>Standard Requirements</b>	The brief name of the "State of Ohio Standard Requirements for Public Facility Construction," including but not limited to General Conditions, and other Division 00 Documents and Division 01 Sections; in effect as of date of the Agreement.
<b>State</b>	The government of Ohio, including any organized body, office, or agency established by the laws of this state for the exercise of any function of state government, or any state institution of higher education as defined in ORC Section 3345.011.
<b>Subcontract</b>	Any contract or agreement between the CM and a Subcontractor for performance of a portion of the Work.
<b>Subcontract Form</b>	The State of Ohio Subcontract Form prescribed by OAC 153:1-3-02 and required for use with the Construction Manager at Risk method of project delivery.
<b>Subcontract Costs</b>	The sum of the contract values of all of the Subcontracts the CM enters into in furtherance of the Work. The Subcontract Costs include the cost of Subcontractor-provided surety bonds (if any).
<b>Subcontracting Plan</b>	The CM-developed written plan which describes in detail the CM's strategy for packaging and scheduling bidding and for ensuring that the scopes of Work of the various Subcontractors are coordinated, all requirements for the Project have been assigned to the appropriate Subcontract, the likelihood of jurisdictional disputes between trades has been minimized, and proper coordination has been provided for phased construction (if any).
<b>Subcontractor</b>	A Person under a contract with the CM to perform any part of the Work during the Construction Stage of the Project, including all such Persons in any tier. The term "Subcontractor" includes Material Suppliers, but does not include any Separate Contractor unless expressly assigned in writing to the CM by the Owner and accepted by the CM.
<b>Substantial Completion</b>	The stage in the progress of the Work when the Work (or designated portion of the Work for which the Contracting Authority and Owner have agreed to take Partial Occupancy) is sufficiently complete in accordance with the Contract that the Owner can utilize the Work for its intended use, as determined by the A/E. The issuance of a certificate of occupancy or partial certificate of occupancy (if applicable) is a condition precedent to the achievement of Substantial Completion.
<b>Substantially Complete</b>	See "Substantial Completion."

<b>Substitution</b>	An article, device, material, equipment, form of construction, or other item, proposed by the CM and approved by the A/E for incorporation or use in the Work as being functionally and qualitatively equivalent to essential attributes of a Basis of Design or Acceptable Component specified in the Contract Documents.
<b>Supplementary Conditions</b>	Amendments to the General Conditions, issued as a separate document, which describe conditions of the Contract unique to a particular Owner or Project, which may include provisions regarding the assignment of responsibility for refuse removal, safety and security precautions and programs, temporary Project facilities and utilities, weather and fire protection, scaffolding and equipment, materials and services to be used commonly by the CM and Subcontractors and requiring the CM to provide assistance in the utilization of any applicable equipment system, preparation of operation and maintenance manuals, and training of Owner personnel for operation and maintenance of the Project. The General Conditions shall not be superseded or amended by Drawings and Specifications, unless so provided in Supplementary Conditions prepared by the Contracting Authority and approved by the Commission.
<b>Surety</b>	A Person who provides financial assurances under a Performance Bond or Payment Bond.
<b>Systems Manual</b>	A system focused composite document that includes the operation manual, maintenance manual, and additional information of use to the Owner after they begin using the facility.
<b>Total Compensation</b>	The sum of the Preconstruction Stage Compensation plus the Contract Sum.
<b>Total Compensation Budget</b>	The Owner-established budget for the sum of the Preconstruction Stage Compensation plus the Construction Costs.
<b>Unit Price</b>	The cost of providing a unit of Work including labor, materials, services, and associated expenses as described in the GMP Amendment. Unit Prices do not include the CM's Fee on account of the associated Unit Price Work.
<b>Work</b>	The labor, materials, equipment, and services, individually or collectively which are required by the Contract Documents, to be performed or provided by the CM for the Project. The furnishing of all material, labor, detailing, layout, supplies, plants, tools, scaffolding, transportation, temporary construction, superintendence, demolition, and all other services, facilities and items reasonably necessary for the full and proper performance and completion of the requirements of the Project as set forth in the Contract Documents, and items reasonably inferable therefrom and consistent therewith for the proper execution and completion of the construction and other services required by the Contract Documents, whether provided or to be provided by the CM or a Subcontractor, or any other entity for whom the CM is responsible, and whether or not performed or located on or off of the Site.

**END OF DOCUMENT**

**Exhibit E - A/E Special Terms and Conditions (Sample)**  
**State of Ohio Professional Services Agreement**  
**Construction Manager at Risk Project**



*Edit this sample document to include terms and conditions specific to the Owner's projects.*

**Certifications**

These A/E Special Terms and Conditions amend and supplement the A/E Standard Terms and Conditions and other provisions of the Architect/Engineer Agreement as indicated below. All provisions not amended remain in full force and effect. The terms in these Special Terms and Conditions defined in the Contracting Definitions or the A/E Standard Terms and Conditions shall have the meanings assigned to them in those documents.

*The following edit deletes the Change Order Fee Allowance language, appropriate for OSFC-funded projects.*

*Delete Section 6.2.2.*

*Insert modifications to the A/E Standard Terms and Conditions that are applicable for projects specific to the agency or institution or school district below.*

**MODIFICATIONS TO STANDARD TERMS AND CONDITIONS**

*Insert Sections X.X, X.X.X, X.X.X.X, and X.X.X.X.X as follows:*

X.X **«Paragraph»**

X.X.X **«Subparagraph»**

X.X.X.X **«Clause»**

X **«Sub-clause»**

*In Section X.X.X, replace the first sentence with the following:*

*Replace Section X.X.X with the following:*

*Delete Section X.X.X.*

*Insert additional terms and conditions that are applicable to projects by the Owner below.*

*Insert Article 11 with associated Sections as follows in its entirety:*

**ARTICLE 11 - MISCELLANEOUS SPECIAL TERMS AND CONDITIONS**

11.1 **«Paragraph»**

11.1.1 **«Subparagraph»**

11.1.1.1 **«Clause»**

.1 **«Sub-clause»**

END OF DOCUMENT