

# Architect / Engineer Agreement (Stipulated Sum Project)

This Architect/Engineer Agreement ("Agreement") is made by and between The Ohio State University ("Owner") whose contact person shall be the Project Manager designated below or successor, and [Insert Name of A/E] ("Architect/Engineer" or "A/E"), whose contact person and address are set forth below.

WHEREAS, the Owner is operating under Ohio Revised Code ("O.R.C. ") Chapters 123 and 153 and it is the intention of the Owner, in the exercise of its powers as set forth in O.R.C. Sections 153.65 through 153.71, both inclusive, to obtain professional design services on behalf of the Owner for the following project ("Project"):

**Project Number:** [Insert Project Number]  
**Project Name:** [Insert Project Name1]  
[Insert Project Name2]

**Owner:** The Ohio State University  
Project Manager: [Insert Name], Facilities Operations & Development  
Address: 400 Central Classroom Building  
Columbus, Ohio 43210

**Architect/Engineer:** [Insert A/E Name]  
A/E Principal Contact: [Insert A/E Contact]  
Address: [Insert Address]  
[Insert City, State and Zip Code]

WHEREAS, unless adjusted as provided herein, all fees and reimbursable expenses payable to the A/E under this Agreement shall not exceed \$[Insert Amount]; and

WHEREAS, the Architect/Engineer desires, and is capable and licensed, to provide professional design services for the Project;

WHEREAS, the capitalized words and terms set forth in Article 10 herein shall be understood, throughout this Agreement, to have the meanings as set forth in Article 10;

NOW, THEREFORE, in consideration of the mutual promises herein contained, the Owner and the Architect/Engineer agree as follows:

## ARTICLE 1 - ARCHITECT/ENGINEER'S RESPONSIBILITIES

### 1.1 A/E's Services

#### 1.1.1 Scope of Services; Applicable Law

- .1 The A/E shall provide professional design services for the Project, including, but not limited to, services customarily furnished in accordance with generally accepted architectural or engineering services, in accordance with the terms of this Agreement, including, but not limited to, the provisions set forth in the attached Scope of Additional Services and Reimbursable Expenses labeled Exhibit #1.
- .2 The A/E shall provide such services in accordance with Applicable Law, the applicable Announcement issued pursuant to O.R.C. Section 153.67 ("Announcement"), and the Owner's Standards of Design, if any.

#### 1.1.2 Construction Budget

- .1 The total amount available for the construction of the Project is \$[Insert Construction Budget] ("Construction Budget").
  - .2 The Owner shall provide written notice to the A/E of any change in the Construction Budget.
  - .3 The A/E and the Owner do not have control over the cost of labor, materials, or equipment, over Contractors' methods of determining Bid prices, or over competitive bidding, market, or negotiating conditions. Accordingly, the A/E does not warrant or represent that Bids 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.
- 1.1.3 Timeliness; Standard of Care
- .1 The A/E shall perform its services in accordance with professional standards of skill, care, and diligence in a timely manner in accordance with the Project Schedule.
  - .2 The A/E shall provide its services so that the Project is completed as expeditiously and economically as possible, within the Construction Budget, and in the State's best interests.
- 1.1.4 Design Schedule
- .1 Within 30 days after the execution of this Agreement, the A/E shall submit, for approval by the Owner, a Design Schedule for the performance of the A/E's services.
  - .2 The Design Schedule shall include allowances for reasonable periods required for the review and approval of items by the Owner, and for approvals of governmental authorities having jurisdiction over the Project.
  - .3 Unless the Owner notifies the A/E of objections to the Design Schedule within 30 days of receipt thereof, the Owner shall be deemed to have approved the Design Schedule.
  - .4 The A/E shall coordinate the Design Schedule with the Project Schedule.
  - .5 The A/E shall not exceed, nor make any adjustment to, the Design Schedule after its initial approval without the prior written consent of the Owner.
- 1.1.5 Personnel
- .1 The identities of the principal persons, and the extent of their participation in performing the A/E's services, shall not be altered without the Owner's prior written consent.
  - .2 The A/E shall dismiss, from performing services under this Agreement, any individual employed by the A/E, or the A/E's subcontractors or Consultants, who the Owner finds, in its sole discretion, to be incompetent, guilty of misconduct, or detrimental to the services being performed under this Agreement.
- 1.1.6 Consultants
- .1 The A/E may provide services through one or more consultants employed by the A/E ("Consultants"), provided, however, that the A/E shall remain responsible to the Owner for all of the A/E's duties and obligations under this Agreement.
  - .2 No Consultant shall be retained upon terms inconsistent with this Agreement.
  - .3 The identity of any Consultant and the extent of such Consultant's participation in performing the A/E's services as set forth in the attached Scope of Additional Services and Reimbursable Expenses labeled Exhibit #1 shall not be altered without the Owner's prior written consent.

- .4 The Owner's approval of any Consultant shall not relieve the A/E of any liability for all acts and omissions of such Consultant. The A/E shall be fully responsible and liable for any such acts or omissions of the Consultant.

#### 1.1.7 Partnering Process and Meetings

- .1 The A/E shall, prior to construction of the Project, participate in the creation and implementation of a partnering agreement, and shall participate in partnering meetings with the Owner, appropriate Consultants, A/E's field representative, Contractors, and other parties involved in the Project. Partnering meetings may be conducted during both the design and construction stages of the Project.
- .2 The formation of a cohesive, mutually beneficial partnering arrangement among the Contractor, all Separate Contractors, the A/E, and the Owner will accomplish the construction of the Project most effectively and efficiently. This arrangement draws on their collective strengths, skills, and knowledge to achieve a Project of the intended quality, within budget, and on schedule. To achieve that objective, participation in a partnering session is required for the following key stakeholders:
  - .1 Owner – Primary representative and Project Manager
  - .2 A/E – Principal-in-charge, project manager, field representative, major consultants
  - .3 Contractor – Principal-in-charge, project manager, and superintendent
  - .4 Separate Contractors – Principal-in-charge, project manager, and superintendent
  - .5 Major Subcontractors (e.g., masonry, fire protection) – Principal-in-charge, project manager, or superintendent
  - .6 Schedule Consultant, if applicable
- .3 The purpose of the partnering arrangement is to build cooperative relationships between the Project's key stakeholders, avoid or minimize disputes, and nurture a more collaborative ethic characterized by trust, cooperation and teamwork. This arrangement is intended to produce a voluntary, non-binding, but formally structured agreement among the Project's key stakeholders, leading to an attitude that fosters risk sharing.
- .4 To create and implement the partnering arrangement, the Project's key stakeholders shall meet prior to the construction of the Project for developing a partnering agreement. The agreement should be comprehensive and focus on all issues necessary for successful completion of the Project, and shall identify common goals and objectives, develop a problem solution process, an Alternative Dispute Resolution ("ADR") strategy, and an implementation plan for the partnering arrangement.
- .5 Formal contractual relations, responsibilities, and liabilities are not affected by any partnering agreement. The cost associated with establishing this partnership shall be included in an allowance in the Lead Contractor's bid. The A/E shall include in its Basic Services the resources necessary to participate in the partnering meetings.
- .6 Partnering services may extend over the entire period of performance of the Contract and may include intervention or project realignment services to be utilized if serious disputes arise. The Project's key stakeholders should agree, during the initial partnering session, to the types of situations and circumstances in which intervention or realignment services shall be utilized.

- .1 If realignment or intervention services are utilized, partnering facilitators shall not be called as witnesses in any litigation, mediation, or quasi-judicial proceeding.

#### 1.1.8 Non-Discrimination

- .1 The A/E shall comply with all Applicable Law regarding equal employment opportunity, including O.R.C. Section 153.59 and all related Executive Orders.
- .2 The A/E agrees that the A/E, any Consultant or subcontractor to the A/E, and any person acting on behalf of the A/E or a Consultant or subcontractor to the A/E, shall not discriminate, by reason of race, creed, sex, disability, military status, or color, against any citizen of the State in the employment of any person qualified and available to perform the services under this Agreement.
- .3 The A/E further agrees that the A/E, any Consultant or subcontractor to the A/E, and any person acting on behalf of the A/E or a Consultant or subcontractor to the A/E shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of services under this Agreement on account of race, creed, sex, disability, military status, or color.
- .4 The A/E shall cooperate fully with the State Equal Opportunity Coordinator, with any other official or agency of the State or federal government, which seeks to eliminate unlawful employment discrimination, and with all other State and federal efforts to assure equal employment practices under the Contract.

#### 1.1.9 Drug Free Workplace

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

#### 1.1.10 Campaign Contributions

- .1 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 O.R.C. Section 3517.13.

#### 1.1.11 Ethics Compliance

- .1 In accordance with Executive Order 2007-01S, the A/E hereby certifies, by its signature on this document, that it: (1) has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands the Ohio ethics and conflict of interest laws, and (3) shall take no action inconsistent with those laws and this order.
- .2 The A/E understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this Agreement and may result in the loss of other contracts with the State.
- .3 The A/E certifies that it is currently in compliance with, and will continue to adhere to, the requirements of Ohio ethics laws.

#### 1.1.12 Ohio Services

- .1 The A/E's services shall not be performed outside the State of Ohio without the Owner's prior written consent.

## 1.1.13 Royalties and Patents

- .1 If a particular invention, design, process, or device is specified in the Contract Documents and if, to the A/E's knowledge, use of the specified item is subject to patent rights or copyrights calling for the payment of a license fee or royalty to others, the A/E shall disclose the existence of such rights or copyrights to the Owner.

## 1.1.14 Use of Domestic Steel

- .1 The A/E shall comply with the Department's policy regarding the specification and use of domestically produced steel products, including furnishing the required certifications. The policy is available at the Department's web site, <http://das.ohio.gov/asd/Legpage.htm#Directives>, by clicking on the "DAS Directives" link and then clicking on "Required Use of Domestic Steel. "

## 1.1.15 Limitation of Authority

- .1 The A/E shall not have any authority to bind the Owner for the payment of any costs or expenses without the prior express written approval of the Owner.
- .2 The A/E shall have authority to act on behalf of the Owner only to the extent provided herein.
- .3 The A/E's authority to act on behalf of the Owner may be modified only by an amendment to this Agreement in accordance with subparagraph 9.5.2.

## 1.1.16 Approval or Disapproval of A/E's Work

- .1 The Owner shall have the right to disapprove any portion of the A/E's work on the Project, including, but not limited to, any design work or documents or Drawings prepared by the A/E.
- .2 In the event that any Stage of the A/E's work is disapproved by the Owner, the A/E shall proceed, when requested by the Owner, with revisions to the work, documents, or Drawings prepared or performed for that Stage to satisfy the objections.
- .3 The A/E acknowledges that any review or approval by the Owner of any work, documents, or Drawings prepared or performed by the A/E pursuant to this Agreement shall not relieve the A/E of the A/E's responsibility to properly and timely perform such work and prepare such documents and Drawings.

## 1.1.17 EDGE Business Development Program Participation:

- .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 Ohio Department of Administrative Services, Equal Opportunity Division ("EOD") as proposed for this Agreement by the A/E and as approved by the Owner.
  - .1 If the A/E is an EDGE-certified business, the A/E may include this Agreement amount in the reporting.
  - .2 The amount of EDGE participation cannot exceed 100 percent of the amount of this Agreement.
- .2 The A/E shall provide EDGE Participation Quarterly Reports if the term of this Agreement is 270 or more consecutive days.
  - .1 The A/E shall provide quarterly status reports, produced by the A/E and each applicable EDGE-certified business for the Agreement, indicating: (1) The name

- of each EDGE-certified business; (2) The original amount of the EDGE-certified business contract or purchase order with the A/E; (3) The current amount of the EDGE-certified business contract or purchase order; (4) The amount invoiced to date; (5) The amount paid to date; and (6) A statement describing any substantive product or performance deficiencies.
- .2 Quarterly reports are due on January 15, April 15, July 15, and October 15.
  - .3 The first quarterly report is due starting with the reporting month following the effective date of this Agreement.
  - .4 The A/E shall provide reports for each EDGE-certified business; however, the quarterly reports may be consolidated and submitted as a singular document.
  - .5 The A/E shall simultaneously submit its EDGE Participation Quarterly Report(s) to EOD and to the Owner.
- .3 The A/E shall provide an EDGE Participation Final Report simultaneously with its final Payment Request.
    - .1 The A/E shall simultaneously submit its EDGE Participation Final Report to EOD and to the Owner.
    - .2 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.
  - .4 The A/E shall provide EDGE Participation Quarterly Report(s) and the EDGE Participation Final Report in detail and form acceptable to the Owner.
  - .5 The A/E shall cooperate fully with requests for additional EDGE information and documentation from the EOD or the Owner.
- 1.1.18 Declaration Regarding Material Assistance/Non-Assistance to a Terrorist Organization ("DMA")
- .1 The A/E represents and warrants that it has not provided any material assistance, as that term is defined in O.R.C. Section 2909.33(C), to an organization that is identified by, and included on, the United States Department of State Terrorist Exclusion List and that it has truthfully answered "no" to every question on the DMA. The A/E further represents and warrants that it has provided or shall provide such to the Owner and/or the Ohio Business Gateway (<http://homelandsecurity.ohio.gov/dma/dma.asp>) prior to execution of this Agreement. If these representations and warranties are found to be false, this Agreement shall be void and the A/E shall immediately repay to the Owner any funds paid under this Agreement.
- 1.1.19 Findings for Recovery
- .1 The A/E represents and warrants that it is not subject to an "unresolved" finding for recovery under O.R.C. Section 9.24. If this representation and warranty is found to be false, this Agreement shall be void, and the A/E shall immediately repay to the Owner any funds paid under this Agreement.

**ARTICLE 2 - SCOPE OF ARCHITECT/ENGINEER'S BASIC SERVICES**

## 2.1 General

- 2.1.1 Basic Services to be provided by the A/E shall consist of the 6 stages set forth in paragraphs 2.1.3 through 2.8, inclusive, and include, but are not limited to, normal 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 O.R.C. Section 3379.10 Percent for Arts Program.
- 2.1.2 Reserved
- 2.1.3 Use of the University's Web-based Project Management System
  - .1 If the Owner decides, in its sole discretion, to utilize the Owner's Project Management System (NetLink), for the Project, the AE shall use NetLink for all compatible services required under this Agreement.
  - .2 All costs for the A/E's use of NetLink for the Project shall be included in its Basic Services, and additional compensation shall not be permitted.
  - .3 If the A/E's staff or its Consultants are unfamiliar with the proper use of NetLink, the A/E shall provide its staff and Consultants for training without additional compensation under this Agreement.

## 2.2 Predesign Stage

## 2.2.1 Program of Requirements

- .1 The A/E shall provide a preliminary evaluation of the Owner's Program of Requirements and schedule and budget requirements, including the Construction Budget, each in terms of the other and in terms of the applicable provisions set forth in the attached Scope of Additional Services and Reimbursable Expenses labeled Exhibit #1.

## 2.2.2 Approved Program of Requirements and Revisions

- .1 The A/E shall prepare, date, and sign a revised Program of Requirements, obtain the Owner's approval thereof and signature thereon, and deliver a copy of the signed, approved revised Program of Requirements to the Owner ("Approved Program of Requirements").
- .2 If, at any time after such delivery, any changes or adjustments to the Approved Program of Requirements are desired, the A/E shall prepare a written amendment to the Approved Program of Requirements describing the changes or adjustments, and obtain the Owner's approval thereof and signature thereon.
- .3 If the Project is administered using OAKS CI, the A/E shall submit its revised Program of Requirements and any changes or revisions to the Owner through the Design Review business process.
- .4 The Approved Program of Requirements, as amended from time to time, shall determine the scope of the Project.

## 2.2.3 Reserved

## 2.3 Schematic Design Stage

## 2.3.1 Review and Consultation

- .1 The A/E shall provide any necessary further evaluation or refinement of the Approved Program of Requirements and the schedule and budget requirements, shall identify and analyze requirements of governmental authorities having jurisdiction to approve the Project design, and shall participate in consultations with such authorities.
  - .2 For renovation or remodeling, the A/E shall also investigate existing conditions and verify the accuracy of information provided by the Owner about existing conditions, as necessary.
- 2.3.2 Recommendations and Costs
- .1 The A/E shall review, with the Owner, Site use and improvements and alternative approaches to selection of materials, building systems, and equipment.
  - .2 The A/E shall provide general recommendations on construction feasibility, availability of materials and labor, time requirements for construction, and factors related to Project cost, including costs of alternative designs or materials, preliminary budgets, and possible economies of scale.
- 2.3.3 Reserved
- 2.3.4 Preliminary Life Cycle Cost Analysis
- .1 The A/E shall prepare and submit 3 design concepts for a Preliminary Life Cycle Cost Analysis ("LCCA") to the Owner.
    - .1 Reserved
    - .2 Reserved
    - .3 Reserved
- 2.3.5 Schematic Design Documents
- .1 Based upon the Approved Program of Requirements and the schedule and budget requirements, the A/E shall prepare Schematic Design Documents. The A/E shall provide a minimum of three preliminary design concepts for the Owner's review. The A/E shall base the final schematic design documents on the Owner's selected preliminary design concept.
  - .2 The Schematic Design Documents shall consist of architectural drawings and other documents illustrating the Project scale and the relationship of Project components to one another, and shall also illustrate the relationship of the Project to surrounding properties.
  - .3 Upon completion of the Schematic Design Stage for each Project phase, the A/E shall provide 3 copies of the Schematic Design Documents to the Owner for review and written approval.
  - .4 Reserved
  - .5 Reserved
- 2.3.6 Preliminary Cost and Schedule Estimates
- .1 Upon completion of the Schematic Design Stage for each phase of the Project or appropriate portion thereof, the A/E shall prepare and submit to the Owner, for approval, a Statement of Probable Construction Cost, based on current area volume and other unit costs, and a Preliminary Project Schedule, which shall incorporate the Design Schedule.

- .2 The A/E shall review any difference between the Construction Budget and the Statement of Probable Construction Cost, identify reasons for any difference, and recommend means to eliminate the difference.
- .3 The A/E and the Owner shall agree upon the means to eliminate any difference between the Construction Budget and the Statement of Probable Construction Cost, and the A/E shall prepare a written report describing the agreed upon means.

#### 2.3.7 Submittal to Owner

- .1 The A/E shall complete a Design Review Acceptance form and shall attach thereto a copy of the Preliminary Project Schedule, the Statement of Probable Construction Cost, and any report prepared pursuant to subparagraph 2.3.6.
- .2 The A/E shall obtain the Owner's approval of the Design Review Acceptance form and attachments, in addition to obtaining the Owner's signature on the form, and deliver the form and attachments to the Owner for approval.
- .3 If the Project is administered using OAKS CI, the A/E shall submit its Schematic Design Documents and any changes or revisions to the Owner through the Design Review business process.

## 2.4 Design Development Stage

### 2.4.1 Reserved

### 2.4.2 Life Cycle Cost Analysis

- .1 The A/E shall prepare and submit 3 copies of a Life Cycle Cost Analysis to the Owner.
- .2 Reserved

### 2.4.3 Design Development Documents

- .1 Based on the approved Schematic Design Documents, the current Approved Program of Requirements, the approved Statement of Probable Construction Cost, the approved Preliminary Project Schedule, and the written report developed during the Schematic Design Stage describing the agreed upon means to reconcile differences between the budget and estimate, the A/E shall prepare Design Development Documents.
- .2 The Design Development Documents shall consist of drawings, outline specifications, and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials, and such other essential elements as may be appropriate.
- .3 Upon completion of the Design Development Stage for each phase of the Project, the A/E shall provide 3 copies of the Design Development Documents to Owner for review and written approval.
- .4 The A/E shall revise the Design Development Documents to incorporate comments from the Owner.

### 2.4.4 Cost Estimate and Project Schedule

- .1 Upon completion of the Design Development Stage for each phase of the Project or appropriate portion thereof, the A/E shall prepare and submit, for the Owner's approval, a Detailed Estimate of Construction Cost and a Project Schedule indicating Milestone completion dates.

- .2 In establishing the Detailed Estimate of Construction Cost, the A/E shall include reasonable contingencies for design, bidding, and price escalation and determine, in conjunction with the Owner, the materials, equipment, component systems, and types of construction to be included in the Contract Documents.
- .3 The A/E shall review any difference between the Construction Budget or the Statement of Probable Construction Cost and the Detailed Estimate of Construction Cost, identify reasons for any difference, and recommend means to eliminate the difference.
- .4 The A/E and the Owner shall agree upon the means to eliminate any difference between the Construction Budget and the Detailed Estimate of Construction Cost, and the A/E shall prepare a written report describing the agreed upon means.
- .5 The A/E shall review any differences between the Preliminary Project Schedule and the Project Schedule, identify reasons for the differences, and recommend whether the differences should be eliminated and means to eliminate the differences.
- .6 If the A/E and the Owner agree to eliminate any such differences, the A/E shall prepare a written report describing the agreed upon means.
- .7 The A/E and the Owner shall make any necessary amendments to the Approved Program of Requirements in accordance with subparagraph 2.2.2.

#### 2.4.5 Submittal to the Owner

- .1 The A/E shall complete a Design Review Acceptance form and shall attach thereto a copy of the Project Schedule, the Detailed Estimate of Construction Cost, and any report prepared pursuant to subparagraph 2.4.4.
- .2 The A/E shall obtain the Owner's approval of the Design Review Acceptance form and attachments, in addition to obtaining the Owner's signature on the form.
- .3 If the Project is administered using OAKS CI, the A/E shall submit its Design Development Documents and any changes or revisions to the Owner through the Design Review business process.

### 2.5 Construction Documents Stage

#### 2.5.1 Reserved

#### 2.5.2 Drawings and Specifications

- .1 Based on the current, approved Design Development Documents, approved Detailed Estimate of Construction Cost, approved Project Schedule, any further revisions to the Approved Program of Requirements, and the written report developed during the Design Development Stage describing the agreed upon means to reconcile differences between the budget and estimate, the A/E shall prepare, for approval by the Owner, Drawings and Specifications setting forth in detail the requirements for Project construction.
- .2 With the prior written consent of the Owner, the A/E shall include Alternates in the Contract Documents.
- .3 The Drawings and Specifications shall encourage competition, shall provide for construction by multiple prime contractors when required by Applicable Law, and shall be complete and unambiguous.
  - .1 The A/E shall prepare and submit a sole source justification letter describing any materials, products, or systems that are available from a single manufacturer, supplier, or contractor to the Owner in writing for its approval.

- .4 The Drawings and Specifications shall be in accordance with all Applicable Law.
- .5 In preparing the Drawings and Specifications, the A/E shall consider general market conditions.
- .6 The A/E shall not amend the Standard Requirements except by Supplementary Conditions approved by the Department in writing.
- .7 The Drawings and Specifications shall not contradict, nor create any ambiguity with, the Standard Requirements. The A/E shall be solely responsible for all costs incurred by the Owner resulting from any such contradiction or ambiguity.
- .8 From time to time, the A/E shall make any necessary revisions to the Drawings and Specifications.
- .9 Upon completion of design for each phase of the Project, the A/E shall provide 3 copies of the Drawings and Specifications to the Owner for review and approval.
- .10 The A/E shall revise the Drawings and Specifications to incorporate comments from the Owner.
- .11 If the Project is administered using OAKS CI, the A/E shall submit its Construction Documents and any changes or revisions to the Owner through the Design Review business process.

#### 2.5.3 Revisions to Cost Estimate and Project Schedule

- .1 As the Drawings and Specifications are developed, the A/E shall inform the Owner 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 Detailed Estimate of Construction Cost and the Project Schedule.
- .2 Upon prior written approval of the Owner of any such changes or adjustments in Project requirements or in construction materials, systems, or equipment, the A/E shall revise the Detailed Estimate of Construction Cost and Project Schedule, as applicable, incorporating such changes or adjustments.
- .3 The A/E shall complete a Design Review Acceptance form, attach a copy of the revised Detailed Estimate of Construction Cost or the revised Project Schedule, as applicable, obtain the Owner's signature thereon.

#### 2.5.4 Bidding Documents

- .1 The A/E shall assist the Owner in the preparation of documents necessary for bidding of Contracts for the Project, including, but not limited to, bidding information and instructions, cost estimates, Notices to Bidders, Bid Forms, and Supplementary Conditions.

#### 2.5.5 Government Approvals

- .1 The A/E shall submit, to the Division of Industrial Compliance of the Ohio Department of Commerce (the "Division"), such sets of the Drawings and Specifications as the Division may require for approval, together with any necessary completed applications and all required fees.
- .2 The A/E shall secure any necessary National Pollution Discharge Elimination System Storm Water General Permit by submitting a notice of intent application form to the Ohio Environmental Protection Agency at least 45 days prior to the commencement of the Construction Stage, shall prepare and certify a storm water pollution prevention plan to

provide sedimentation and erosion controls at the Project, and shall prepare and process the required notice of termination prior to Contract Completion.

- .3 The A/E shall secure the required structural, plumbing, HVAC, and electrical plan approvals from the Division or, if the Project is not on State property, from the local certified building department with jurisdiction.
- .4 The A/E shall assist the Owner, including, without limitation, by provision of technical criteria, provision of written descriptions and design data and consultations with appropriate officials in connection with filing of documents required for the approval of governmental authorities having jurisdiction over the Project.

#### 2.5.6 Additional Filings

- .1 The A/E shall file any additional Drawings and Specifications as required under Applicable Law.
- .2 Upon the Division's approval of the Drawings and Specifications, the A/E shall obtain 3 sets of corrected copies of the Drawings and Specifications bearing the Division's approval stamps. The A/E shall distribute such corrected copies as follows:
  - .1 One set to the Lead Contractor or Construction Manager when determined,
  - .2 One set retained by the A/E, and
  - .3 One set to the Owner attached to a completed Design Review Acceptance form for the Owner's approval.
  - .4 If the Project is administered using OAKS CI, the A/E shall submit its Construction Documents and any changes or revisions to the Owner through the Design Review business process.

## 2.6 Bidding and Award Stage

### 2.6.1 Obtaining Bids

- .1 The A/E shall prepare and issue Addenda as necessary to render interpretations and clarifications of the Contract Documents.

### 2.6.2 Pre-bid Conference

- .1 The A/E shall conduct pre-bid conference(s) with prospective Bidders to familiarize Bidders with the Contract Documents, including any special requirements of the Contract Documents.
- .2 At the pre-bid conference(s), the A/E shall also familiarize prospective Bidders with requirements of equal employment opportunity, prevailing wage, EDGE, Drug Free Workplace, campaign contribution limits, ethics compliance, LEED documentation and implementation requirements, and other requirements, as necessary.
- .3 The A/E shall respond to all questions from the pre-bid conference(s) by preparing and issuing pre-bid conference minutes attached to one or more written Addenda within 5 days of the conference.

### 2.6.3 Bid Packages

- .1 The A/E shall obtain all necessary prevailing wage determinations and shall include them in the Contract Documents.
- .2 The A/E, or its designee (e.g., its reprographer), shall assemble the Contract Documents into appropriate packages and shall distribute the packages to prospective Bidders, the

Owner, and other appropriate persons, including, but not limited to, any applicable local or regional plan room organizations.

#### 2.6.4 Bid Review

- .1 The A/E shall, in accordance with Applicable Law, review all Bids received for responsiveness, lead the investigation of the responsibility of Bidders, and deliver a written recommendation to the Owner about the award, or rejection, of any Bid or Bids for each contract for the Project.
- .2 In making the recommendation, the A/E shall evaluate all applicable Alternates referenced in the Contract Documents.

#### 2.6.5 Substitutions After Bid Opening

- .1 The A/E shall consider Requests for Substitutions after the bid opening only when a Contractor can conclusively demonstrate to the A/E the following conditions:
  - .1 The specified Basis of Design Components, Acceptable Components, or Substitutions approved prior to the bid opening, through no fault of the Contractor or the Contractor's Subcontractors and Material Suppliers, are not available; or
  - .2 The specified Basis of Design Components, Acceptable Components, or previously-approved Substitutions will not perform as designed or intended.

#### 2.6.6 Pre-award Conferences

- .1 The A/E shall conduct pre-award conferences with apparent successful Bidders and shall assist the Owner to gather documentation for contract execution from such Bidders.
- .2 Upon the failure of a Bidder to provide such documentation in a timely manner, the A/E shall assist the Owner in considering whether an extension of time for submitting such documentation is appropriate.

#### 2.6.7 Subcontractor and Material Supplier Review

- .1 The A/E, based upon review of the Contract Documents, any past experience, and reasonable inquiry, shall participate in investigating any Subcontractor or Material Supplier proposed by any Contractor and recommend approval or disapproval.
- .2 Within 3 business days after receiving original or amended Subcontractor and Material Supplier Declaration forms from a Contractor, the A/E shall verify that the forms are complete and deliver them to the Owner.
- .3 If the A/E finds the forms are incomplete, the A/E shall return them to the Contractor with no action and identify corrective action the Contractor shall perform prior to resubmitting the forms. If the A/E returns such incomplete forms to the Contractor, the Contractor, within 10 days of receipt thereof, shall resubmit the forms with revisions complying with the corrective action identified by the A/E.
- .4 Upon the Owner's receipt of the forms, the A/E and the Owner shall perform an initial review of each Subcontractor and Material Supplier listed.

#### 2.6.8 Over Budget Options

- .1 If the Construction Budget is exceeded by the total of the lowest responsive and responsible Bids and any legally negotiated prices for the Project, the Owner shall, at its option:

- .1 Approve in writing an increase in the Construction Budget and rebid the Project;
  - .2 Authorize rebidding or renegotiation for some or all parts of the Project within a reasonable time without an increase in the Construction Budget;
  - .3 Abandon the Project, in whole or in part, and terminate this Agreement in accordance with subparagraph 8.1.2 or 8.1.4, as applicable; or
  - .4 Cooperate in the revision of the Project Scope as defined in subparagraph 2.2.2 to reduce the actual cost of construction to the Construction Budget
- .2 If the Owner adopts the option in subparagraph 2.6.8.1.1 above and such increase in the Construction Budget is more than 10 percent, the A/E may request, in writing, an adjustment to the Basic Fee in accordance with subparagraph 5.3.5.
  - .3 If the Owner adopts the option in subparagraph 2.6.8.1.4 above, the A/E shall appropriately modify the Approved Program of Requirements, the Project Schedule, and the Contract Documents and cooperate in any necessary bidding or negotiation without additional charge.

#### 2.6.9 Further Revisions to Cost Estimate and Project Schedule

- .1 If necessary, the A/E shall inform the Owner of the need for any adjustments in the Detailed Estimate of Construction Cost and the Project Schedule.
- .2 Upon approval of the Owner of any such adjustments, the A/E shall prepare a revised Detailed Estimate of Construction Cost or a revised Project Schedule, as applicable, incorporating such adjustments, and obtain the Owner's signature thereon.

## 2.7 Conformed Documents

### 2.7.1 Conformed Documents Required

- .1 During the entire bidding and award Stage, the A/E shall incorporate all Addenda information into the Contract Documents; and, between the date that the Owner issues a Notice of Intent to Award for the first construction contract for the Project and the effective date of the first construction contract Notice to Proceed, the A/E shall provide updated Contract Documents that conform in every regard to the documents originally issued for bidding purposes plus all of the information in all Project Addenda ("Conformed Documents").
- .2 The A/E shall issue the Conformed Documents to the successful Bidder(s) upon award of their respective contracts.
- .3 If the amount of a contract is \$500,000 or less, the A/E shall furnish 5 sets of Conformed Documents to the respective Contractor. If the amount of a contract is greater than \$500,000, the A/E shall furnish 7 sets of Conformed Documents to the respective Contractor.
- .4 Contractors shall remain responsible to provide all labor, materials, and services for which they are responsible under the Contract Documents and all Addenda.
- .5 The A/E shall provide Electronic Files to each requesting Contractor for the Contractors' convenience for the purpose of preparing its submittals, including, but not limited to, Shop Drawings and Coordination Drawings. The A/E shall provide such Electronic Files at no additional cost to the Contractor or the Owner.

## 2.8 Construction Stage

### 2.8.1 Duration; Extent, Access

- .1 The Construction Stage will commence with the award of a contract for the Project to a Contractor and will terminate upon Final Acceptance of the Project by the Owner.
- .2 The A/E shall have access, at all times, to the Project whenever any Work is in preparation or in progress.

### 2.8.2 Interpretations

- .1 The A/E shall render interpretations necessary for the proper execution or progress of the Work on the Project.
- .2 The A/E shall respond to a Contractor's Request for Interpretation ("RFI") within 3 days of receiving the RFI.
- .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 Owner and each applicable Contractor.
- .4 The A/E shall keep a log of all RFIs and their respective responses.

### 2.8.3 Investigation of Conditions for Renovation or Remodeling

- .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.

### 2.8.4 Differing Site Condition Investigation

- .1 Promptly after receiving notice of a Differing Site Condition from a Contractor, the A/E shall investigate to determine whether the Contractor has encountered a Differing Site Condition.
- .2 The A/E shall give written notice of its determination to the Owner and the Contractor within 10 days after completing the investigation.
- .3 If the A/E determines that the Contractor has encountered a Differing Site Condition, the A/E shall process an appropriate Change Order.

### 2.8.5 Project Oversight and Site Visits

- .1 The A/E shall notify, advise, and consult with the Owner and protect the State against Defective Work throughout the completion of the Project, which includes a period of 1 year after Final Acceptance.
- .2 The A/E shall designate a field representative, subject to the Owner's approval, to review the Work of each 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.
- .3 The A/E, and appropriate Consultants, shall also visit the Project at such intervals as the Owner requires, to review the Work of each 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.
  - .1 Such visits shall specifically include, but are not limited to, those listed in the attached Scope of Additional Services and Reimbursable Expenses labeled

Exhibit #1, observation of large excavations, observation of footings during placement of concrete and observation of masonry work, structural steel erection, roofing work and interior finishes.

- .4 In all events, the A/E, and appropriate Consultants, shall be at the Site for such purposes not less than [\[Insert On-site Hours per Week During Construction Stage\]](#) hours per week whenever any Work is in preparation or progress, unless otherwise expressly provided in writing by the Owner.
- .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 all Defective Work to the Owner, together with recommendations for the correction thereof, and shall deliver written notice to any applicable Contractor to correct such Defective Work. Such written notice shall specify the time within which the Contractor shall correct the Work.
- .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.
- .7 The A/E shall immediately notify the Owner any time the A/E disapproves or rejects an item of Work.

#### 2.8.6 Progress

- .1 The A/E shall record the progress of the Project and provide written reports to the Owner on a monthly basis, unless otherwise agreed in writing. Such reports shall include, but are not limited to, information on each Contractor's Work, as well as completion status on the entire Project, showing percentages of completion.

#### 2.8.7 Construction Progress Schedule

- .1 The A/E shall review and approve the Construction Progress Schedule for conformance with the Contract Documents, provide a copy of the Construction Schedule and schedule of submittals to the Owner, and incorporate the Construction Schedule and schedule of submittals into the Project Schedule.
- .2 The A/E shall periodically inform the Owner of the need to update the Project Schedule as required to show current conditions, including, but not limited to, conformance to the Construction Schedule, as updated from time to time.
  - .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 Owner and carry out the directions of the Owner so that the Milestone completion dates may be met, unless the Owner agrees in writing to revise the Milestone completion dates.
  - .2 Whenever the Project Schedule is revised or updated as provided in this subparagraph 2.8.7, the A/E shall assist the Owner to revise the Project Schedule, and obtain the Owner's signature thereon.

#### 2.8.8 Meetings

- .1 The A/E shall schedule, conduct, and participate in preconstruction, progress, quality control and special meetings with the Owner, appropriate Consultants, Contractors, and any other parties involved in the Project to discuss such matters as procedures, progress, problems, and scheduling.

- .2 The A/E shall prepare and distribute written agendas and minutes of all such meetings to the Owner, Contractors 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 3 business days after the meeting.
- .3 The A/E shall attach, to the minutes of each weekly progress meeting, each Contractor's weekly written report as submitted to the A/E, describing progress on the Contractor's past, current, and upcoming activities.
- .4 The minutes of each progress meeting shall reflect any objection made to the minutes of the previous meeting and any response.
- .5 The A/E shall notify Contractors and other Persons involved in the Project of the time and place of the weekly 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 Contractors and other persons involved in the Project of a different day and hour at least 2 days in advance.

#### 2.8.9 Tests and Inspections

- .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 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 include in its Proposal 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. The A/E may include a negotiated markup for the Consultant services used.
- .4 The A/E shall employ a Consultant properly licensed to perform the required inspections and all related testing services.
- .5 If the A/E determines that any portion of the Work requires such inspection, testing, or approval not otherwise required under the Contract Documents, the A/E shall order the inspection, testing, or approval.
- .6 Within 5 days after completion of an inspection, testing, or approval, the A/E shall provide an original report of the inspection, testing, or approval to the applicable Contractor and the Owner with a recommendation for or against acceptance of the results therein.
- .7 If the special inspection, testing, or approval reveals Defective Work, the A/E shall arrange for reimbursement from the responsible Contractor.
- .8 If the special inspection, testing, or approval reveals that the Work complies with the Contract Documents, the Owner shall reimburse the A/E in accordance with paragraph 5.1.
- .9 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.

#### 2.8.10 Submittal Review

- .1 The A/E shall review Submittals for conformity with design intent and conformity with the Contract Documents within 14 days of receiving Submittals or in accordance with the approved submittal schedule, or other period as mutually agreed by the A/E and the Contractor.
- .2 The A/E shall also review drawings, calculations, and designs required of Contractors 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 which the Contract Documents expressly make the sole responsibility of one or more Contractors, Subcontractors, Material Suppliers or other persons).
- .3 The A/E shall act upon resubmission of corrected Submittals within 14 days of receiving them, or other period as mutually agreed by the A/E and the Contractor.
- .4 A 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.
- .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. The A/E shall issue a written notice to the Contractor stating that its Submittal is being held, within 7 days of receiving it.
- .6 Reserved

#### 2.8.11 Coordination Drawings

- .1 The A/E shall review the Coordination Drawings to determine whether the Coordination Participants achieved the goals established in the coordination meetings.
- .2 The A/E shall report any concerns, in writing, to the Coordination Participants within 14 days after receiving the drawings.
- .3 If installed Work causes or contributes to interference with subsequent Work of another Contractor, the A/E shall determine the needed modifications to the installed Work to accommodate the subsequent Work.

#### 2.8.12 Proposal Requests and Change Orders

- .1 The A/E shall prepare Proposal Requests with estimated costs and other necessary documentation seeking Proposals from Contractors for adjustments of the Contract Sum or the Contract Time, or both, associated with potential and proposed changes in the Work.
- .2 The A/E shall assign a number to each such contract modification, which shall uniquely identify it. 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 progress. Contract modifications resulting from errors or omissions shall not be combined with other modifications for which the A/E will receive a fee.
- .3 The A/E shall keep a log of all Proposal Requests, Contractor Proposals, and Change Orders. The A/E's Change Order Log shall contain the following minimum information:
  - .1 Number of the contract modification;
  - .2 A brief description of the modification;

- .3 Affected trade(s);
  - .4 Cost of the modification; and
  - .5 Dates sent to, and received from, the relevant parties.
- .4 The A/E shall prepare each Change Order form, attach the supporting documentation, and issue the Change Order form to the Contractor for signature.
  - .5 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.
  - .6 The A/E shall issue a Change Order to reconcile the difference between the scheduled and actual quantities of Work performed and materials furnished by a Contractor.
- 2.8.13 Field Work Orders and Orders for Minor Changes in the Work
- .1 A Field Work Order is a written order prepared by the A/E and signed by the Owner and the A/E, directing a change in a Contractor's Work and may, if necessary:
    - .1 State a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both; or
    - .2 Limit the scope of the change in the Work by a fixed adjustment of the Contract Sum.
  - .2 A Field Work Order 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.
  - .3 The A/E may, with the Owner's prior approval, order minor changes in a Contractor's Work not involving adjustment of the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents.
  - .4 The A/E has no authority to authorize a Contractor to perform additional or extra Work for which the Contractor may seek adjustment of the Contract Sum or the Contract Time, or both.
  - .5 The A/E shall issue orders for minor changes in a Contractor's Work by written order to the Contractor. The A/E shall keep a log of all Field Work Orders and Orders for Minor Change in the Work.
- 2.8.14 Project Costs
- .1 The A/E shall monitor Project cost accounting records on Work performed by Contractors under unit costs, actual costs for labor and materials, or other appropriate basis. The A/E shall afford the Owner access to these records at all times.
- 2.8.15 Contractor Schedule of Values
- .1 Within 10 days of receipt of the Notice to Proceed, a 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.
  - .2 The A/E may return the Schedule of Values to the Contractor for re-submittal if it does not meet the requirements set forth in the Standard Requirements or contains insufficient items or details of the Contractor's Work.
- 2.8.16 Contractor Payments

- .1 The Contractor may submit a Contractor Payment Request for Work performed based upon the Schedule of Values to the A/E each month or upon another interval approved by the Owner .
  - .1 If the Project is not administered using OAKS CI, the Contractor shall submit 1 draft copy to the A/E not less than 1 week prior to submitting multiple copies of its Contractor Payment Request.
- .2 Based upon the A/E's review of the applicable Work and evaluations of the applicable Contractor Payment Requests, the A/E shall review and approve, modify, or reject the amounts shown on such Payment Requests as being due to the applicable Contractor.
- .3 The A/E may request, from a Contractor, additional documentation in connection with each payment to the Contractor.
- .4 Each Application for Payment shall be signed by the A/E and delivered to the Owner.
- .5 The A/E may recommend to the Owner that payments be withheld from, or Statutory Delay Forfeiture be assessed against, a Contractor Payment Request.

#### 2.8.17 Contractor Claims

- .1 The A/E, in consultation with the Owner, shall respond to a Contractor's written notice of a Claim within a reasonable time of receipt, but not to exceed 10 days.
- .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 A/E's written analysis shall include:
  - .1 A narrative of the A/E's examination of the facts giving rise to the Claim;
  - .2 Identification of relevant Contract Documents and language;
  - .3 An analysis of whether the Contractor complied with the requirements of the Contract Documents pertaining to Claim initiation and substantiation including, but not limited to, the issues of entitlement to, and calculation of, adjustments of the Contract Sum, Contract Time, or both;
  - .4 An analysis of claimed additional labor, materials, and equipment for the scope of the Work items described;
  - .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);
  - .6 A concluding opinion regarding the Contractor's entitlement to, and the appropriateness and reasonableness of all, or any part of, the Claim; and
  - .7 An appendix containing copies of contemporaneous documentation supporting the concluding opinion.

#### 2.8.18 Partial Occupancy

- .1 The A/E shall assist the Owner in determining dates of Partial Occupancy of a Contractor's Work or portions thereof designated by the Owner and shall assist in obtaining any certification required by Applicable Law.

- .2 Before the Owner commences Partial Occupancy, the A/E shall process, for the Owner's approval, a Certification of Contract Completion for the designated area listing incomplete or Defective Work for each Contractor's contract.

#### 2.8.19 Final Cleaning

- .1 If a dispute arises among Contractors as to responsibility for final cleaning, the A/E may authorize a Contractor, or engage a qualified cleaning company, to perform final cleaning and deduct the cost from amounts due to those Contractors responsible, as the A/E recommends and the Owner determines to be appropriate.
- .2 If the A/E cannot determine the responsible Contractor, the costs shall be shared by the Contractors actively working on the Project as determined in the Owner's sole discretion.

#### 2.8.20 Contract Closeout

- .1 Within 3 business days of receipt of a Contractor's Punch List and request for the A/E's Review of the Work, the A/E shall provide written notice to the Owner of such receipt and shall notify the Contractor of acceptance or rejection of the request, stating reasons for any rejection.
- .2 Within 7 days of its acceptance of a Contractor's request, the A/E shall conduct the A/E's Review to determine whether the Contractor's Work, or the designated portion, is in conformity with the Contract Documents.
- .3 The A/E shall notify the Contractor and the Owner of the scheduled time of the A/E's Review.
- .4 The A/E shall include comments from the Owner in the A/E's Review.
- .5 Within 3 business days after the A/E's Review, the A/E shall provide to the Contractor a list of Defective, incomplete, or unacceptable Work ("A/E's Punch List").
- .6 If the A/E accepts a Contractor's request for the A/E's Review of the Work and subsequently reasonably determines that the Work is not in conformity with the Contract Documents, the A/E may request compensation for expenses related to excessive Punch List activities.
- .7 Within 3 business days of receipt of a 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.
- .8 If multiple inspections of items on the A/E's Punch List are required because of a Contractor's failure to properly and timely complete them, the Contractor shall pay any additional costs incurred by the A/E resulting from any attendant delay.
- .9 When items of Work cannot be completed until a subsequent date, the A/E may recommend that these items be deferred and the Owner may release payment to the Contractor, as determined in the Owner's sole discretion.
- .10 The A/E shall list deferred items on a Partial Certification of Contract Completion with the dates the items are to be completed.
- .11 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 Final Certification of Contract Completion.
- .12 Upon execution of a Final Certification of Contract Completion, the A/E shall receive, review for conformity with the requirements of the Contract Documents, and transmit to

the Owner any affidavits and turn over to the Owner any keys, manuals and the originals of any guarantees, warranties, releases, bonds and waivers.

- .13 The A/E shall transmit a copy of any guarantees, warranties, releases, bonds and waivers to the Owner.

#### 2.8.21 Record Documents

- .1 The A/E shall revise the Conformed Documents and related electronic files with the information contained on the As-Built Documents submitted by each Contractor.
- .2 The A/E shall label the revised Conformed Documents and related electronic files as "Record Documents" and reflect the date of the A/E's incorporation of the As-Built Documents.
- .3 The A/E shall furnish to the Owner 1 set of Record Documents in the form of reproducible documents correctly marked to show the Project as completed, 1 set of all other Contract Documents showing the Project as completed in the form of paper documents, and 1 set of all Contract Documents showing the Project as completed in the form of the related electronic files.
- .4 The Record Documents, to the best of the A/E's knowledge based upon the As-Built Documents delivered to the A/E by the Contractors and the A/E's observations during the progress of the Project, 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 Conformed Documents.

#### 2.8.22 Contractor Responsibilities

- .1 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.
- .2 The A/E shall not be responsible for, or have control or charge over, the acts or omissions of Contractors or Subcontractors or any of their agents or employees, or any other persons performing any Work on the Project.
- .3 The A/E shall render decisions in connection with a Contractor's responsibilities under the Contract Documents, and submit recommendations to the Owner for enforcement of the Contractor's contract as necessary.
- .4 The A/E is the initial interpreter of all requirements of the Contract Documents.
- .5 All of the A/E's decisions are subject to final determination by the Owner.

### **ARTICLE 3 - ADDITIONAL SERVICES**

#### 3.1 General

##### 3.1.1 Services Not Included in Basic Services

- .1 The A/E shall provide the services listed in paragraphs 3.1.2 through 3.1.16 as Additional Services only when identified in the attached Scope of Additional Services and Reimbursable Expenses labeled Exhibit #1 and approved in writing by the Owner.
- .2 The services listed in paragraphs 3.1.2 through 3.1.16 shall be paid as provided in this Agreement, in addition to payment for the Basic Services; however, the A/E shall not be

compensated for any of the following services made necessary by any act or omission of the A/E or any of the A/E's Consultants.

- .3 Unless waived by the Owner in writing, authorization to provide Additional Services must be obtained prior to providing the Additional Services.

### 3.1.2 Specialized Services

- .1 Providing specialized design and engineering services, including, but not limited to, services for acoustical analysis or design, computer services, communication consultant services, design or specification of unusual or large volumes of fixtures, furnishings, and equipment.

### 3.1.3 Additional On-Site Services

- .1 Providing administration or observation of construction beyond the Basic Services provided pursuant to subparagraph 2.8.5.

### 3.1.4 Extensive Change Orders

- .1 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 subparagraph 2.8.12.

### 3.1.5 Partnering and Scheduling Consultants

- .1 Serving as a partnering or construction scheduling consultant or providing such consulting services.

### 3.1.6 Perspectives, Models, Renderings

- .1 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 which are provided at the prior written request of the Owner.

### 3.1.7 Grant Applications

- .1 Preparing applications and supporting documents for governmental grants, loans or advances.

### 3.1.8 Special Studies

- .1 Providing planning services, site evaluations, environmental studies, or comparative studies of prospective sites, preparing special surveys, studies, and submissions required under Applicable Law.

### 3.1.9 Surveys

- .1 Providing surveying services, including land surveys and rights-of-way studies.

### 3.1.10 Investigation of Conditions for New Construction

- .1 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.

### 3.1.11 Constructability and Cost Analyses

- .1 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 subparagraph 2.3.2.

### 3.1.12 Off-Site Services

- .1 Providing planning or design services for off-site utilities which are not adjacent to the Project, building connections, or roadways.

### 3.1.13 Certain Revisions

- .1 Making revisions in Drawings, Specifications, or other Contract Documents 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.

### 3.1.14 Replacement Work

- .1 Providing consultation concerning replacement of any Work on the Project damaged by fire, casualty, or other cause not due to negligence of the A/E or any Consultant and furnishing services as may be required in connection with the replacement of such Work.

### 3.1.15 Contractor Default

- .1 Providing services made necessary by a Contractor's default.

### 3.1.16 Additional Documents

- .1 Providing more sets of Contract Documents than the number required as Basic Services pursuant to subparagraphs 2.5.1, 2.6.3, and 2.6.8.

## 3.2 Special Inspections Required by the Ohio Building Code

3.2.1 The special inspections indicated in the current edition of the Ohio Building Code ("OBC") Chapter 1704 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 having jurisdiction for 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 and the Owner of the Special Inspection to be performed.

3.2.2 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.

## 3.3 Quality Assurance Testing

3.3.1 The following Quality Assurance ("QA") Testing services are not included as Basic Services, however, the A/E shall provide such services when identified in the attached Scope of Additional Services and Reimbursable Expenses labeled Exhibit #1.

3.3.2 Such services shall be paid under this Agreement as Additional Services; however, the A/E shall not be compensated for any such services made necessary by the act or omission of the A/E or any Consultant of the A/E.

3.3.3 The A/E shall include in its Proposal the name or names of the Consultants it intends to use for all QA Testing that would be reasonably anticipated for the Project and shall provide a Schedule of Fees for Typical Services for each Consultant. The A/E may include a negotiated markup for the Consultant services used.

3.3.4 The A/E shall employ a Consultant properly licensed to provide the required QA Testing and all related services. The Consultant shall provide to the Owner at the address requested, one copy, issued concurrently, of all reports and recommendations provided to or for the A/E.

3.3.5 Examples of QA Testing and Reporting:

- .1 Geotechnical Analysis

- .1 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.
- .2 Environmental Testing and Analysis
  - .1 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.
- .3 Concrete
  - .1 Test for general quality, such as: slump, air entrainment, cylinder test, core test, swiss hammer.
- .4 Masonry
  - .1 Includes such testing as prism tests, mortar cube, grout tests, water infiltration.
- .5 Structural Steel, Reinforcing Steel, Welding, Bolts and Connections
  - .1 Includes any testing and reporting of any type of steel, including those listed above.
- .6 HVAC Systems and Controls
  - .1 Includes testing and balancing of any or all HVAC components including controls systems.
- .7 Plumbing and Piping
  - .1 Includes testing of water, waste, vent and process piping, and provide associated reporting.
- .8 Air and Water Testing and Balancing
  - .1 Includes testing and balancing of various pneumatic and hydronic piping, and provide associated reporting.
- .9 Other (e.g., Medical Gases testing, Lead Shielding, etc.)

#### **ARTICLE 4 - STATE'S RESPONSIBILITIES**

- 4.1 Required Actions
  - 4.1.1 The 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.
- 4.2 Instructions to Contractors
  - 4.2.1 All instructions of the Owner to Contractors shall be through, or in consultation with, the A/E.
- 4.3 Owner's Requirements
  - 4.3.1 The Owner shall provide, to the A/E, full information regarding its requirements for the Project including, but not limited to, 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.

#### 4.4 Owner's Representative

4.4.1 The Owner shall designate an Owner's Representative, a person authorized to act on the Owner's behalf with respect to the Project to the extent provided in the Contract Documents.

#### 4.5 Site Description

4.5.1 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.

#### 4.6 Notice to A/E

4.6.1 If the Owner 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.

#### 4.7 Legal Representation

4.7.1 The Owner shall not be responsible to provide, or pay for, any legal representation of the A/E.

### ARTICLE 5 - COMPENSATION

#### 5.1 Reimbursable Expenses

##### 5.1.1 Limits

- .1 The A/E shall use its best efforts to minimize Reimbursable Expenses.
- .2 In all events, total Reimbursable Expenses shall not exceed \$[Insert Amount], without the prior written approval of the Owner and an amendment to this Agreement in accordance with subparagraph 9.5.2.
- .3 Reimbursable Expenses shall only be permitted for the items identified in the attached Scope of Additional Services and Reimbursable Expenses labeled Exhibit #1 and shall not exceed the respective amounts.

#### 5.2 Basis of Compensation

##### 5.2.1 Basic Fee

- .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 paragraph 5.3 hereof in the amount of \$[Insert Basic Fee in Numerals].
- .2 A change in the Basic Fee may be made only by an amendment to this Agreement in accordance with subparagraph 9.5.2.

##### 5.2.2 Additional Fees

- .1 The Owner shall pay the A/E the Fees in the amount of \$[Insert Amount], for the respective Additional Services, when such services are performed in accordance with

Article 3 and identified in the attached Scope of Additional Services and Reimbursable Expenses labeled Exhibit #1.

- .2 For other Additional Services provided by the A/E and any Consultants in accordance with Article 3, the Owner shall pay the A/E Additional Fees in an amount negotiated to the mutual reasonable satisfaction of the Owner and the A/E, but in all events, such Additional Fees shall not exceed 2.5 times the Direct Personnel Expense incurred by the A/E and any applicable Consultant in providing those Additional Services.
- .3 For Change Order work authorized by the Owner, the A/E shall be compensated at the rate of [Insert Change Order Fee Percentage in Numerals] percent of the additional construction cost up to the amount of the Change Order Fee Allowance of \$[Insert Change Order Fee Allowance in Numerals]. There shall be no fees for approved Change Orders processed as a result of errors and/or omissions on the part of the A/E or decreases in construction cost.
- .4 Except for the Additional Services and Additional Fees listed above, Additional Services and any Additional Fees shall be approved only by an amendment to this Agreement in accordance with subparagraph 9.5.2.
- .5 The A/E, with the prior written consent of the Owner, may provide Additional Services through one or more Consultants.

5.2.3 Extent of Basic Fee

- .1 The A/E's Basic Fee includes all compensation for Basic Services, including, but not limited to, 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.

5.3 Method and Terms of Payment

5.3.1 Basic Fee

- .1 Payment of the Basic Fee shall be made monthly in proportion to services performed in each Stage, in accordance with the following percentages of the Basic Fee:

Revise the breakdown for the stages as appropriate and as negotiated for each Project, paying particular attention to the use of CAD v. BIM software. The first number in the range is appropriate for a typical CAD-based project. BIM-based projects will usually expend more resources earlier in the design stages and the percentage must be adjusted accordingly. The second number in the range is appropriate for a typical BIM-based project.

Pre-design Stage	\$[Insert]	5%
Schematic Design Stage	\$[Insert]	[15-20]%
Design Development Stage	\$[Insert]	[15-25]%
Construction Documents Stage	\$[Insert]	[30-15]%
Bidding and Award Stage	\$[Insert]	5%
Conformed Documents	\$[Insert]	2%
Construction Stage	\$[Insert]	25%
Project Closeout	\$[Insert]	3%

- .2 Any balance of the final 3 percent of the Basic Services Fee shall be paid upon Project Closeout as follows: one-half after preparation of all Punch-Lists and one-half after completion of all Punch-List items to the reasonable satisfaction of the Owner and receipt of Project Record Submittals by the Owner, as provided in this Agreement.
  - .3 The Owner 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 Owner.
  - .4 Payment of the last 20 percent of the Basic Fee for the Predesign Stage, the Schematic Design Stage, the Design Development Stage, the Construction Documents Stage, and the Bidding or Negotiation Stage shall be made only after all documents and Drawings required for the respective Stage have been submitted to the Owner, in form and substance reasonably satisfactory to the Owner.
  - .5 The Basic Fee, including, but not limited to, the final 5% thereof, shall be subject to all setoffs in favor of the State for claims against the A/E.
  - .6 Payments for Basic Services shall be based upon a properly completed A/E's Pay Request and shall be made within the applicable time limits provided by O.R.C. Section 126.30.
- 5.3.2 Additional Fees, Reimbursable Expenses
- .1 Payments of Additional Fees for Additional Services in accordance with Article 3 and subparagraph 5.2.2, and for Reimbursable Expenses in accordance with paragraph 5.1, shall be made monthly based upon services performed or expenses incurred, as applicable, and as shown by a properly completed A/E's Pay Request.
- 5.3.3 Payments by A/E
- .1 Within 10 business days of 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.
- 5.3.4 Compensation for Extension of Project Time
- .1 If the A/E notifies the Owner, not less than 30 days prior to the time for completion of the Project set by the approved Project Schedule, that such time for completion is reasonably expected to be exceeded by more than 10 percent through no fault of the A/E, the compensation, if any, for Basic Services to be rendered during such extended period, shall be negotiated to the mutual reasonable satisfaction of the Owner and the A/E.
  - .2 If, through such negotiation, the Owner agrees that the A/E shall be paid additional compensation, an amendment to that effect shall be executed in accordance with subparagraph 9.5.2.
  - .3 Such amendment shall be executed before the A/E renders any services made necessary by such extension of the time of completion, unless otherwise agreed in writing by the Owner.
- 5.3.5 Compensation for Change of Scope of Project or Construction Budget
- .1 The Project Scope is defined by the Approved Program of Requirements, as provided in subparagraph 2.2.2.
  - .2 The Construction Budget is defined in subparagraph 1.1.2.
  - .3 If the Owner, through no fault of the A/E, materially changes 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 Owner and the A/E.
- .4 If, through such negotiation, the Owner agrees that the A/E shall be paid additional compensation, an amendment to that effect shall be executed in accordance with subparagraph 9.5.2.
  - .5 Such amendment shall be executed before the A/E renders any services made necessary by such change in the Project Scope or the Construction Budget, unless otherwise agreed in writing by the Owner.

## **ARTICLE 6 - INSURANCE AND INDEMNIFICATION**

### **6.1 Insurance**

#### **6.1.1 Casualty Insurance**

- .1 Except when a modification is requested in writing by the A/E and approved in writing by the Owner, the A/E shall carry, and maintain at the A/E's cost, with companies authorized to do business in Ohio, all necessary liability insurance during the term of this Agreement.
- .2 Such liability insurance shall include, as a minimum, all of the following requirements:
  - .1 Workers' Compensation and employer's liability insurance, to the fullest extent required by Applicable Law;
  - .2 Commercial general liability coverage for bodily injury and property damage, including limited contractual liability coverage, in not less than the following amounts:
    - .3 .1 General Aggregate Limit: \$2,000,000 each occurrence;
    - .4 .2 Each Occurrence Limit: \$1,000,000 each occurrence; and
    - .5 Commercial automobile liability coverage, including non-owned and hired, in an amount not less than \$1,000,000.

#### **6.1.2 Project-specific Professional Liability Insurance**

- .1 For all Projects with a Construction Budget of \$5,000,000 or more, the A/E shall, in consultation with the Owner, obtain proposals for project specific professional liability insurance to cover the A/E, any Consultants, and any Construction Manager ("Project-specific Professional Liability Insurance") in an amount of not less than \$2,000,000.
- .2 The term of coverage of such insurance shall include the design period, the construction period, and a period of no less than 10 years after Contract Completion.

#### **6.1.3 Professional Liability Insurance**

- .1 When the Owner does not elect to procure Project-specific Professional Liability Insurance, and subject to the Owner's written waiver or modification of Professional Liability Insurance upon written request of the A/E, the A/E shall maintain insurance to protect against claims arising from the performance of the A/E's services caused by any negligent acts, errors or omissions for which the A/E is legally liable ("Professional Liability Insurance").

- .2 Except when a waiver is approved by the Owner upon written request of the A/E, such Professional Liability Insurance shall be in an amount not less than \$1,000,000 per claim and in the annual aggregate.
- .3 The A/E shall keep such insurance in effect throughout the term of this Agreement and for a period of no less than 10 years after Contract Completion, for so long as the A/E may be held liable for its performance of services for the Project.
- .4 If the Professional Liability Insurance is written on a claims-made basis, such insurance shall have a retroactive date no later than the date on which the A/E commenced to perform services relating to the Project.
- .5 The insurance company issuing the Professional Liability Insurance policy must be authorized to do business in Ohio and have a rating of at least A status as noted in the most recent edition of the Best's Insurance Reports.

#### 6.1.4 Certificates

- .1 The A/E shall provide the Owner with certificates of insurance evidencing the required coverage and amounts, including, but not limited to, any certificates of renewal of insurance.
- .2 The certificates of insurance shall contain a provision that the policy or policies will not be canceled without 30 days' prior written notice to the Owner.

## 6.2 Indemnification

### 6.2.1 Indemnification by A/E Generally

- .1 To the fullest extent permitted by law, the A/E shall indemnify and hold harmless the Owner and its respective members, officers, consultants, agents, representatives, and employees, in both individual and official capacities (individually "Indemnified Party"; collectively "Indemnified Parties"), from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including, but not limited to, the fees and charges of engineers, architects, construction managers, attorneys, and other professionals), direct, indirect, or consequential, of any nature, kind or description, which arise out of, are caused by, or result from performance of the A/E's services hereunder, but only to the extent caused by any negligent acts, errors or omissions of the A/E, anyone directly or indirectly employed by the A/E, or anyone for whose acts the A/E is legally liable, regardless of whether or not the claim, damage, loss, or expense is caused in part by an Indemnified Party.

### 6.2.2 Intellectual Property Indemnification

- .1 To the fullest extent permitted by law, the A/E shall indemnify and hold harmless the Indemnified Parties from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including, but not limited to, the fees and charges of engineers, architects, construction managers, attorneys, and other professionals), direct, indirect, or consequential, of any nature, kind or description, arising out of the claimed infringement of any copyright, patent or other intangible property right caused by the A/E, anyone directly or indirectly employed by the A/E, or anyone for whose acts the A/E is legally liable, but only to the extent that such claimed infringement occurs in materials not provided by the Owner.

### 6.2.3 Indemnification for Use of Electronic Files

- .1 To the fullest extent permitted by law, the A/E shall indemnify and hold harmless the Indemnified Parties from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including, but not limited to, the fees and charges of engineers, architects, construction managers, attorneys, and other professionals) arising out of, or related to the A/E's, or any other Person's use of electronic files, including, but not limited to, Computer-Aided Design ("CAD") or Building Information Modeling ("BIM") files (collectively "Electronic Files").
  - .1 These Electronic Files are provided solely for the A/E's convenience and use related to the Project. Any use of the Electronic Files shall be at the sole risk of the A/E.
  - .2 The Owner alone owns the Electronic Files and every right, title, and interest therein from the moment of creation.
  - .3 The Electronic Files are not products.
  - .4 The A/E shall not use the Electronic Files for any purpose other than as a convenience for preparing Drawings and Specifications intended solely for use on the Project.
  - .5 The Owner makes no warranties, either express or implied, of the merchantability or fitness of the Electronic Files for any particular purpose.
  - .6 The A/E understands and accepts that the Electronic Files may deteriorate or be inadvertently or otherwise modified without authorization of the State.
  - .7 The State makes no representations as to compatibility, usability, or readability of the Electronic Files resulting from the use of software, application packages, operating systems, or computer hardware differing from those used to create the Electronic Files.
  - .8 In the event of a conflict between the Contract Documents and the Electronic Files, the Contract Documents shall control, take precedence over, and govern the Electronic Files.
  - .9 The A/E alone is responsible to check, verify, and otherwise confirm the accuracy of data on the Electronic Files.
  - .10 The A/E shall not make any claims and hereby waives, to the fullest extent permitted by law, any claims or causes of action of any nature against the Indemnified Parties, which may arise out of, or in connection with, the use of the Electronic Files.

## **ARTICLE 7 - DISPUTE RESOLUTION PROVISIONS**

### **7.1 Mediation**

- 7.1.1 Instead of, or in addition to, the procedures set forth below, the Owner and the A/E may, by written agreement, submit any claims, requests, disputes, or matters in question between or among them to mediation upon such terms as shall be mutually reasonably agreeable.

### **7.2 Notice and Filing of Requests**

- 7.2.1 Any request by the A/E for additional fees or expenses shall be made in writing to the Owner and filed prior to payment of the final 5 percent of the Basic Fee. The A/E's failure to comply with

the requirements of this subparagraph 7.2.1 shall constitute an irrevocable waiver by the A/E of any request for such fees and expenses.

### 7.3 Substantiation of Request

7.3.1 In every written request filed pursuant to paragraph 7.2, 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.

### 7.4 Meeting with the Project Manager

7.4.1 If the A/E files a written request with the Owner pursuant to paragraph 7.2, the Project Manager shall, within 30 days of receipt of the request, schedule a meeting in an effort to resolve the request and render a decision on the request promptly thereafter or render a decision on the request without a meeting, unless a mutual agreement is made to extend such time limit.

7.4.2 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.

### 7.5 Appeal to Institutional Architect or Designee

7.5.1 If the efforts of the Project Manager do not lead to resolution of the request, the A/E may appeal to the Owner's Institutional Architect or Designee by notice in writing, within 14 days of the Project Manager's decision.

.1 Reserved.

7.5.2 Within 30 days of receipt of the notice, the Institutional Architect or Institutional Designee, if applicable, shall schedule a meeting and render a decision on the appeal promptly thereafter or render a decision on the appeal without a meeting, unless a mutual agreement is made to extend such time limit.

7.5.3 The purpose of such a meeting shall be to settle the matters in dispute and shall be attended by persons expressly and fully authorized to resolve the matters on behalf of the A/E.

7.5.4 O.R.C. Chapter 119 shall not be applicable to any proceedings of the Institutional Architect or Designee.

7.5.5 The decision of the Institutional Architect or Institutional Designee, if applicable, shall be the Owner's final and conclusive determination.

### 7.6 Delegation

7.6.1 No provision of this Article 7 shall prevent the Owner from delegating the duties or authorities of the Owner to any other person selected at the Owner's sole discretion.

### 7.7 Performance

7.7.1 The A/E shall proceed with the A/E's performance of this Agreement during any dispute resolution process, unless otherwise agreed by the A/E and the Owner in writing.

7.7.2 The Owner shall continue to make payment, in accordance with this Agreement, of any amounts not in dispute pending final resolution of any dispute.

## ARTICLE 8 - TERMINATION AND REMEDIES

### 8.1 Termination of the Agreement

#### 8.1.1 Means of Termination

- .1 This Agreement may be terminated by either party upon 7 days written notice should the other party fail to perform in accordance with the terms of this Agreement; provided, however, the A/E shall not terminate this Agreement for non-payment if the Owner initiates the payment process by preparing, executing, and submitting a voucher for all reasonably undisputed amounts due to the A/E within 10 days of receipt of the A/E's written notice to terminate.
- .2 This Agreement may be terminated by the Owner without cause upon 15 days written notice to the A/E.
- .3 This Agreement may be terminated at any time upon the mutual written consent of the Owner and the A/E.

#### 8.1.2 A/E's Remedies Upon Termination by Owner Without Cause or Termination by A/E

- .1 In the event of a termination by the A/E or a termination which is not a result of the A/E's failure to perform in accordance with the terms of this Agreement, the A/E shall be compensated for all Basic Services of a completed Phase performed prior to the termination date, in accordance with the percentages set forth in subparagraph 5.3.1, together with Reimbursable Expenses incurred prior to the termination date.
- .2 In such event, for services rendered prior to the termination date in an uncompleted Phase and for Additional Services, the A/E shall receive compensation based on the percentages of completion of that Phase or those Additional Services, as applicable, and as reasonably determined by the Owner, together with Reimbursable Expenses incurred prior to the termination date.

#### 8.1.3 A/E's Remedies Upon Termination by Owner for Cause

- .1 In the event of a termination resulting from the A/E's failure to perform in accordance with the terms of this Agreement, the A/E shall be compensated only for Basic Services performed and paid for prior to the termination date, in accordance with the percentages set forth in subparagraph 5.3.1, together with Additional Services completely performed prior to the termination date.
- .2 In such event, the A/E shall be reimbursed only for Reimbursable Expenses incurred prior to the date of the notice of termination, unless the Owner consents in writing to the payment of Reimbursable Expenses incurred after that date.

#### 8.1.4 A/E's Remedies Upon Termination by Mutual Consent

- .1 In the event of a termination upon the mutual written consent of the Owner and the A/E, any compensation for Basic Services or for Additional Services or payment of Reimbursable Expenses shall be negotiated and set forth in an amendment to this Agreement, in accordance with subparagraph 9.5.2, prior to such termination.

#### 8.1.5 Post-Termination Matters

- .1 If the Owner and the A/E agree that any services are to be performed for the Project by the A/E after any termination date, the amount of any compensation and the method and terms of payment of such compensation or any Reimbursable Expenses related to such

services shall be negotiated and set forth in an amendment to this Agreement, in accordance with subparagraph 9.5.2, prior to the commencement of such services.

- .2 Such amendment and any relevant provisions of this Agreement shall survive termination of this Agreement.

## 8.2 Remedies

### 8.2.1 Cumulative Remedies

- .1 No remedy conferred upon the Owner by the terms of this Agreement is intended to be exclusive of any other remedy provided at law or in equity.
- .2 Each and every remedy of the Owner shall be cumulative and shall be in addition to any other remedy given to the Owner hereunder, or now or hereafter existing. Except as otherwise provided in this Agreement, no remedy conferred upon the A/E by the terms of this Agreement is intended to be exclusive of any other remedy provided at law or in equity.
- .3 Except as otherwise provided in this Agreement, each and every remedy of the A/E shall be cumulative and shall be in addition to any other remedy given to the A/E hereunder, or now or hereafter existing.

### 8.2.2 Remedies Not Waived

- .1 No delay, omission or forbearance to exercise any right, power or remedy accruing to the Owner or the A/E hereunder shall impair any such right, power or remedy or shall be construed to be a waiver of any breach hereof or default hereunder.
- .2 Every such right, power, or remedy may be exercised from time to time and as often as deemed expedient.

## **ARTICLE 9 - MISCELLANEOUS PROVISIONS**

### 9.1 Document Ownership and Use

#### 9.1.1 Property of Owner

- .1 Drawings, Specifications, and other documents prepared by, or with the cooperation of, the A/E or any Consultant pursuant to this Agreement, including the Electronic Files used to create them, are, from the moment of creation, the property of the Owner, whether or not the Project for which they are prepared is commenced or completed, and the Owner alone owns every right, title, and interest therein.
- .2 The A/E or Consultant, as applicable, may retain copies, including reproducible copies of such Drawings, Specifications and other documents for information and reference.
- .3 Such Drawings, Specifications, or other documents, including the Electronic Files used to create them, may be used by the Owner or others employed by the Owner for reference in any completion, correction, remodeling, renovation, reconstruction, alteration, modification of, or addition to, the Project, without prior approval of, or compensation to, the A/E or its Consultants.
- .4 Unless the Project is a prototype, such Drawings, Specifications or other documents, including the Electronic Files used to create them, shall not be used by the Owner, or be given or sold by the Owner to be used by others, on other projects, except by prior

written agreement with, including mutually acceptable compensation to, the A/E or Consultant, as applicable.

.5 Reserved

.6 If an event occurs, for which the A/E or Consultant may be liable, the Owner shall notify the A/E or Consultant of such event as soon as practical after such event and shall provide access to the Project to the A/E or Consultant and their representatives.

.7 This subparagraph 9.1.1 shall survive termination of this Agreement.

#### 9.1.2 A/E's Intellectual Property

.1 All inventions, patents, design patents, and computer programs acquired, or developed by, the A/E in connection with, or in relation to, the Project shall remain the property of the A/E, and shall be protected by the Owner from use by others, except by prior written agreement with, including mutually acceptable compensation to, the A/E.

### 9.2 Public Relations

#### 9.2.1 Publicity Prior to Completion of the Project

.1 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.

#### 9.2.2 Publicity After completion of the Project

.1 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 its participation in the Project.

#### 9.2.3 Professional Photography

.1 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 shall provide the Owner with a reasonable quantity of photographs for use in the Owner's marketing and awareness activities, including, but not limited to, profiles of the Project on their respective Web sites.

#### 9.2.4 Design Awards and Other Recognition

.1 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 its participation in the Project.

.2 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.

### 9.3 Records

9.3.1 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 Owner at all times and shall be maintained for 7 years after the Owner's Final Acceptance of the Project.

9.3.2 All other records kept by the A/E related to the Project shall be available to the Owner at all times and shall be maintained for 6 years after the Owner's Final Acceptance of the Project.

#### 9.4 Successors and Assigns

- 9.4.1 The Owner and the 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.
- 9.4.2 Reserved.
- 9.4.3 The A/E shall not assign, or transfer any right, title or interest in this Agreement without the Owner's prior written consent.

#### 9.5 Extent of Agreement

##### 9.5.1 Entire Agreement

- .1 This Agreement and the Contract Documents represent the entire and integrated agreement between the Owner and the A/E and supersede all prior negotiations, representations or agreements, either written or oral.

##### 9.5.2 Amendments

- .1 This Agreement may be amended only by an amendment prepared by the Owner and signed by both the A/E and the Owner.
- .2 Amendments involving changes to the legal terms and conditions of this Agreement shall require approval by the Ohio Attorney General.
- .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 subparagraph 1.1.2, Article 5, and the attached Scope of Additional Services and Reimbursable Expenses labeled Exhibit #1.

##### 9.5.3 Multiple Counterparts

- .1 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.

##### 9.5.4 Captions

- .1 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.

##### 9.5.5 Precedence

- .1 If there are any inconsistencies between the provisions of the Contract Documents and the provisions of the Announcement or this Agreement, the provisions of this Agreement shall prevail.
- .2 In addition, the A/E shall refer to *The SAO Manual*, *FOD Building Design Standards*, *FOD Project Delivery Manual*, and including, but not limited to, all exhibits thereto, for applicable procedures, policies, and forms.

##### 9.5.6 Conditions to Validity

- .1 None of the rights, duties and obligations contained in this Agreement shall be binding on any party until all relevant statutory provisions of the Ohio Revised Code, including, but not limited to O.R.C. 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 Controlling Board of the State of Ohio, or other applicable approving body.

- .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 Owner gives the A/E written notice that such funds are available from the Owner's funding source.

9.6 Governing Law

- 9.6.1 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.

9.7 Assignment of Antitrust Claims

- 9.7.1 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 Intending to be legally bound, the A/E, acting herein by and through the person signing this Agreement on its behalf as a duly authorized agent, hereby assigns, sells, conveys and transfers to the Owner any and all right, 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, 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 price is established under this Agreement and 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. The provisions of this subparagraph 9.7.1 shall become effective at the time the Owner executes its concurrence to this Agreement without further acknowledgement by any of the parties.

9.8 Notices

- 9.8.1 All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be given if delivered in person to the individual or to a member of the company or organization for whom the notice is intended, or if delivered at, or mailed by registered or certified mail, postage prepaid, to, the appropriate following address:

If to the Owner:            [Insert Owner's Name]  
                                       [Insert Address]  
                                       [Insert City, State and Zip Code]  
                                       Attention: [Insert Project Manager]

If to the A/E:                [Insert A/E's Name]  
                                       [Insert Address]  
                                       [Insert City, State and Zip Code]  
                                       Attention: [Insert A/E's Principal Contact]

- 9.8.2 When the Owner, the A/E, or a Contractor gives notice to one of the parties, it shall also simultaneously send a copy of that notice to the other parties.

- 9.8.3 A copy of all notices, certificates, requests or other communications to the Owner shall be sent to the Project Manager.
- 9.8.4 For convenience of communication only, notices, certificates, requests or other communications hereunder, except requests for payment, may be sent by email or facsimile to Owner at 614-292-2539 and to the A/E at [Insert Area Code and Phone Number].
- .1 Notices, certificates, requests or other communications sent by facsimile transmission shall not be deemed to be given unless a counterpart is received or mailed in accordance with subparagraph 9.8.1.
- .2 Requests for payment may be sent to the Owner by facsimile transmission only upon the Owner's prior specific written direction.
- 9.8.5 In the event of an emergency involving the Project, including, but not limited to, 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 Owner by telephone.
- 9.8.6 The Owner or the A/E may, by written notice given hereunder, designate any further or different addresses, telephone numbers, or facsimile numbers to which subsequent notices, certificates, requests, or communications shall be sent.

## 9.9 Severability

- 9.9.1 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.

## ARTICLE 10 - DEFINITIONS

### 10.1 Definitions

- 10.1.1 For the purposes of this Agreement, the words and terms set forth below in this Article 10 are understood to have the following meanings:
- .1 "Acceptable Component" means a component listed in the Specifications after the Basis of Design Component.
- .2 "Addenda" or "Addendum" means a written or graphic instrument issued prior to the bid opening which modifies or interprets the proposed Contract Documents by additions, deletions, clarifications, or corrections. Addenda become part of the Contract Documents when the Contract Form is executed.
- .3 "Alternate" means a change in the proposed Project scope, alternate materials, or methods of construction and an amount stated on the Bid form to be added to or deducted from the Base Bid if the corresponding Alternate is incorporated into the Contract for construction.
- .4 "Applicable Law" means all applicable federal, state, and local codes, statutes, ordinances, and regulations in the performance of the A/E's services.
- .5 "Basis of Design Component" means a component listed first in the Specifications.
- .6 "Bid" means a written proposal to perform a contract for the Project, submitted on a completed Bid Form, accompanied by other required documents.

- .7 “Bidder” means a Person that submitted a Bid.
- .8 “Building Information Model” or “BIM” means 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.
- .9 “Certification of Contract Completion” means a form used to document that a Contractor’s Work is complete, and the Contractor has complied with all conditions precedent to final payment and release of retainage. This form may also be used to document partial completion.
- .10 “Change Order” means a written instrument prepared by the A/E and signed by the Owner, A/E, and a Contractor, which modifies the Contractor’s contract and states the signing parties agreement on a change in the Contractor’s Work, the amount of adjustment to the Contract Sum, if any, and the amount of adjustment to the Contract Time, if any.
- .11 “Change Order Fee Allowance” means the amount established by the Owner in the Architect/Engineer Agreement for the purpose of funding Change Order fees payable to the A/E resulting from increases in the construction cost by approved Change Orders.
- .12 “Conformed Documents” means Contract Documents with all Addenda items and accepted Alternates incorporated by the A/E, published, and issued to a successful Bidder for its use during performance of its contract.
- .13 “Construction Progress Schedule” means the critical path schedule for performance of the Construction Contract; showing the time for completing the Work within the Contract Time; the planned sequence for performing the various components of the Work; the interrelationship between the activities of the Contractors, the A/E, the Owner; and the Contractors’ resource and cost loading information; as periodically updated during the performance of the Work.
- .14 “Contract Documents” means, collectively, the documents that constitute the substance of a Contractor’s contract including, but not limited to, Drawings, Specifications, Addenda if any, General and Supplementary Conditions of the contract, Bid Form, Wage Rates; and the executed Contract Form, Bid Guaranty and Contract Bond, and Change Orders if any.
- .15 “Contract Form” means the form furnished by the Owner that, when completed and signed by a Contractor and the Owner, and approved by the Attorney General of the State, evidences entry into a contract.
- .16 “Contract Sum” means the amount stipulated in the Contract Form that is the total amount payable to a Contractor for performance of the Work, including adjustments authorized by executed Change Orders.
- .17 “Contract Time” means the period stipulated in the Contract Form for performance of the Work, in consecutive days, beginning and ending on the dates established by the Notice to Proceed, including adjustments authorized by executed Change Orders.
- .18 Reserved.
- .19 “Contractor” means a Person who 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.

- .20 “Contractor Payment Request” means the form furnished by the Department that is to be used by a Contractor in requesting payments and which, when signed by the Contractor, shall serve as an affidavit that payments requested are in proportion to the Work completed as shown on the Schedule of Values.
- .21 “Contractor’s Punch List” means a document prepared by a Contractor, which consists of a list of items of Work to be completed or corrected by the Contractor as a condition precedent to the A/E issuing the Punch List.
- .22 “Day” means a calendar day of 24 hours measured from midnight to midnight, unless otherwise expressly specified to mean a business day.
- .23 “Defective Work” means 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 and Construction Manager’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.
- .24 “Department” means the Ohio Department of Administrative Services.
- .25 “Differing Site Condition” means either (1) a subsurface or otherwise concealed physical condition encountered at the Site that differs materially from the condition indicated in the Contract Documents, or (2) an unknown physical condition of an unusual nature encountered at the Site that differs materially from that ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents.
- .26 “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.
- .27 “Drawings” means graphic portions of the Contract Documents, showing the design, type of construction, location, dimension, and character of the Work to be provided by a Contractor, which generally includes plans, elevations, sections, details, schedules, diagrams, notes, and text.
- .28 “Estimated Construction Cost” means the sum of the Estimated Contract Cost amounts published in the Solicitation, as modified by Addenda, for a phase of the Project.
- .29 “Field Work Order” means a written document prepared by the A/E and executed by the Owner and the A/E that directs a change in a Contractor’s Work.
- .30 “Final Acceptance” means the Owner’s acceptance of the Work performed by a Contractor after certification by the A/E, and Construction Manager, if any, of Contract Completion.
- .31 “Final Inspection” means the final review of a Contractor’s Work by the A/E, and Construction Manager, if any, to determine whether issuance of the Certificate of Contract Completion is appropriate.

- .32 “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 life-time of the Project, product, or measure.
- .33 “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.
- .34 “Material Supplier” means a Person who furnishes materials or supplies on the Project.
- .35 “Milestone” means a significant date or event in the development of the Work identified in the Contract Documents and illustrated on the Construction Progress Schedule.
- .36 “Owner” means the State agency, university, college, or other instrumentality for whom the Project is being constructed.
- .37 “Partial Occupancy” means the Owner occupies or uses a portion of the Project prior to Contract Completion, temporary occupancy is approved by authorities having jurisdiction, and items of Work cannot be completed until a subsequent date.
- .38 “Person” means an individual, corporation, business trust, estate, partnership, association, or other public or private entity.
- .39 “Phase” means a separation of the Work by sequence or time intervals. Phasing may be necessary due to funding constraints, breaking the Project into packages that will be constructed as design is performed for subsequent phases as in a fast-track project.
- .40 “Plan Holder” means a prospective Bidder that received a set of Contract Documents prior to the bid opening.
- .41 “Project” means a public improvement, of which the Work performed under the Contract Documents may be the whole or a part.
- .42 “Project Manager” means a permanent employee of the Owner assigned to the Project and authorized to perform specific responsibilities.
- .43 “Project Schedule” means the critical path schedule for performance of the Agreement for Professional Design Services; showing the time for completing the Work within the Contract Time; the planned sequence for performing the various components of the Work; the interrelationship between the activities of the Contractors, the A/E, the Construction Manager if any, and the Owner; and the Contractors’ resource and cost loading information; as periodically updated during the performance of the Work.
- .44 “Proposal Request” means a document issued after execution of a contract requesting a Proposal from the Contractor(s), which may initiate a Change Order to modify the contract.
- .45 “Punch List” means a document listing items of Work requiring correction or completion by a Contractor as a condition precedent to Contract Completion.
- .46 “Record Documents” means electronic files and printed documents of all nature prepared by the A/E, which incorporate the information shown on a Contractor’s As-Built Documents. They consist of the “Record Drawings” and “Record Project Manual,” the Certification of Contract Completion (as complete), Contractor’s Warranty, Manufacturers’ Warrantees, Certificate(s) of Occupancy, approved shop drawings and

- other action submittals, Field Work Orders, Proposal Requests, Requests for Interpretation, Addenda, Change Orders, Balancing Reports, and the final version of the approved Construction Progress Schedule.
- .47 “Reimbursable Expenses” means actual expenditures incurred by the A/E or its Consultants in the interest of the Project, approved by the Owner for reproduction of Contract Documents for distribution to Bidders, plan approval fees, building permits, and, if requested by the Owner, reformatting Project Record Submittals to a computer medium different than the computer medium used by the A/E. No other expenditures shall be Reimbursable Expenses, unless so provided in an amendment to this Agreement in accordance with subparagraph 9.5.2.
- .48 “Request for Interpretation” means a written request to the A/E seeking an interpretation or clarification of the Contract Documents.
- .49 “Site” means the location designated for the Project.
- .50 “Specifications” means 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 volume(s), including identification of acceptable materials, methods, equipment, quality, and workmanship.
- .51 “Stage” means a distinct period in the life cycle of a facility from concept through construction, to use and deconstruction or demolition.
- .52 “Standard Requirements” means the brief name of the “State of Ohio Standard Requirements for Public Facility Construction,” including, but not limited to, Instructions to Bidders, General Conditions, and other Division 00 Documents and Division 01 Sections; currently in effect, which the Department may modify from time to time.
- .53 “Statutory Delay Forfeiture” means a sum established in the Contract Documents, pursuant to O.R.C. Section 153.19, to be paid to the Owner because of a Contractor’s failure to complete the Work, or a portion thereof, within the Contract Time.
- .54 “Subcontractor” means a Person who undertakes to perform any part of the Work on the Project under a contract with a Contractor or with any Person other than the State, including all such Persons in any tier.
- .55 “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.
- .56 “Substitution” means an article, device, material, equipment, form of construction, or other item, proposed by a prospective Bidder prior to the bid opening and approved by the A/E by Addendum, 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 proposed Contract Documents.
- .57 “Supplementary Conditions” means amendments to the General Conditions, issued as a separate document, which describe conditions unique to a particular 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 Contractors and requiring Contractors 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.

- .58 “Work” means the labor, materials, equipment, and services, individually or collectively which are required by the Contract Documents, to be performed or provided by a Contractor for the Project.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first below written.

[Insert A/E's Name]  
("Architect/Engineer")

By: \_\_\_\_\_

Title: \_\_\_\_\_

A/E's Federal Tax ID: \_\_\_\_\_

OWNER

**The Ohio State University**  
("Owner")

By: \_\_\_\_\_

Name: Jeff Kaplan \_\_\_\_\_

Title: Senior Vice President for Administration and Planning  
and Special Assistant to the President

**RICHARD CORDRAY, OHIO ATTORNEY GENERAL**  
Approved as to Form

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Assistant Attorney General