State of Ohio Standard Requirements for Public Facility Construction
(CM at Risk Project)

2014 Edition

Including Standard Form Documents of
Division 00 – Procurement and Contracting Requirements
and Sections of Division 01 – General Requirements

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Document 00 01 10 - Table of Contents (CM at Risk ~~Contract~~Project)
State of Ohio Standard Requirements for Public Facility Construction

Edit the Table of Contents for each Project by modifying the document ~~per~~according to the instructions in shaded boxes, and then delete the instructions.

PROCUREMENT AND CONTRACTING REQUIREMENTS GROUP

Division 00 – Procurement and Contracting Requirements

Introductory Information
00 01 10.....Table of Contents

Procurement Requirements
00 11 19.....Request for Proposals
00 21 16.....Instructions to Proposers

Insert the Owner's Supplementary Instructions below, if any.

00 22 00~~.23.AGY~~ Supplementary Instructions

~~Expand~~Edit the Table of Contents, listing geotechnical or environmental data here (00 ~~31~~3N NN), if any.

00 31 00.....Available Project Information
00 31 13.....Preliminary Schedules
00 31 19.....Existing Condition Information
00 31 21.....Survey Information
00 31 24.....Environmental Assessment Information
00 31 26.....Existing Hazardous Material Information
00 31 32.....Geotechnical Data

00 43 23.....Proposal Form
~~00 45 13.....Proposer's Qualifications~~
00 45 39.....EDGE Affidavit

Contracting Requirements
00 52 23.....Agreement Form
00 52 34.....Subcontract Form (OAC:1-03-02)
00 53 23.....GMP Amendment
00 61 13.13.....Performance Bond Form
00 61 13.16.....Payment Bond Form
~~00 63 23.....GMP Amendment~~
00 71 00.....Contracting Definitions
00 72 23.....General Conditions

Insert the Owner's Supplementary Conditions below, if any.

00 73 00~~.23.AGY~~ Supplementary Conditions

00 73 43.....Wage Rate Requirements

Use the item above if the Project will be constructed entirely with state or local funds. If the Project is constructed using federal funds in any amount, use the item below and contact OFCC to develop supplementary documents to comply with Davis-Bacon wage requirements. Insert prevailing wage rates after the appropriate Wage Rate Requirements document. If the Project is a PK-12 or Career-Tech School, delete both items.

00 73 43.50.....Wage Rate Requirements (Federal Funded Project)

SPECIFICATIONS GROUP

Expand the Table of Contents below, list each specification Section by number and title – Large Project Manuals should be divided into two or three volumes in a logical manner.

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GENERAL REQUIREMENTS SUBGROUP

Division 01 – General Requirements

01 21 00.....Allowances
01 32 16.....Construction Progress Schedule

Edit and expand the Table of Contents, listing design criteria and performance requirements here at a level of detail appropriate for the Project.

01 80 00.....Performance Requirements
01 81 00.....Facility Performance Requirements
01 81 13.....Sustainable Design Performance Requirements
01 82 00.....Facility Substructure Performance Requirements
01 83 00.....Facility Shell Performance Requirements
01 84 00.....Interiors Performance Requirements
01 85 00.....Conveying Equipment Performance Requirements
01 86 00.....Facility Services Performance Requirements
01 86 13.....Fire Suppression Performance Requirements
01 86 16.....Plumbing Performance Requirements
01 86 19.....HVAC Performance Requirements
01 86 23.....Integrated Automation Performance Requirements
01 86 26.....Electrical Performance Requirements
01 86 29.....Communications Performance Requirements
01 86 33.....Electronic Safety and Security Performance Requirements
01 87 00.....Equipment and Furnishings Performance Requirements
01 87 13.....Equipment Performance Requirements
01 87 16.....Furnishings Performance Requirements
01 88 00.....Other Facility Construction Performance Requirements
01 89 00.....Site Construction Performance Requirements

FACILITY CONSTRUCTION SUBGROUP

Division 02 – Existing Conditions

Division 03 – Concrete

Division 04 – Masonry

Division 05 – Metals

Division 06 – Wood, Plastics, and Composites

Division 07 – Thermal and Moisture Control

Division 08 – Openings

Division 09 – Finishes

Division 10 – Specialties

Division 11 – Equipment

Division 12 – Furnishings

Division 13 – Special Construction

Division 14 – Conveying Equipment

Divisions 15 through 19 – Not Used

FACILITY SERVICES SUBGROUP

Division 20 – Not Used

Division 21 – Fire Suppression

Division 22 – Plumbing

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Division 23 – Heating, Ventilating, and Air Conditioning

Division 24 – Not Used

Division 25 – Integrated Automation

Division 26 – Electrical

Division 27 – Communications

Division 28 – Electronic Safety and Security

Division 29 – Not Used

SITE AND INFRASTRUCTURE SUBGROUP

Division 30 – Not Used

Division 31 – Earthwork

Division 32 – Exterior Improvements

Division 33 – Utilities

Division 34 – Transportation

Division 35 – Waterway and Marine

Divisions 36 through 39 – Not Used

PROCESS EQUIPMENT SUBGROUP

Division 40 – Process Integration

Division 41 – Material Processing and Handling Equipment

Division 42 – Process Heating, Cooling, and Drying Equipment

Division 43 – Process Gas and Liquid Handling Equipment

Division 44 – Pollution Control Equipment

Division 45 – Industry-Specific Manufacturing Equipment

Division 46 – Water and Wastewater Equipment

Division 47 – Not Used

Division 48 – Electrical Power Generation

Division 49 – Not Used

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Document 00 11 19 - Request for Proposal (CM at Risk Project)
State of Ohio Standard Requirements for Public Facility Construction

Project Name	_____	Response Deadline	_____ _____ local time
Project Location	_____	Project Number	_____
City / County	_____	Project Manager	_____
Owner	_____	Contracting Authority	_____

ARTICLE 1 - GENERAL INFORMATION

1.1 Purpose

1.1.1 This is a **Request for Proposal** ("RFP") for Construction Manager at Risk Services for the Project. The Contracting Authority is requesting Short-Listed Firms ("prospective Proposers") to submit a Proposal to provide those Services.

1.2 RFP Materials

1.2.1 This **RFP** is organized into the following documents, which have either been distributed with this RFP or may be downloaded by clicking on the links below:

.1 This Request for Proposal

~~**.2** Instructions to Proposers - 2014 Edition (2014-JUL)~~

.2 Instructions to Proposers - 2014 Edition (2015-JAN)

.3 Proposal Form (Excel)

~~**.4** EDGE Affidavit - 2014 Edition (2014-JUL)~~

~~**.5** Agreement Form - 2014 Edition (2014-APR)~~

~~**.6** GMP Amendment - 2014 Edition (2014-APR)~~

~~**.7** Performance Bond Form - 2014 Edition (2014-APR)~~

~~**.8** Payment Bond Form - 2014 Edition (2014-APR)~~

~~**.9** Contracting Definitions - 2014 Edition (2014-APR)~~

~~**.10** General Conditions - 2014 Edition (2014-MAY)~~

.4 EDGE Affidavit - 2014 Edition (2014-JUN)

.5 Agreement Form - 2014 Edition (2015-JUN)

.6 Subcontract Form - 2015-JUL (OAC 153:1-03-02)

.7 GMP Amendment - 2014 Edition (2014-NOV)

.8 Performance Bond Form - 2014 Edition (2014-APR)

.9 Payment Bond Form - 2014 Edition (2014-APR)

.10 Contracting Definitions - 2014 Edition (2015-MAR)

.11 General Conditions - 2014 Edition (2014-OCT)

~~**.11**~~**.12** Supplementary Conditions (if applicable)

~~**.12**~~**.13** ~~Wage Rate Requirements~~Wage Rate Requirements (if applicable) - 2014 Edition (2014-APR)

~~**.13**~~**.14** Available Program of Requirements, Drawings, and Specifications

~~**.14**~~**.15** Anticipated Project Schedule

~~**.15**~~**.16** Best Value Rating Form (including selection criteria)

1.3 Prevailing Wage

1.3.1 «State or Federal» Prevailing Wage rates «are or are not» applicable to this Project.

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1.4 EDGE

~~1.4.1~~ The EDGE Participation ~~Goals~~Goal for the Project ~~are:~~

~~.1~~ is «insert amount» percent of the CM's total compensation excluding the CM's Contingency (Preconstruction Stage Compensation

~~.2~~1.4.1 ~~«insert amount» percent of~~ plus the Contract Sum ~~(Construction Stage compensation)~~minus the CM's Contingency).

1.5 Owner's Subcontractor Prequalification Criteria

1.5.1 The Owner's Subcontractor Prequalification Criteria for this Project are:

.1 List any lawsuits, claims, or demands, related to the company or organization's participation on any public contract, whether the lawsuit, claim or demand was initiated by the public owner against the company or organization or initiated against the company or organization in its capacity as a subcontractor.

.2 In the past five years, has the company or organization been requested by a public owner to return to address construction workmanship, performance, or installation issues. If yes, please state the project and type of contract, and describe your response to the request.

.3 «insert Project-specific criteria»

1.6 Selection Process Timeline

1.6.1 The anticipated schedule for the selection process is given below. The Contracting Authority may, in its sole discretion, change this schedule at any time by giving notice to the prospective Proposers.

Activity	Date	Time
RFP, Instructions, and Materials issued	«insert date»	—
Site Visit *(delete if Site Tour used below)*	«insert date»	«insert time»
Pre-Proposal Meetings at «insert location»	—	—
Group Announcements	«insert date»	«insert time»
Site Tour *(delete if Site Visit used above)*	«insert date»	«insert time»
«insert name»	«insert date»	«insert time»
«insert name»	«insert date»	«insert time»
«insert name»	«insert date»	«insert time»
«Submission for review of the Proposer's Subcontractor Prequalification Criteria» *(see related provisions in the Instructions to Proposers and delete if GMP Proposal is not requested in this RFP)*	«insert date»	«insert time»
«Submission for review of the Proposer's list of Prequalified Subcontractors» *(delete if GMP Proposal is not requested in this RFP)*	«insert date»	«insert time»
Proposals Due	«insert date»	—
Interviews	—	—
«insert name»	«insert date»	«insert time»
«insert name»	«insert date»	«insert time»
«insert name»	«insert date»	«insert time»
Announce selected Construction Manager	«insert date»	—
Approval of the initial Agreement	«insert date»	—

1.7 Submission of Proposal

1.7.1 A complete Proposal package will include:

.1 **«insert number»** paper copies of the Proposal – stapled not bound; and

.2 **«insert number»** copies of a CD/DVD containing a PDF of the Proposal and an Excel file of the completed Proposal Form and Best Value Rating Form (combined file).

1.7.2 By the Response Deadline indicated on the first page, the Proposer must submit its complete Proposal package to:
«insert Selection Coordinator's name»
«insert Contracting Authority's name»
«insert street address»
«insert city, state and zip code»

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Please allow sufficient time for inspection of packages by building security.

1.8 Project-Specific Selection Criteria

1.8.1 The selection criteria is set forth in the attached Best Value Rating Form and further explained below:

.1 «insert explanation of each criteria»

ARTICLE 2 - PROJECT DESCRIPTION

2.1 Project Scope and Related Information

2.1.1 Description. «insert scope of project»

.1 Estimated Cost of Construction = $«insert amount»

.2 Planned Building Area = «insert area» S.F.

2.1.2 Architect/Engineer. Professional Design Services will be provided by «insert A/E name».

2.2 Project Schedule

2.2.1 The anticipated Project Schedule presently includes the following activities:

*Project Manager to complete the chart below to identify: **(1)** each Design Stage start/end dates, **(2)** each GMP Process start/end dates, **(3)** each Construction Phase start/end dates, **(4)** each critical Owner Milestone date (e.g., school year start date), and **(5)** anticipated Project Completion date.*

Activity	Start Date	End Date
«insert activity name»	«insert date»	«insert date»
«insert activity name»	«insert date»	«insert date»
«insert activity name»	«insert date»	«insert date»
«insert activity name»	«insert date»	«insert date»
«insert activity name»	«insert date»	«insert date»

ARTICLE 3 - REQUIRED SUBMISSIONS

3.1 Supplemental Information

3.1.1 Include the following information as an attachment to the Proposal:

.1 «LEED Plan»

.2 «insert "Not Applicable" or a description of required Proposal information unique to this Project»

3.2 Proposed GMP Amendment

3.2.1 «insert "Not Applicable at time of Proposal" or "The scope of Work to be included in the proposed GMP Amendment includes: «insert description»"»

3.3 Statement of General Conditions

3.3.1 For consistency in pricing among General Conditions, each Proposer shall include all items (included under General Conditions on the Proposal Form) necessary to operate at the site as if it were a General Contractor. The Proposer may not alter (change, add or delete) categories on the Proposal Form. Provide **(a)** a detailed listing of all General Conditions Costs (defined below) to be provided by the CM, and **(b)** the costs associated with such General Conditions for the Project. General Conditions are defined as follows:

.1 Bond Costs. Costs of extending the Performance and Payment Bonds to 100 percent of the Contract Sum. This includes the cost of increasing the Bonds to cover the Contract Sum.

.2 Builder's Risk Insurance Premium. Costs of providing the Builder's Risk insurance required by the Contract Documents.

.3 Temporary Facilities. This is defined as the trailer(s) that will be used on-site by the CM, for the duration of the Project. Included in this line item should be the initial set-up, monthly rental expense, removal, maintenance, and security system installation. This should also include the installation, rental, and removal of temporary sanitary facilities for the duration of the Project.

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.4 Jobsite Trailer Utilities. This includes any associated utilities (included, but not limited to, electricity, water, waste removal, etc.) needed for the trailer(s), for the duration of the Project.

.5 Office & Janitorial Supplies / Furnishings & Equipment / Water. This is defined as the supplies needed by the CM, excluding communications equipment, to manage the operations within the jobsite trailer(s) for the duration of the Project.

.6 Office Communications Equipment / Printing & Reproduction / Postage / Photographs. This is defined as any necessary computers, telephones, copy/fax machines, any associated software/Internet packages, and/or other equipment required to perform the responsibilities of the CM, for the duration of the Project. Included in this line item should be any associated service plans, maintenance plans or monthly billings associated with these items. In addition, this should include the monthly expense for printing, postage and project photographs.

.7 Office First Aid / Fire Protection / Safety / Signage. This is defined as any needed first aid equipment, fire protection, signage, and safety equipment necessary for the duration of the Project.

.8 Project Site Cleaning. This is defined as the incremental cleaning of trailer(s) and building(s) / jobsite(s), performed weekly at a minimum, for the duration of the Project. Included in this category shall also be any required project site cleaning, road cleaning, and snow removal necessary for the duration of the Project. Additionally, this line item should include the final cleaning of the building(s)/jobsite(s) required for occupancy, at the conclusion of the project.

.9 Dumpsters. This is defined as the total cost of dumpster rentals for the entire project and for the duration of the Project, including all dumpsters required for LEED requirements, as well as for general waste disposal and recycling.

.10 Construction Fence / Access Points / Washout Areas. This is defined as the total cost of initial set-up, monthly rental expense, removal, and maintenance of sufficient construction fencing, gates, and washout areas for the duration of the Project.

.11 «Insert Project-specific General Conditions items. Add additional lines as necessary.»

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ARTICLE 1 - GENERAL INFORMATION

1.1 Project Delivery

1.1.1 The Project will be delivered through the construction manager at risk method described in ORC Sections 9.33 through 9.335.

1.2 Contract Requirements

1.2.1 The Contract will include **(1)** the State of Ohio Standard Requirements for Public Facility Construction using the construction manager at risk project delivery system and **(2)** appropriate Project-specific documents.

1.2.1.1 This Project is subject to the State of Ohio's Equal Employment Opportunity requirements described under OAC 123:2-3 through 123:2-9.

1.2.1.2 This Project may be subject to the State of Ohio's Encouraging Diversity, Growth, and Equity ("EDGE") Business Development Program. If applicable, each Proposer is required to submit with its Proposal certain information about the certified EDGE Business Enterprise(s) participating on the Project with the Proposer. See the **Request for Proposal** for the Project-specific EDGE Participation ~~Goals~~Goal.

.1 The EDGE-participation percentage is determined by the contracted value of goods, services, materials, and labor that are provided by EDGE-certified business(es). The participation is calculated on the total amount of each awarded contract. For more information about EDGE, contact the State of Ohio EDGE Certification Office at http://das.ohio.gov/eod, or at its physical location: 4200 Surface Road, Columbus, Ohio 43228-1395; or by telephone at (614) 466-8380.

1.2.1.3 The Proposer must indicate ~~on the **Proposal Form**~~ the locations where its services will be performed ~~in the spaces provided or by~~by an attachment to its Proposal in accordance with the requirements of Executive Order 2011-12K related to providing services only within the United States.

1.2.1.4 DOMESTIC STEEL USE REQUIREMENTS AS SPECIFIED IN OHIO REVISED CODE SECTION 153.011 APPLY TO THIS PROJECT. COPIES OF OHIO REVISED CODE SECTION 153.011 CAN BE OBTAINED FROM THE OHIO FACILITIES CONSTRUCTION COMMISSION.

1.2.1.5 Proposers are encouraged to be enrolled in good standing in a Drug-Free Safety Program ("DFSP") approved by the Ohio Bureau of Workers' Compensation ("OBWC") prior to submitting a Proposal. Proposers are required to provide on the **Proposal Form** certain information relative to their enrollment in such a program; and, if awarded a Contract, to comply with all other applicable DFSP requirements.

1.2.2 See the **Request for Proposal** for Project-specific expectations concerning project phasing, number and timing of GMP Amendments, and similar topics.

ARTICLE 2 - PROPOSAL PREPARATION AND SUBMISSION

2.1 General Requirements

2.1.1 The Proposal must include the Technical Proposal and Pricing Proposal as described below. Divide and organize the Proposal accordingly.

2.2 Technical Proposal Requirements

2.2.1 The Technical Proposal must include the below-listed items (and only the below-listed items) and must be clearly divided/organized as described.

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2.2.2 Proposed Staffing.

2.2.2.1 Implementation Plan:

.1 Identify the proposed Project team (include Key Personnel identified in the **Proposal Form** and other team members).

.2 Provide a proposed organizational chart for the Project. Proposers with "partner-company" participation must describe **(1)** the division of services/work and percentage of contract for each company, **(2)** the contractual/legal relationship between the companies, and **(3)** whether a separate legal entity has been formed or will be formed for this Project.

.3 If the Proposer is a corporation, partnership, sole proprietorship, or separate legal entity, identify an officer, partner or principal of the Proposer associated with the legal name of the Proposer.

.4 If the Proposer is a joint venture, identify an officer, partner or principal, as applicable, of each member of the joint venture associated with the legal name of the applicable member.

~~.3~~.5 Describe the Proposer's plan for staffing the Project. The Staffing Plan must coordinate with **(1)** the cost details required on the **Proposal Form** and **(2)** the proposed Project Schedule.

2.2.2.2 Staff Availability: Describe the availability of each member of the Proposer's proposed Project team and the amount of time each team member is expected to dedicate to the Project.

2.2.2.3 Flexibility to Schedule Changes: Describe the ability and limitations on the ability of the proposed Project team to accommodate changes of the Project's schedule.

2.2.3 Subcontracting Plan.

2.2.3.1 Prequalification Plan: Outline the Proposer's plan for prequalifying Subcontractors including **(1)** general and Project-specific prequalification criteria, **(2)** activities for developing prospective bidders' interest in the Project, and **(3)** the Proposer's evaluation processes.

2.2.3.2 Packaging Plan and Self-Performed Work:

.1 Describe the Proposer's strategy for packaging and scheduling bidding and ensuring that scopes of Work of the various Subcontractors are coordinated, and all requirements for the Project have been assigned to the appropriate Subcontract.

.2 Provide a description of the Work the Proposer proposes to self-perform on the Project (if any). Proposers are advised that self-performed Work is subject to Contracting Authority approval as described in the Contract's General Conditions.

2.2.3.3 Design-Assist Strategies: Describe the Proposer's plan (if any) for engaging one or more design-assist firms to facilitate the Preconstruction Stage of the Project.

2.2.4 EDGE Plan. (if applicable)

2.2.4.1 Outreach Plan: Describe the Proposer's plan for seeking one or more businesses certified as an EDGE Business Enterprise ("EDGE-certified Business") by the EOC to participate in the Project.

2.2.4.2 ~~Preconstruction~~Services Participation: Describe the Proposer's demonstrated engagement of EDGE-certified Businesses to meet or exceed the stated EDGE Participation Goal for the Project, evidenced by fully executed EDGE Affidavits submitted with its Proposal (Preconstruction Stage Compensation plus the Contract Sum minus Subcontracted Work, Self-performed Work, and the CM's Contingency).

~~2.2.4.2~~ Subcontracted Work Participation: Describe the Proposer's intent and strategy for meeting or exceeding the stated ~~goal for EDGE participation in the Project's Preconstruction Stage.~~

2.2.4.3 ~~Construction Participation Goal: Describe the Proposer's intent and strategy for meeting or exceeding the stated goal for~~ EDGE ~~participation in the Project's~~Participation Goal for the Project, by engaging EDGE-certified Businesses for Subcontracted Work during the Construction Stage.

2.2.5 Estimating Strategies.

2.2.5.1 A/E Collaboration Strategies: Describe the Proposer's plan for collaborating with the A/E in connection with the preparation of Project estimates.

2.2.5.2 Design-Assist Collaboration Strategies: Describe the extent to which the Proposer intends to incorporate design-assist firms into its planned approach to estimating on the Project.

2.2.5.3 Use of Estimating and Market Pricing: Describe the Proposer's planned approach to estimating and the use of market pricing to develop estimates and to verify scopes of work on the Project.

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2.2.6 Procurement Strategies.

2.2.6.1 Buyout Plan:

.1 Describe the Proposer's buyout plan for the Project.

.2 Identify any anticipated labor-, materials-, and equipment-procurement difficulties and the Proposer's plan for addressing those difficulties.

2.2.6.2 Long-lead and Bulk-purchase Strategies:

.1 Identify any anticipated long-lead items and describe the Proposer's plan for procuring those items within the anticipated Project schedule.

.2 Identify any anticipated bulk-purchase opportunities for the Project and describe the Proposer's plan for taking advantage of those opportunities.

2.2.6.3 Support of Owner Objectives: Describe how the Proposer's procurement strategies support the Owner's identified scope, schedule, budget, and other objectives for the Project.

2.2.7 Value Added Suggestions.

2.2.7.1 Description: Describe the Proposer's suggestions (if any) related to construction feasibility; time requirements for Project completion; and factors related to construction cost, including suggestions for alternative designs or materials.

2.2.7.2 Benefits: Describe the benefits to the Owner of each suggested alternate.

2.2.8 Schedule.

2.2.8.1 Baseline Schedule: Provide a detailed schedule which clearly identifies the manner in which the Proposer proposes to sequence the Work and complete it within the Project's schedule requirements.

2.2.8.2 Schedule Enhancements:

.1 Describe the Proposer's proposed Schedule Enhancements (if any) for alternative approaches to the baseline Project schedule. For each proposed Schedule Enhancement or other suggestion, identify all anticipated effects on the Project's scope, cost, and other Project participants and all associated assumptions.

.2 Provide a detailed schedule, which clearly identifies the incorporation of the proposed Schedule Enhancements or other suggestions into the baseline schedule.

2.2.8.3 Phasing/Procurement Activities: Identify all phasing/procurement activities and the manner in which the Proposer proposes to sequence phasing and procurement activities in order to complete the Work within the Project's schedule requirements.

2.2.8.4 Milestones/Activities:

.1 Identify all significant milestones and activities in the baseline and any alternative schedule(s), including but not limited to milestones identified in the **Request for Proposal**.

.2 Describe the significance and other important characteristics of the milestones and major activities identified in the proposed baseline and alternate schedule(s).

2.2.9 Site Logistics, Safety, and Phasing Plans.

2.2.9.1 Site Logistics Plan: Provide an outline or diagram or both of the Proposer's anticipated site logistics plan.

2.2.9.2 Safety Plan: Provide an outline of the Proposer's anticipated site safety plan.

2.2.9.3 Diagrammatic Project Phasing Plan: Provide a diagrammatic Project phasing plan.

2.2.10 Quality-Assurance/Quality-Control ("QA/QC") Plan.

2.2.10.1 Design Stage: Provide the Proposer's QA/QC Plan for the Design Stage of the Project.

2.2.10.2 Estimating and Scheduling: Provide the Proposer's QA/QC Plan for estimating and scheduling on the Project.

2.2.10.3 Construction Stage: Provide the Proposer's QA/QC Plan for the Construction Stage of the Project.

2.2.11 Unique Challenges and Solutions.

2.2.11.1 Project/Scope Characteristics: Describe any Proposer-identified challenges that are unique to the Project and its anticipated scope and provide suggested solutions to the identified challenges.

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2.2.11.2 Budget/Schedule Characteristics: Describe any Proposer-identified challenges that are unique to the Project's budget and schedule characteristics and provide suggested solutions to the identified challenges.

2.2.11.3 Quality/Process Characteristics: Describe any Proposer-identified challenges that are unique to the Project's quality and process characteristics and provide suggested solutions to the identified challenges.

2.2.12 Project-Specific Information.

2.2.12.1 Include all additional items (if any) requested as Supplemental Information in the **Request for Proposal**.

2.2.13 Additional Considerations.

2.2.13.1 Update any information contained in the Proposer's Statement of Qualifications that has changed since the Proposer submitted it.

2.2.13.2 Concisely identify any additional considerations the Proposer believes are relevant to the Project. The Evaluation Committee will not review or consider copies of general marketing materials, web-site printouts, or any other information not specific to the Project.

2.3 Pricing Proposal Requirements

2.3.1 The Pricing Proposal must include only a completed **Proposal Form** clearly marked with the Contracting Authority's Project number and name.

2.3.1.1 The Proposer must complete all lines in the **Proposal Form**.

.1 Identify the percentage of EDGE participation for each line on the **Proposal Form** related to the CM's Services compensation (Preconstruction Stage Compensation plus the Contract Sum minus Subcontracted Work, Self-performed Work, and the CM's Contingency).

2.3.1.2 The pricing terms used in the form are defined in the Contract's **Contracting Definitions**. Additional relevant information is included in the Contract's **General Conditions**.

2.3.2 Proposers are requested to complete the information on the **Proposal Form** consistent with the **Contracting Definitions** and as further outlined below:

2.3.2.1 Preconstruction Fee. Provide your proposed lump sum fee for Preconstruction Services.

2.3.2.2 Preconstruction Stage Personnel Costs Cap. Provide your list of key personnel with their names, roles during the Preconstruction Stage, proposed hourly rates, number of hours proposed, and the total amount (rate x hours). Provide a total amount for all personnel.

2.3.2.3 Preconstruction Reimbursable Expense Cap. Provide your proposed reimbursable expenses incurred during the Preconstruction Stage. The cost of Bonds, in the full amount of the proposed initial Agreement amount, are to be included in the Preconstruction Stage Reimbursable Expenses.

2.3.2.4 Construction Stage Personnel Costs. Provide your list of key personnel with their names, roles during the Construction Stage, proposed hourly rates, number of hours proposed, and the total amount (rate x hours). Provide a total amount for all personnel.

2.3.2.5 Statement of General Conditions Costs. Provide your proposed General Conditions Costs based upon the definition provided in the **Request for Proposal**.

2.3.2.6 Statement of Contingency Requirements. Indicate the anticipated level of contingency that will be within the GMP for the Project as a percentage of the Cost of the Work, and any recommendations on the use of such contingency.

2.3.2.7 CM's Fee. Provide your proposed fee as defined in the **Contracting Definitions** as a percentage of the Cost of the Work plus Contingency.

2.3.2.8 Schedule Enhancements. Provide the number of days and the cost or credit associated with the proposed schedule adjustment (if any).

2.3.2.9 CM Adviser Fee. Provide your proposed fee as a percentage of the Cost of the Work in the "CM Adviser Fee" section under Additional Information on the **Proposal Form**. If a GMP cannot be negotiated, the Contracting Authority may convert the Contract to a CM Adviser contract.

2.3.2.10 CM Billing Rates. Include hourly individual billing rates that correspond to the Project organizational chart. The billing rates should not contain any profit or allocation for home office overhead, but should reflect direct personnel expenses (e.g., direct salaries or labor wages of personnel listed plus the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes, other statutory employee benefits, employee retirement plans and similar contributions).

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2.3.3 Bonding/Insurance. Provide evidence of capacity to provide bonding in the amount of the Contract Sum, based on the estimated Construction Budget (e.g., a letter from its Surety or Sureties stating that the Proposer is eligible for the Performance Bond and Payment Bond for 100 percent of the estimated Contract Sum as required under OAC Section 153:1-4-02 if the Proposer is selected), and a copy of the Proposer's certificate of insurance showing the Proposer's current limits of liability for commercial general liability, employer's liability, business automobile liability and professional liability. **Failure of the Proposer to provide acceptable evidence of bonding capacity sufficient to complete the Project may result in disqualification of the Proposer and rejection of its Proposal.**

2.3.4 If the **Request for Proposal** requires submission of a proposed GMP Amendment, see **Article 4** for related requirements.

ARTICLE 3 - SELECTION AND CONTRACT NEGOTIATION PROCESSES

3.1 Selection Criteria

3.1.1 The Evaluation Committee will make its selection using a best-value selection process.

3.1.2 The **Request for Proposal** and the **Best Value Rating Form** identify the selection criteria that will be factored into the evaluation process.

3.2 Pre-Proposal Meeting

3.2.1 The Selection Coordinator will invite each Proposer to meet individually with members of the Evaluation Committee before the Proposal-submission deadline. The purpose of the pre-proposal meeting is to permit each Proposer to ask the Evaluation Committee questions in an individual setting to help the Proposer prepare its Proposal.

3.2.2 If the date and time for the Pre-Proposal Meetings are not included the anticipated schedule in the **Request for Proposal**, the Selection Coordinator will contact each Proposer to schedule individual times for the meetings.

3.3 Proposal Submission

3.3.1 The Proposer shall submit the required number of copies of its Proposal to the Selection Coordinator in the format, at the location, and by no later than the deadline indicated in the **Request for Proposal**. Proposers are cautioned to allow sufficient time for inspection of packages by building security.

3.3.2 If electronic submittals are required, combine the Proposal documents into one PDF file named with the project name listed on the **Request for Proposal** and the Proposer's name. Use the "print" feature of Adobe Acrobat Professional or similar software for creating a PDF rather than using a scanner. If possible, reduce the file size of the PDF. In Adobe Acrobat Professional, go to Advanced, then PDF Optimizer. Mark or label the CD or DVD and the cover with the project name and the Proposer's name.

3.4 Post-Proposal Interview

3.4.1 After the Proposal-submission deadline, the Evaluation Committee will interview each Proposer. The interview will not be scored or included in the scoring of the Proposal. The purpose of the interview is to allow the Evaluation Committee to meet the proposed Project team, become familiar with Key Personnel, and to understand the Proposer's approach and ability to meet the Project's objectives.

3.4.2 Each Proposer is expected to **(1)** plan its allotted interview time to cover all criteria listed on the **Best Value Rating Form** and **(2)** be prepared to discuss with specificity the Proposer's capacity to meet the Project's requirements.

3.4.3 The Selection Coordinator will contact each Proposer to schedule individual times for the interviews.

3.5 Evaluation and Ranking

3.5.1 The Evaluation Committee will evaluate each Proposal using the technical criteria to evaluate the Technical Proposal and the pricing criteria to evaluate the Pricing Proposal. The Evaluation Committee will evaluate the Technical Proposal separately from the Pricing Proposal, then combine the evaluations using the weighting shown on the **Best Value Rating Form** to reach a final evaluation of the Proposal.

3.5.2 The Evaluation Committee will rank the Proposals based on the final evaluations to identify the Proposal which presents the best value for the Project. The Selection Coordinator will notify each Proposer of the Evaluation Committee's ranking.

3.5.3 If the **Request for Proposal** requires submission of a proposed GMP Amendment, see **Article 4** for related requirements.

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3.6 Contract Negotiation Submissions

3.6.1 The Proposer with whom the Contracting Authority is negotiating shall submit the following documents to the Contracting Authority within five days after ~~the~~ commencement of contract negotiations:

3.6.1.1 Completed Exhibits to the Agreement:

- **.1** **Personnel Costs Rate Schedule** attached as **Exhibit A**;
- **.2** **Preconstruction Stage Reimbursable Expenses Schedule** attached as **Exhibit B**; and
- **.3** **General Conditions Costs Description** attached as **Exhibit C**.

3.6.1.2 The Bonds required under the Contract along with **(1)** a certified copy of the authority to act (power of attorney) of the agent signing the Bonds on behalf of the Surety and **(2)** a current and signed Certificate of Compliance under ORC Section 9.311 issued by the Ohio Department of Insurance showing the Surety is licensed to do business in Ohio.

3.6.1.3 Ohio Bureau of Workers' Compensation Certificate of Premium Payment.

3.6.1.4 Certificate of Insurance (ACORD form is acceptable), a copy of additional insured or loss payee endorsement(s) reflecting coverage that complies with the Contract's requirements, and a current loss run report for the current policy period of the required professional liability insurance.

3.6.1.5 Certificate of Compliance with Affirmative Action Programs, issued by the Equal Opportunity Coordinator. The form must be submitted through the Ohio Business Gateway: http://business.ohio.gov/efiling/.

3.6.1.6 Evidence that the Proposer is enrolled in, and in good standing in, a DFSP approved by the OBWC.

3.6.1.7 If applicable to this Project, evidence acceptable to the Contracting Authority of the Proposer's participation in the EDGE Program **(1)** by contracting with EDGE-certified Business Enterprise(s) for the Project by submitting a fully completed EDGE Affidavit for each EDGE-certified Business Enterprise, **(2)** by requesting a waiver or partial waiver of the advertised EDGE Program participation goal for the Project on the Proposer's company letterhead including full documentation of the Proposer's good faith effort to contract with EDGE-certified Business Enterprise(s) for this Project, or **(3)** both.

3.6.1.8 If the Proposer is a foreign corporation (i.e., not incorporated under Ohio law), it must submit a Certificate of Good Standing from the Ohio Secretary of State showing the right of the Proposer to do business in Ohio.

3.6.1.9 If a Proposer is an individual or partnership, nonresident of the State of Ohio, it must submit a Power of Attorney designating the Ohio Secretary of State as the Proposer's agent for accepting service of summons in any action brought under ORC Section 153.05 or under ORC Sections 4123.01 to 4123.94, inclusive.

3.6.1.10 If the Proposer is a joint venture, the executed agreement between the joint venture partners describing the division of services/work and percentage of contract for each company.

3.7 Contract Negotiations

3.7.1 The Contracting Authority will enter into contract negotiations with the Proposer that submitted the Proposal identified by the Evaluation Committee as presenting the best value for the Project.

3.7.2 If the negotiations with the Proposer determined to be the best value are unsuccessful, the Contracting Authority will inform that Proposer in writing of termination of negotiations. The Contracting Authority may then begin negotiating with the Proposer ranked next best value. If those negotiations fail, the Contracting Authority may follow the same process with each successive Proposer in order of ranking until the Contract is negotiated. If negotiation fails with all Proposers, the Contracting Authority may **(1)** issue the **Request for Proposal** to additional firms from the qualifications short-listing process and follow the above-described process, **(2)** re-start the solicitation process, or **(3)** take other action.

3.8 Schedule

3.8.1 See the **Request for Proposal** for the anticipated schedule and related deadlines.

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ARTICLE 4 - GMP-RELATED PROCESS

4.1 Proposed GMP Amendment

4.1.1 If required in the **Request for Proposal**, the Proposer shall submit the following documents in a separate, sealed package within the submitted Proposal package:

4.1.1.1 a proposed GMP Amendment including all exhibits, the form of which is an exhibit to the Contract's Form of Agreement;

4.1.1.2 a proposed Subcontracting Plan as described in the Contract's General Conditions;

4.1.1.3 the prequalification criteria for prospective Bidders on each anticipated Subcontract; and

4.1.1.4 a list of proposed Subcontractors indicating the anticipated scope of Work for each.

4.1.2 NOTE: Identify the firm on the outside of the GMP package as required for the entire Proposal package and also prominently include "Proposed GMP Amendment" on the GMP package.

4.2 Evaluation of Proposed GMP Amendments

4.2.1 If the **Request for Proposal** requires submission of a proposed GMP Amendment, the Evaluation Committee will not open any submitted GMP Amendment until after the Evaluation Committee concludes all interviews and has scored each Proposer's Technical Proposal and Pricing Proposal as described under **Article 3**.

4.2.1.1 Notwithstanding **Section 4.2.1**, a representative of the Contracting Authority **(1)** may review submitted GMP Amendments before the Evaluation Committee concludes all interviews and has scored the submitted Technical Proposals and Pricing Proposals, **(2)** may communicate with a Proposer to obtain clarification of information contained in a Proposer's submitted GMP Amendment, but **(3)** may not communicate to the Evaluation Committee any of the information about or contained in the submitted GMP Amendments until after the Evaluation Committee concludes all interviews and has scored each Proposer's Technical Proposal and Pricing Proposal as described under **Article 3**.

4.2.2 The Evaluation Committee will consider each Proposer's proposed GMP Amendment and related documents with the score previously given by the Evaluation Committee to reach a final evaluation of each Proposal. The Evaluation Committee will use those final evaluations when it ranks the Proposals as described under **Section 3.5.2**.

4.2.3 The proposed GMP Amendment shall remain valid and open for acceptance for a period of 90 days after submission.

ARTICLE 5 - GENERAL PROVISIONS

5.1 Questions

5.1.1 All questions must be submitted in writing to the Selection Coordinator. The Selection Coordinator will email the answers to all Proposers. The Proposers shall communicate through the Selection Coordinator.

5.1.2 The Selection Coordinator may also email other Project-related information to the Proposers.

5.2 Proposal Certifications

5.2.1 By submitting a Proposal, the Proposer certifies to the Contracting Authority and Owner that:

5.2.1.1 the Proposer is not the subject of an unresolved finding for recovery issued by the Auditor of State under ORC Section 9.24;

5.2.1.2 the Proposer is not debarred under ORC Section 153.02;

5.2.1.3 the Proposer has not been found by a court to be in default of a judgment or breach of settlement agreement; and

5.2.1.4 the Proposer has not violated ORC Section 3517.102 by exceeding allowable campaign contributions.

5.3 Cancellation and Rejection; Waiver of Minor Errors

5.3.1 The Contracting Authority may reject all Proposals and cancel all or any portion of this solicitation at any time for any reason. The Contracting Authority will have no liability to any Proposer arising out of any cancellation of this solicitation or rejection of any related submission.

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5.3.2 After the Evaluation Committee ranks the Proposals based on the final evaluations to identify the Proposal which presents the best value for the Project, the Contracting Authority shall reject the recommendation of the Evaluation Committee if the Contracting Authority determines that:

5.3.2.1 the Contract cannot be awarded under ORC Section 9.24 because the recommended Proposer has a finding for recovery issued by the Auditor of State, and the finding for recovery is unresolved;

5.3.2.2 the recommended Proposer is debarred under ORC Section 153.02;

5.3.2.3 the recommended Proposer has been found by a court to be in default of a judgment or breach of settlement agreement;

5.3.2.4 the recommended Proposer has violated ORC Section 3517.102 by exceeding allowable campaign contributions; or

5.3.2.5 a correction of a clerical error made by the Selection Coordinator or the Evaluation Committee changes the result of a selection.

5.3.3 If the Proposer that was recommended by the Evaluation Committee is not awarded the Contract due to reasons set forth in **Sections 5.3.2.1**, **5.3.2.2**, **5.3.2.3**, and **5.3.2.4**, the Contracting Authority shall notify that Proposer in writing and describe the reason(s) for rejection.

5.3.3.1 Only the Proposer that was recommended by the Evaluation Committee but not awarded the Contract by the Contracting Authority may protest the decision within five days and request a meeting seeking a final administrative decision. The reason(s) for the protest must be in writing. The Contracting Authority shall consider the objection within 15 days of the notice. This process is not subject to ORC Chapter 119.

5.3.3.2 No award of Contract shall be made final until the Contracting Authority either affirms or reverses the rejection, which is the final administrative decision.

5.3.4 If the Contracting Authority determines that a conflict of interest exists between the Evaluation Committee members and the Proposers, the Contracting Authority shall reject the recommendation of the Evaluation Committee, establish a new evaluation committee, and repeat the selection process.

5.3.5 If the Contracting Authority determines that the Evaluation Committee did not follow the best-value selection processes established under the OAC, or had inadequate documentation in support of the selection and is unable to cure the failure to consider adequate documentation, the Contracting Authority may reject the recommendation of the Evaluation Committee, establish a new evaluation committee, and repeat the selection process.

5.3.6 The Contracting Authority may waive minor errors that do not change the results of a selection.

5.4 Proposal Revision

5.4.1 If the Contracting Authority requests a clarification of any Proposal, the Proposer must submit the clarification in writing to the Contracting Authority by the date specified in the **Request for Proposal** but no later than the date scheduled for the Proposer's interview.

5.5 Proposal Withdrawal

5.5.1 If the Proposer that was recommended by the Evaluation Committee withdraws its proposal, the Contracting Authority may approve award of the Contract to the firm next determined to provide the best value.

5.6 Applicable Law and Forum

5.6.1 The rights of any Proposer or any party to a subsequent Contract shall be governed by Ohio law, and only Ohio courts shall have jurisdiction over any action or proceeding related to the Proposal or any subsequent Contract. The Proposer irrevocably consents to that jurisdiction.

5.7 Computing Time

5.7.1 When the **Request for Proposal** refers to a period of time by a number of days, it excludes the first day and includes the last day of the period. If the last day of the period falls on a Saturday, Sunday, or a legal holiday, that day shall be omitted and the period shall end on the next day which is not a Saturday, Sunday, or legal holiday.

5.8 Public Records

5.8.1 Documents submitted to the Contracting Authority in response to the **Request for Proposal** are public and will be available for inspection under ORC Section 149.43 after announcement of the selected firm. The following information shall remain confidential and will not be released: **(1) Proposal Form**(s), except for subtotals for cost categories which

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will be transferred to the **Best Value Rating Form**; **(2)** Surety letters showing bonding capacity, and **(3)** insurance certificate(s)

ARTICLE 6 - DEFINITIONS

6.1 General

6.1.1 Terms used but not otherwise defined in these **Instructions to Proposers** or in the **Request for Proposal** have the meanings assigned to them in **(1)** the State of Ohio Standard Requirements for Public Facility Construction using construction manager at risk project delivery system; and **(2)** ORC Sections 9.33 through 9.334, OAC Section 153:1-6-01, and related statutory and regulatory provisions.

6.2 Defined Terms

6.2.1 Best Value Rating Form. State of Ohio Standard Forms and Documents Document F170-03 as prepared for the Project. This form may be combined with the **Proposal Form** in a single Excel workbook.

6.2.2 Evaluation Committee. The Contracting Authority- and Owner-appointed committee convened to evaluate the Proposals.

6.2.3 Project Manager. The permanent employee of the Contracting Authority designated by the Contracting Authority to represent the Contracting Authority and to advise the Evaluation Committee on technical and pricing issues.

6.2.4 Proposal. The combined Technical Proposal and Pricing Proposal submitted by a Proposer in response to the **Request for Proposal**.

6.2.5 Proposer. A firm which **(1)** receives the **Request for Proposal** from the Contracting Authority and **(2)** submits a Proposal in compliance with these **Instructions to Proposers** and the **Request for Proposal**.

6.2.6 Proposal Form. State of Ohio Standard Requirements for Public Facility Construction Document 00 43 23 as prepared for the Project. This form may be combined with the **Best Value Rating Form** in a single Excel workbook.

6.2.7 Request for Proposal. State of Ohio Standard Requirements for Public Facility Construction Document 00 11 19 as prepared for the Project and issued to the Proposers.

6.2.8 Responsive Proposal. A valid and complete Proposal that meets all requirements of the **Request for Proposal**, and shall not be conditioned or qualified in any way, except to the extent permitted by the **Request for Proposal** and **Instructions to Proposers**.

~~6.2.8~~6.2.9 Schedule Enhancement. A schedule adjustment that adds value to the Project.

~~6.2.9~~6.2.10 Selection Coordinator. The employee of the Contracting Authority designated by the Contracting Authority to facilitate and manage the best value selection process.

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EDGE PARTICIPATION

Certified Statement of Intent to Contract and Perform

Bidder / Proposer: Submit one fully completed form for each EDGE-certified Business Enterprise

Project: _____

Project Name: _____

A. ~~Bidder's~~Bidder / Proposer's Company Name: _____
~~C. project contract at ANY tier)~~

Mark all that apply:

Multi-Prime Contract General Contract CM at Risk Contract Design-Build Contract

B. EDGE-certified Business Enterprise information (for ~~Bidder~~contract at ANY tier)

Mark all that apply:

__ Subcontractor __ Material Supplier __ Professional Services __ Goods~~/~~ & Services

EDGE Business Name: _____

EDGE Business Address: _____

_____

EDGE Business Federal Tax I.D. _____ E-mail: _____

Contact Person: _____ Phone: (____) _____

Insert a brief description of materials, labor, services, supplies, ~~labor,~~ etc. to be provided (may use industry codes~~)~~):

_____

_____

_____

C. Certification of Intent

By signing below, the Bidder / Proposer certifies that it intends to contract with the ~~certified~~ EDGE-certified Business Enterprise for the portion of the ~~Contract~~contract described above related to ~~the~~its Contract for this Project and for the estimated cost shown below. By signing below, the ~~certified~~ EDGE-certified Business Enterprise certifies that it intends to contract with the Bidder / Proposer and intends to provide the portion of the ~~Contract~~contract described above related to the Contract for this Project for the *estimated cost* of:

_____ and _____ /100 dollars ($_____).

In the event the named Bidder / Proposer is NOT ~~the successful Bidder~~awarded a Contract, this Statement shall be null and void.

EDGE-certified Business Enterprise	***Bidder / Proposer***
_____	_____
Authorized representative name, title (print or type)	Authorized representative name, title (print or type)
_____	_____
Signature of authorized representative	Signature of authorized representative

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END OF DOCUMENT

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Document 00 52 23 - Agreement Form (CM at Risk Project)
State of Ohio Standard Requirements for Public Facility Construction

This Agreement is made as of the date set forth below between the State of Ohio, acting by and through the Contracting Authority, and the Construction Manager in connection with the Project.

Project Number:	**«insert project number»**
Project Name:	**«insert project name»**
Site Address:	«insert street address» «insert city, county»
Owner:	**«insert name»**
Owner's Representative:	«insert name»
Address:	«insert street address» «insert city, state zip code»
Contracting Authority:	**«insert name»**
Project Manager:	«insert name»
Address:	«insert street address» «insert city, state zip code»
Construction Manager ("CM"):	**«insert name»**
CM's Principal Contact:	«insert name»
Address:	«insert street address» «insert city, state zip code»
Architect/Engineer ("A/E"):	**«insert name»**
A/E's Principal Contact:	«insert name»
Address:	«insert street address» «insert city, state zip code»

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

1.1 The CM shall perform and provide all of the Work described in the Contract.

1.2 The Construction Budget is $«insert Construction Budget amount».

Two-Year Colleges may delete ~~Section~~ Sections 1.3 and 1.4 below. Otherwise, enter the percentage~~.~~(s).

~~**1.3**~~ The CM shall contract with EDGE-certified Business~~ Enterprise(s~~(es) for ~~the portion of the Contract described below:~~

~~**1.3.1** during the Preconstruction Stage, no~~not less than «insert CM's ~~Preconstruction Stage~~ EDGE total commitment» percent of the CM's total compensation excluding the CM's Contingency (Preconstruction Stage Compensation~~; and~~

~~**1.3.2**~~**1.3** ~~during~~ plus the Contract Sum minus the ~~Construction Stage, no less than «insert CM's Construction Stage EDGE commitment» percent of the Contract Sum established in the GMP Amendment.~~CM's Contingency).

If the CM was awarded points for exceeding the published EDGE participation goal during the RFQ phase of the Best Value Selection process, include the following Section 1.4, otherwise delete it.

1.4 In addition to the EDGE commitment in **Section 1.1**, the CM shall contract with EDGE-certified Business(es) for not less than «insert CM's EDGE Services commitment» percent of the CM's Services compensation (Preconstruction Stage Compensation plus the Contract Sum minus Subcontracted Work, Self-performed Work, and the CM's Contingency).

ARTICLE 2 - PRECONSTRUCTION STAGE COMPENSATION

2.1 The Preconstruction Stage Compensation is **$«insert Preconstruction Stage Compensation amount»**, which is the sum of the **(1)** Preconstruction Fee, **(2)** Preconstruction Stage Personnel Costs, and **(3)** Preconstruction Stage Reimbursable

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Expenses. The Owner shall pay the Preconstruction Stage Compensation to the CM in exchange for the CM's proper, timely, and complete performance of the Preconstruction Services.

2.2 Preconstruction Fee. The CM's Preconstruction Fee is $«insert fee amount» and is subject to the following allocation:

Project Stage/Task	Associated Fee	Portion of Total Fee
~~Organizational Meeting~~	~~$«insert fee amount»~~	~~«insert percentage»%~~
Program Verification Stage	$«insert fee amount»	«insert percentage»%
Schematic Design Stage	$«insert fee amount»	«insert percentage»%
Design Development Stage	$«insert fee amount»	«insert percentage»%
Construction Documents Stage	$«insert fee amount»	«insert percentage»%
GMP Proposal and Amendment	$«insert fee amount»	«insert percentage»%
Total Preconstruction Fee	$«insert fee amount»	100%

2.3 Preconstruction Stage Personnel Costs. The CM's Preconstruction Stage Personnel Costs shall not exceed $«insert Preconstruction Stage Personnel Costs cap», and shall be paid on an hourly basis according to the rates set forth in the **Personnel Costs Rate Schedule** attached as **Exhibit A**.

2.4 Preconstruction Stage Reimbursable Expenses. The CM's Preconstruction Stage Reimbursable Expenses shall not exceed $«insert Preconstruction Stage Reimbursable Expenses cap», and shall be paid according to the **Preconstruction Stage Reimbursable Expenses Schedule** attached as **Exhibit B**.

ARTICLE 3 - CONSTRUCTION STAGE COMPENSATION

3.1 As described in the General Conditions, the parties will establish the Contract Sum, Contract Times, Milestones, and other commercial terms relevant to the Construction Stage through at least one **GMP Amendment**, the form of which is attached as **Exhibit D**.

3.2 The CM shall propose the amount of the CM's Construction Stage Personnel Costs portion of the Cost of the Work as a part of the proposed GMP Amendment; provided, however, that the CM's Construction Stage Personnel Costs shall not exceed $«insert CM's Construction Stage Personnel Costs cap».

3.2.1 The CM's Construction Stage Personnel Costs shall be based upon the rates set forth in the **Personnel Costs Rate Schedule** attached as **Exhibit A**.

3.3 The CM shall propose the amount of the General Conditions Costs portion of the Cost of the Work as a part of the proposed GMP Amendment; provided, however, that the General Conditions Costs shall not exceed $«insert General Conditions Costs cap».

3.3.1 A detailed description of the items of Work included in the General Conditions Costs portion of the Cost of the Work is set forth in the **General Conditions Costs Description** attached as **Exhibit C**.

3.4 The CM shall propose the amount of the CM's Contingency as a part of the proposed GMP Amendment; provided, however, that the CM's Contingency shall not exceed an amount equal to «insert CM Contingency percentage» percent of the Cost of the Work identified by the CM in the proposed GMP Amendment.

The standard Section 3.4.1 is immediately below and shall be used in this Agreement unless the Contracting Authority, Owner, and CM agree otherwise.

3.4.1 Shared-Savings Change Order. Unless otherwise provided in the GMP Amendment, no more than 30 days before final payment to the CM, the parties shall execute a Change Order to reduce the Contract Sum by an amount equal to **(1)** 100 percent of the funds then remaining in the CM's Contingency plus **(2)** an associated reduction of the CM's Fee in an amount equal to «insert CM Fee percentage from Section 3.5 of this Agreement» percent of the amount by which the Contract Sum is reduced on account of return of the CM's Contingency.

3.5 The CM shall propose the amount of the CM's Fee as a part of the proposed GMP Amendment; provided, however, that the CM's Fee shall not exceed an amount equal to «insert CM Fee percentage» percent of the sum of the Cost of the Work plus CM's Contingency, both as identified by the CM in the proposed GMP Amendment.

3.6 If the parties cannot agree on a Contract Sum, the Contracting Authority may terminate the Contract for convenience. If the Contracting Authority thereafter decides to pursue the Project using the Multiple-Prime Contract with Construction

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Manager Adviser project-delivery method and to enter into a related construction-management agreement with the CM, the CM's Fee under that contract shall not exceed «insert CM Adviser Fee percentage» percent. The Contracting Authority is not obligated to offer or enter into a Construction Manager Adviser contract with the CM for the Project.

ARTICLE 4 - KEY PERSONNEL

4.1 The CM's Key Personnel for the Project are:

4.1.1 «insert name», Project Manager;

4.1.2 «insert name», Lead Scheduling Engineer;

4.1.3 «insert name», Lead Estimator;

4.1.4 «insert name», General Superintendent.

Edit the above list as appropriate for the Project.

ARTICLE 5 - CONSULTANTS

5.1 The CM's Consultants for the Project are:

5.1.1 «insert discipline»:

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

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

5.1.2 «insert discipline»:

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

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

Edit the above list as appropriate for the Project.

5.2 The CM may provide a portion of the Work through one or more Consultants, provided, however, the CM will remain responsible for all duties and obligations of the CM under the Contract.

5.2.1 If the CM engages a Design-Assist Firm, that entity **(1)** will be considered a Consultant under the Contract during the Preconstruction Stage and **(2)** before that entity performs any Work during the Construction Stage, it shall be subject to all Applicable Law and Contract provisions concerning the prequalification, bidding, selection, and engagement of Subcontractors and shall enter into a Subcontract with the CM.

5.3 By appropriate written agreement, the CM shall require each Consultant, to the extent of the Consultant's portion of the Work, to be bound to the CM by the terms of the Contract, and to assume toward the CM all of the obligations and responsibilities which the CM assumes toward the Contracting Authority and Owner.

5.3.1 The CM shall not retain any Consultant on terms inconsistent with the Contract.

5.3.2 All agreements between the CM and a Consultant shall identify the Contracting Authority and Owner as the agreement's intended third-party beneficiaries.

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5.3.3 The Contracting Authority's receipt and approval of a copy of the agreement between the CM and a Consultant is a condition precedent to the Owner's obligation to pay the CM on account of the Consultant's services.

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

5.5 The CM shall obtain the Contracting Authority's written approval before engaging any Consultant not named above. The CM shall not employ any Consultant against whom the Contracting Authority has a reasonable objection. The Contracting Authority's approval or disapproval of any Consultant, however, will not relieve the CM of the CM's full responsibility for the performance of the Work.

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

5.7 The Contracting Authority may communicate with any Consultant either through the CM or directly with the Consultant, but the Contracting Authority may not modify the contract between the CM and any Consultant.

5.8 The CM hereby assigns to the Contracting Authority each Consultant's agreement provided that the assignment is effective only after the Contracting Authority terminates the Contract and only for those agreements which the Contracting Authority accepts by notifying the Consultant and CM in writing. The Contracting Authority may re-assign accepted agreements.

ARTICLE 6 - GENERAL PROVISIONS

6.1 Escalation of Personnel Cost Rates.

6.1.1 The CM may adjust the rates set forth in the **Personnel Costs Rate Schedule** attached as **Exhibit A** in accordance with the CM's normal salary-review practices, but **(1)** not before the date one year after the date of the Agreement, **(2)** not more than once in any one-year period thereafter, and **(3)** not in excess of 5 percent per annual increase.

6.1.2 No rate increase will **(1)** apply to any Work performed before the Owner and Contracting Authority receive written notice of the increase from the CM, or **(2)** result in an increase in a previously established fixed or not-to-exceed fee such as under **(a) Sections 2.3** and **3.2** of this Agreement, **(b)** the GMP Amendment, or **(c)** as the parties may agree upon from time to time in connection with all or any part of the Work.

6.2 Effectiveness.

6.2.1 It is expressly understood by the CM that none of the rights, duties, and obligations described in the Contract Documents shall be valid and enforceable unless the Director of the Office of Budget and Management first certifies that there is a balance in the Owner's appropriation not already encumbered to pay existing obligations.

6.2.2 Subject to **Section 6.2.1**, the Contract shall become binding and effective upon execution by the Contracting Authority, the Owner, and the CM.

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

6.3 Representations.

6.3.1 The CM represents and warrants that it is not subject to an unresolved finding for recovery under ORC Section 9.24. If this representation and warranty is found to be false, the Contract is void, and the CM shall immediately repay to the Owner any funds paid under this Contract.

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

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

6.3.4 The CM affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Contract. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the CM performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in this Contract.

ARTICLE 7 - ENUMERATION OF DOCUMENTS

7.1 The Contract Documents constitute the substance of the Contract, and include, but are not limited to, this Agreement (including all of its exhibits), the GMP Documents, final Drawings, final Specifications, Addenda if any, **Contracting Definitions**, **General Conditions**, **Wage Rate Requirements**, Project Manual, and Modifications if any.

7.2 This Agreement includes the following documents:

7.2.1 Personnel Costs Rate Schedule attached as **Exhibit A**;

7.2.2 Preconstruction Stage Reimbursable Expenses Schedule attached as **Exhibit B**;

7.2.3 General Conditions Costs Description attached as **Exhibit C**;

7.2.4 GMP Amendment form attached as **Exhibit D**; and

7.2.5 Supplementary Conditions attached as **Exhibit E** *(if applicable)*.

The following Treasurer's Certification is required on all Contracts for Projects by and for Two-Year Colleges.

For all other Contracts, delete the Treasurer's Certification below.

TREASURER'S CERTIFICATION

This signature certifies the amount required to meet the obligation in the fiscal year in which this Agreement is made has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances.

Signature

Printed Name
Chief Financial Officer

Institutions of Higher Education may revise "State of Ohio" to "Owner" in the upper right block below.

If the Project is locally administered, delete the "Owner's Concurrence" signature in the lower left block and the associated rows of the table below.

SIGNATURES

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

«INSERT CM'S NAME»	**STATE OF OHIO**
Signature	*Signature*

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Printed Name

Title

Printed Name

Title

Date

«INSERT OWNER'S NAME»
Owner's Concurrence

Signature

Printed Name

Title

END OF DOCUMENT

Version Control Document

Document 00 52 34 - State of Ohio Subcontract Form (CM at Risk Project)

State of Ohio Standard Requirements for Public Facility Construction

This Agreement is made as of the date set forth below between the ~~Contractor~~Construction Manager and the Subcontractor in connection with the Project.

Project Number:	**«insert number»**
Project Name:	**«insert name»**
Site Address:	«insert street address» «insert city, county»
~~Contractor:~~Construction Manager ("CM"):	**«insert name»**
~~Contractor's~~CM's Principal Contact:	«insert name»
Address:	«insert street address» «insert city, state zip code»
Subcontractor:	**«insert name»**
Subcontractor's Principal Contact:	«insert name»
Address:	«insert street address» «insert city, state zip code»
Public Authority:	**«insert name»**
Public Authority Contact:	«insert name»
Address:	«insert street address» «insert city, state zip code»

~~Article 1~~ARTICLE 1 - NATURE OF SUBCONTRACT

1.1 The Subcontractor shall perform the entire Subcontract Work as specified in Exhibit «N» and described in the Contract Documents for the Project~~:~~.

~~Article 2~~ARTICLE 2 - COMPENSATION

2.1 The ~~Contractor~~CM agrees to pay for the performance of this Subcontract, subject to additions and deductions as provided in the Contract Documents, the Subcontract Sum of «insert Subcontract Sum», comprised of the following:

«insert Subcontract Sum component» ..... $«insert amount»

«insert Subcontract Sum component» ..... $«insert amount»

«insert Subcontract Sum component» ..... $«insert amount»

«insert Subcontract Sum component» ..... $«insert amount»

~~Article 3~~ARTICLE 3 - TIME OF PERFORMANCE

3.1 Time is of the essence. The Subcontractor shall diligently prosecute and complete all Subcontract Work in accordance with the construction progress schedule agreed between the parties.

~~Article 4~~ARTICLE 4 - CONTRACT DOCUMENTS

4.1 To the extent that the contract between the Public Authority and the ~~Contractor~~CM applies to the Subcontract Work:

4.1.1 The ~~Contractor~~CM and the Subcontractor agree to be mutually bound by the terms of the Contract Documents;

4.1.2 The ~~Contractor~~CM assumes toward the Subcontractor the rights, remedies, obligations, and responsibilities that the Public Authority has and assumes toward the ~~Contractor~~CM;

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4.1.3 The Subcontractor assumes toward the ~~Contractor~~CM the rights, remedies, obligations, and responsibilities that the ~~Contractor~~CM assumes toward the Public Authority; and

4.1.4 The Subcontractor agrees to perform its portion of the Work in accordance with the Contract Documents.

4.2 The Subcontract and any modifications, amendments, or alterations thereto shall be governed, construed, and enforced by and under the laws of the State of Ohio.

4.3 If any term or provision of the Subcontract, 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 the Subcontract or the application of such term or provision to other Persons or circumstances, shall not be affected thereby, and each term and provision of the Subcontract shall be valid and enforced to the fullest extent permitted by law.

4.4 The Subcontract shall be binding on the ~~Contractor~~CM and Subcontractor, their successors and assigns, in respect to all respective covenants and obligations contained in the Contract Documents, but the Subcontractor may not assign the Subcontract without the prior written consent of the ~~Contractor~~CM and the Public Authority.

~~Article 5~~ARTICLE 5 - EFFECTIVENESS

5.1 The Subcontract shall become binding and effective upon execution by the ~~Contractor~~CM.

5.2 This Subcontract has been executed in several counterparts, each of which shall constitute a complete original Subcontract, which may be introduced in evidence or used for any other purpose without production of any other counterparts.

5.3 Any signatory may deliver a copy of its counterpart signature page to this Subcontract via fax or e-mail. Each signatory shall be entitled to rely upon a signature of any other signatory delivered in such a manner as if such signature were an original.

~~Article 6~~ARTICLE 6 - REPRESENTATIONS

6.1 Contingent Assignment. The ~~Contractor's~~CM's contingent assignment of this Subcontract to the Public Authority, as provided in the Contract, is effective after termination of the ~~Contractor~~CM by the Public Authority and the Public Authority's acceptance of the assignment in writing to the Subcontractor. The Subcontractor consents to the assignment and shall be bound at the same price and terms as in the Subcontract to the Public Authority. Unless the Public Authority takes assignment of the Subcontract, the Subcontractor will not have any contractual rights against the Public Authority.

6.2 Intended Third-Party Beneficiary. The Public Authority is an intended third party beneficiary of the Subcontract, entitled to enforce any rights thereunder for its benefit.

6.3 Insurance. The Subcontractor shall maintain insurance in accordance with the Contract Documents. Exhibit «N» sets forth the minimum limits of liability for the insurance required in the Contract Documents.

6.4 Right to Audit. The Subcontractor agrees that the Public Authority or any agents designated by the Public Authority have access to and the right to audit and the right to copy at the Public Authority's cost all of the Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work for a period of not less than 3 years following completion of the Work consistent with Ohio Revised Code ("ORC") Section 149.43 with regard to the Public Authority's obligation to maintain confidentiality of trade secrets.

6.5 Indemnity. To the fullest extent permitted by law, the Subcontractor shall indemnify, defend, and hold harmless the Public Authority, the ~~Contractor~~CM, their consultants and employees from all claims and expenses for bodily injury and property damage other than to the Work itself that may arise from the performance of the Subcontract Work, including reasonable attorneys' fees, costs and expenses, but only to the extent caused by the negligent acts or omissions of the Subcontractor or a person or entity for whom the Subcontractor may be liable. This Subcontract does not require a Subcontractor to waive its immunity under the Workers Compensation laws of Ohio from claims brought against the Subcontractor by the Subcontractor's employees.

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6.6 Prompt Pay. The ~~Contractor~~CM shall at a minimum make payments to the Subcontractor in accordance with Applicable Law, including ORC Section 4113.61. Progress payments to the Subcontractor for satisfactory performance of Subcontract Work shall be made no later than 10 days after receipt by the ~~Contractor~~CM of payment from the Public Authority for Subcontract Work.

6.7 Retainage. Subcontractor retainage shall be at a rate equal to the percentage retained from the ~~Contractor's~~CM's payment by the Public Authority for the Subcontract Work, unless a lesser percentage is otherwise specified.

6.8 Warranty. The Subcontractor fully warrants, for the benefit of the Public Authority, that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents and free from defective workmanship or materials.

6.9 Non~~-~~Waiver of Lien Rights or Payment Bond Rights. This Subcontract shall not prohibit a Subcontractor from exercising its rights under ORC Chapter 1311 or under any ~~Contractor~~CM-provided payment bond.

6.10 Non-Discrimination. The Subcontractor agrees to fully comply with Applicable Law regarding equal opportunity, including ORC Section 153.59 and, to the extent applicable, all Executive Orders issued by the Governor of the state of Ohio.

6.11 Dispute Resolution. The supplemental conditions to this Subcontract shall provide for a dispute resolution process comparable to the Contract's dispute resolution process in terms of timing, notice, substantiation, and informal dispute resolution efforts. The dispute resolution process provided in the supplemental conditions shall result in prompt access to the ultimate dispute resolution mechanism selected by the parties.

6.12 In the event that any supplemental conditions or other Subcontract terms conflict with the **State of Ohio Subcontract Form**, the **State of Ohio Subcontract Form** takes precedence and this Subcontract shall be read and enforced to include the provisions of the **State of Ohio Subcontract Form**.

6.13 The following exhibits are attached to and are a part of this Subcontract:

6.13.1 Exhibit A:

6.13.2 Exhibit B:

6.13.3 Exhibit C:

6.13.4 Exhibit D:

SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Subcontract Form.

«INSERT SUBCONTRACTOR'S NAME»	**«INSERT ~~CONTRACTOR'S~~CM'S NAME»**
Signature	*Signature*
Printed Name	*Printed Name*
Title	*Title*
	Date

END OF DOCUMENT

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Agreement Exhibit D

The State of Ohio, acting by and through the Contracting Authority, and the CM enter into this Amendment as of the date set forth below to amend the Contract they entered into as of «insert date of Agreement» in connection with the Project known as:

Project Number: **«insert project number»**
Project Name: **«insert project name»**

Owner: **«insert name»**

Contracting Authority: **«insert name»**

Construction Manager ("CM"): **«insert name»**

ARTICLE 1 - CONTRACT SUM AND RELATED ITEMS FOR THIS AMENDMENT

1.1 The Contract Sum is **$«insert amount»**, which is the sum of the estimated Cost of the Work, plus the CM's Contingency, plus the CM's Fee as follows:

1.1.1 The estimated Cost of the Work is **$«insert amount»**, which includes all Allowances (if any) and Unit Prices (if any) defined through this Amendment, and is the sum of:

1.1.1.1 CM's Construction Stage Personnel Costs in the amount of **$«insert amount»**, which amount shall not exceed $«insert CM's Construction Stage Personnel Costs cap from the Agreement»;

1.1.1.2 General Conditions Costs in the amount of **$«insert amount»**, which shall not exceed $«insert General Conditions Costs cap»;

.1 Since the date of the Agreement, the scope of the General Conditions Work has been increased as follows: «insert text description of the increase of the scope of the General Conditions Work».

.2 On account of the increase in the scope of the General Conditions Work, the General Conditions Costs cap stated in the Agreement is hereby changed to $«insert new General Conditions Costs cap».

1.1.1.3 all Work the CM proposes to provide through Subcontractors in the amount of **$«insert amount»**;

1.1.1.4 all Work the CM proposes to self-perform directly or through a CM Affiliated Entity in the amount of **$«insert amount»**, which amount does not include any costs accounted for under the CM's Construction Stage Personnel Costs or General Conditions Costs.

1.1.2 The CM's Contingency in the amount of **$«insert amount»**, which shall not exceed «insert CM Contingency percentage from the Agreement» percent of the above-identified Cost of the Work.

1.1.2.1 Notwithstanding **Article 9** of the **General Conditions**, the Contingency Review Dates will be the dates on which the CM achieves the following activities identified in the **Construction Progress Schedule** attached as **GMP Exhibit E**:

«insert activity number, activity name»
«insert activity number, activity name»
«insert activity number, activity name»

Delete Section 1.1.2.1 completely if it is not applicable.

1.1.3 The CM's Fee in the amount of **$«insert amount»**, which shall not exceed «insert CM Fee percentage from the Agreement» percent of the sum of the above-identified Cost of the Work plus the above-identified CM's Contingency.

1.2 Recap of Contract Sum and Related Items:

Compensation Component Description (refer to complete description in the Section of this GMP Amendment referenced below)	**Current Amount** (before execution of this GMP Amendment)	**Increase(Decrease)** (amount added to or (deducted from) Current Amount)	**Amended Amount** (after execution of this GMP Amendment)

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Compensation Component Description (refer to complete description in the Section of this GMP Amendment referenced below)	**Current Amount** (before execution of this GMP Amendment)	**Increase(Decrease)** (amount added to or (deducted from) Current Amount)	**Amended Amount** (after execution of this GMP Amendment)
1.1 Contract Sum	$«insert amount»	$«insert amount»	$«insert amount»
1.1.1 Estimated Cost of the Work	$«insert amount»	$«insert amount»	$«insert amount»
1.1.1.1 Personnel Costs	$«insert amount»	$«insert amount»	$«insert amount»
1.1.1.2 General Conditions Costs	$«insert amount»	$«insert amount»	$«insert amount»
1.1.1.3 Subcontracted Work	$«insert amount»	$«insert amount»	$«insert amount»
1.1.1.4 Self-performed Work	$«insert amount»	$«insert amount»	$«insert amount»
1.1.2 CM's Contingency	$«insert amount»	$«insert amount»	$«insert amount»
1.1.3 CM's Fee	$«insert amount»	$«insert amount»	$«insert amount»

ARTICLE 2 - CONTRACT TIMES

2.1 The Contract Times are the periods established in the following table for the achievement of the associated Milestones:

Construction Stage Milestone(s) to which Liquidated Damages apply	**Contract Time**	**Projected Date** (as of the date of this GMP Amendment)
«insert description of interim milestone – add more rows if necessary – delete if none»	«insert number of calendar days» days	«insert date»
Substantial Completion of all Work	«insert number of calendar days» days	«insert date»

2.1.1 The projected dates listed under "Projected Date (as of the date of this GMP Amendment)" are provided only for convenient reference during the consideration and negotiation of this GMP Amendment. The durations listed under "Contract Time" define the Contract ~~Time~~Times and take precedence over the projected dates.

ARTICLE 3 - LIST OF EXHIBITS

3.1 This Amendment is based upon the following documents:

3.1.1 Basis Documents attached as **GMP Exhibit A**;
(This exhibit includes the Design Intent Statement and a list, which identifies by number, title, and date, all of the Drawings, Specifications, and other documents, upon which the CM relied to prepare this Amendment.)

3.1.2 Assumptions and Clarifications attached as **GMP Exhibit B**;
(This exhibit includes a complete list of the assumptions and clarifications made by the CM in the preparation of this Amendment, which list is intended to clarify the information contained in the Basis Documents, but is not intended to otherwise modify the Contract.)

3.1.3 Project Estimate attached as **GMP Exhibit C**;
(This exhibit includes a detailed estimate of the Cost of the Work which (1) allocates the cost of each of item of the Work to labor and materials/equipment organized by trade categories and (2) does not contain a lump-sum estimate for any item other than the CM's Fee and the CM's Contingency. This exhibit is informational only. It is included to provide a tool to evaluate, analyze, and discuss the proposed Contract Sum.)

3.1.4 Project Schedule attached as **GMP Exhibit D**;

3.1.5 Construction Progress Schedule attached as **GMP Exhibit E**;

3.1.6 Staffing Plan attached as **GMP Exhibit F**;
(This exhibit includes the CMs detailed plan for staffing the Project during the Construction Stage and an outline of the qualifications and experience of the CM's proposed project manager and proposed superintendent, including references, unless the CM previously submitted that information and the CM's project manager and superintendent were approved.)

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3.1.7 Subcontractor Work Scopes attached as **GMP Exhibit G**;
(This exhibit includes a detailed scope-of-Work description for each anticipated Subcontract.)

3.1.8 Scope of CM's Self-Performed Work attached as **GMP Exhibit H**;
(This exhibit includes a detailed scope-of-Work description for all trade Work the CM proposes to perform itself or through a CM Affiliated Entity if the requirements in the Contract are met; otherwise this scope of Work will be performed by a Subcontractor.)

3.1.9 Schedule of Allowances attached as **GMP Exhibit I** *(if applicable)*;
(This exhibit includes a complete list and detailed description of all Allowance Items with related measurement and payment terms.)

3.1.10 Schedule of Unit Prices attached as **GMP Exhibit J** *(if applicable)*;
(This exhibit includes a complete list and detailed description of all Unit Price items with related measurement and payment terms.)

3.1.11 Schedule of Alternates attached as **GMP Exhibit K** *(if applicable)*; and
(This exhibit includes a complete list and detailed description of all Alternates with related measurement and payment terms.)

3.1.12 Schedule of Incentives and Shared Savings attached as **GMP Exhibit L** *(if applicable)*.
(This exhibit includes a detailed description of all performance incentives/bonuses applicable to the Work including related measurement/entitlement and payment terms.)

The following Treasurer's Certification is required on all Contracts for Projects by and for Two-Year Colleges. For all other Contracts, delete the Treasurer's Certification below.

TREASURER'S CERTIFICATION

This signature certifies the amount required to meet the obligation in the fiscal year in which this Amendment is made has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances.

_____
Signature

_____
Printed Name
Chief Financial Officer

Institutions of Higher Education may revise "State of Ohio" to "Owner" in the upper right block below. If the Project is locally administered, delete the "Owner's Concurrence" signature in the lower left block and the associated rows of the table below.

SIGNATURES

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

«INSERT CM'S NAME»	**STATE OF OHIO**
Signature	*Signature*
Printed Name	*Printed Name*

Version Control Document

Title

Title

Date

«INSERT OWNER'S NAME»
Owner's Concurrence

Signature

Printed Name

Title

END OF DOCUMENT

Version Control Document

Document 00 61 13.13 - Performance Bond Form

State of Ohio Standard Requirements for Public Facility Construction

(Form of Performance Bond prescribed by Ohio Administrative Code Section 153:4-1-02)

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned_____

_____,_____

_____, as Principal,

~~at~~ _____ ~~(Address)~~
and

_____ _____

_____ as ~~Surety,~~ Sureties,

are hereby held
and firmly bound unto

_____,_____

_____

_____ as Obligee~~,~~(s), in the penal sum of

_____ _____ dollars,

for the payment of which well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

SIGNED AND SEALED this _____ day of _____, _____.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above-named Principal did on the _____ day of _____, _____, enter into a Contract with the Obligee, which said Contract is made a part of this Bond the same as though set forth herein and which is more fully described as:

Project Number: _____

Project Name: _____

Contract Description: _____
___(e.g., Construction Manager at Risk, Design-Build)

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~~Now~~ NOW, THEREFORE, if the above-named Principal shall well and faithfully do and perform the things agreed by the Principal to be done and performed according to the terms of said Contract then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

~~The said~~THE SAID Surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of said Contract or in or to the Plans and Specifications therefore shall in any way affect the obligations of said Surety on its bond, and it does hereby waive notice of any such modifications, omissions or additions in or to the terms of the Contract, the Work or the Contract Documents, including without limitation the Plans and Specifications.

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PRINCIPAL:

x _____

_____
Principal Signature

By: _____

Title: _____

SURETY:

x _____

_____
Surety Signature

By: _____
Attorney-in-Fact

SURETY INFORMATION:

_____
Street

_____
City State Zip

_____
Telephone Number

SURETY AGENT'S INFORMATION:

_____
Agency Name

_____
Street

_____
City State Zip

_____
Telephone Number

END OF DOCUMENT

Version Control Document

Document 00 61 13.16 - Payment Bond Form
State of Ohio Standard Requirements for Public Facility Construction

(Form of Payment Bond prescribed by Ohio Administrative Code Section 153:4-1-02)

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned_____

_____,_____

_____, as Principal,

~~at~~ _____ ~~(Address)~~
and

_____ _____

_____ as ~~Surety,~~ Sureties,

are hereby held
and firmly bound unto

_____,_____

_____

_____ as Obligee~~,~~(s), in the penal sum of

_____ _____ dollars,

for the payment of which well and truly to be made, we jointly and severally bind ourselves, our heirs, executors,

administrators, successors, and assigns.

SIGNED AND SEALED this _____ day of _____, _____.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above-named
Principal did on the _____ day of _____, _____, enter into a Contract with the Obligee,

which said Contract is made a part of this ~~bond~~Bond the same as though set forth herein and which is more fully described

as:

Project Number: _____

Project Name: _____

Contract Description: _____
___(e.g., Construction Manager at Risk, Design-Build)

Version Control Document

~~Now~~ NOW, THEREFORE, if the above-named Principal shall pay all lawful claims of subcontractors, material suppliers, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said Contract; we agreeing and assenting that this undertaking shall be for the benefit of any material supplier or laborer having a just claim, as well as for the Obligee(s) herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

~~The said~~THE SAID Surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of said Contract or in or to the Plans and Specifications therefore shall in any wise affect the obligations of said Surety on its bond, and said Surety hereby waives notice of any such modifications, omissions or additions in or to the terms of the Contract, the Work or the Contract Documents, including without limitation the Plans and Specifications.

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PRINCIPAL:

x _____

_____
Principal Signature

By: _____

Title: _____

SURETY:

x _____

_____
Surety Signature

By: _____
Attorney-in-Fact

SURETY INFORMATION:

_____
Street

_____
City State Zip

_____
Telephone Number

SURETY AGENT'S INFORMATION:

_____
Agency Name

_____
Street

_____
City State Zip

_____
Telephone Number

END OF DOCUMENT

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Acceptable Component A component listed in the Specifications after the Basis of Design Component.

A/E See "Architect/Engineer."

Agreement The form furnished by the Contracting Authority (including all of its exhibits) that, when completed and signed by the CM and Contracting Authority evidences entry into the Contract.

Allowance A sum stipulated in the Contract Documents for a particular scope of the Work that may not be completely defined at the time the parties enter into the GMP Amendment. Allowance amounts do not include the CM's Fee on account of the associated Work.

Alternate A potential change in the scope of the Work, which may include but is not limited to alternate materials or methods of construction, and an adjustment stated in the GMP Amendment to be made to the Contract Sum or Contract Times or both if the corresponding Alternate is incorporated into the Contract.

Alternative Dispute Resolution A voluntary and non-binding process for the administrative review, consideration, and attempted settlement of a dispute, without resort to judicial process, including but not limited to partnering, negotiation, mediation, impartial fact-finding, dispute review board, and mini-trials, but shall not include arbitration.

Applicable Law All federal, state, and local codes, statutes, ordinances, and regulations that apply to the performance of the Work or the A/E's Services on the Project.

Approved Program of Requirements A written document approved by the Owner and Contracting Authority that details the functional requirements of the Project and the expectations of how it will be used and operated. These include project goals, measurable performance criteria, cost considerations, benchmarks, success criteria, and supporting information.

Architect/Engineer The Person responsible for providing professional design services and construction contract administration for the Project as provided in the Contract Documents. The A/E shall be a **(1)** registered architect holding a license and certificate of authorization issued by the Ohio Architects Board pursuant to ORC Chapter 4703, **(2)** landscape architect holding a license and certificate of authorization issued by the Ohio Landscape Architects Board pursuant to ORC Chapter 4703, or **(3)** professional engineer or professional surveyor holding a license and certificate of authorization issued by the Ohio Engineers and Surveyors Board pursuant to ORC Chapter 4733.

As-Built Documents Documents, including but not limited to Drawings, Addenda, Specifications, executed Change Orders, and other elements of the Contract Documents which the CM annotates and otherwise modifies to indicate changes made during the construction process, the location of concealed and buried items, and other information useful to the Owner throughout the life of the completed Project.

Basis Documents All of the Drawings, Specifications, and other documents (including without limitation the Design Intent Statement), **(1)** upon which the CM relied to prepare the associated GMP Amendment, and **(2)** which are identified in Exhibit A to the associated GMP Amendment.

Basis of Design A document that records the concepts, calculations, decisions, and product selections used to meet the Owner's Project Requirements and to satisfy applicable regulatory requirements, standards, and guidelines. The document includes both narrative descriptions and lists of individual items that support the design process.

Basis of Design Component A component listed first in the Specifications.

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Bid A written proposal to perform the scope of Work allocated to a Subcontract, which meets the definition of "Trade Contract" under OAC Section 153:1-7-01.

Bidder A Person that submitted a Bid.

BIM See "Building Information Model."

Bond The Performance Bond, Payment Bond, or both.

Building Information Model A digital representation of physical and functional characteristics of a facility; a shared knowledge resource for information about a facility forming a reliable basis for decisions during its life-cycle, which is defined as existing from earliest conception to demolition; electronic files used to design and coordinate the Project; and may be used to describe a single model or multiple models used in the aggregate.

Certificate of Contract Completion A form used to document the CM's achievement of Contract Completion. This form may also be used to document partial Contract Completion.

Certificate of Substantial Completion A form used to document **(1)** that the CM has achieved Substantial Completion of the Work or a designated portion of the Work for which the Contracting Authority and the Owner have agreed to take Partial Occupancy, and **(2)** the date on which the associated Substantial Completion of the Work was achieved.

Change Directive A written order prepared by the A/E and executed by the Contracting Authority that directs a change in the Work.

Change Order A written instrument prepared by the A/E and executed by the Contracting Authority and the Contractor that modifies the Contract.

Claim A demand or assertion, initiated by written notice, certified by one of the parties to the Contract seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract.

Claim Affidavit A sworn document used in conjunction with filing a lien, which contains a claim on the funds that are due to the CM, in favor of a Person supplying labor, materials, or services for the value of labor, materials, or services supplied.

CM See "Construction Manager."

CM Affiliated Entity Any entity related to or affiliated with the CM or with respect to which the CM has direct or indirect ownership or control, including without limitation any entity owned in whole or part by the CM; any holder of more than 10 percent of the issued and outstanding shares of, or the holder of any interest in, the CM; any entity in which any officer, director, employee, partner or shareholder (or member of the family of any of the foregoing persons) of the CM or any entity owned by the CM has a direct or indirect interest, which interest includes but is not limited to that of a partner, employee, agent or shareholder.

CM Payment Request The form furnished by the Commission that is to be used by the CM in requesting payments and which, when signed by the CM, shall serve as an affidavit that payments requested are in proportion to the Work completed as shown on the Schedule of Values.

CM's Contingency A portion of the Contract Sum reserved for the CM's exclusive use (subject to the concurrence of the Owner and Contracting Authority) on account of certain unexpected events described in the General Conditions.

CM's Documents All Project-related documents, including those in electronic form, prepared by the CM, Consultants, and Subcontractors.

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CM's Fee The portion of the Contract Sum attributable to the aggregate of the CM's Overhead and profit related to the CM's proper, timely, and complete performance of the Work in the Construction Stage. The CM's Fee does not include the CM's Preconstruction Stage Compensation.

CM's Punch List A document prepared by the CM that consists of a list of items of Work to be completed or corrected by the CM as a condition precedent to Contract Completion.

Commission See "Ohio Facilities Construction Commission."

Commissioning Agent The Person identified by the Contracting Authority who leads, plans, schedules, and coordinates the commissioning team to implement the Commissioning Process for the Project.

Commissioning Plan A document that outlines the organization, schedule, allocation of resources, and documentation requirements of the Commissioning Process.

Commissioning Process A quality-focused process for enhancing the delivery of a project. The process focuses on verifying and documenting that the facility and all of its systems are planned, designed, installed, tested, operated, and maintained to meet the Owner's Project Requirements.

Commissioning Report A document that records the activities and results of the Commissioning Process. The Commissioning Report is developed from the final Commissioning Plan with its attached appendices.

Construction Budget The budget for Construction Costs for the Project established by the Contracting Authority and the Owner.

Construction Cost The total cost for the CM's performance of the Work in the Construction Stage including all elements of the Project designed or specified by the A/E (at current market rates of labor and materials), plus CM's Contingency, plus CM's Fee. Construction Cost does not include the following: Preconstruction Stage Compensation, A/E fees, the cost of the land, right-of-way acquisition costs, or financing costs.

Construction Manager The party identified as such in the Agreement.

Construction Progress Schedule The critical path schedule for performance of the Contract; showing the time for completing the Work within the Contract Times; the planned sequence for performing the various components of the Work; the interrelationship between the activities of the Subcontractors, A/E, CM, Contracting Authority, and Owner; and the Subcontractors' resource and cost loading information; as periodically updated during the performance of the Work.

Construction Stage Personnel Costs The Personnel Costs the CM earns and the Owner pays to the CM during the Construction Stage.

Consultant A Person engaged by the CM or a Subcontractor to provide professional services of various types for the Project including without limitation the Preconstruction Stage services of a Design-Assist Firm. The term includes the Consultant's authorized representatives, successors, assigns, and subconsultants regardless of tier.

Contract The state of legal obligation entered into by the State and CM, whereby they have agreed to an exchange of certain acts, materials, equipment, and services for certain monetary consideration, under all terms and conditions specified in the Contract Documents, which shall remain in full force and effect until such time as all obligations under the Contract have been lawfully and completely discharged, or the Contract is terminated under other conditions specified in the Contract Documents.

Contract Completion The stage in the progress of any Phase when the Work is completed in accordance with the terms of the Contract Documents and the CM has satisfied all of its other obligations under the Contract, including without limitation **(1)** all governmental authorities have given final, written approval of the Work, **(2)** a final unconditional

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certificate of occupancy has been granted and issued to the Owner by the appropriate governmental authorities, and **(3)** all Punch List items have been completed or corrected.

Contract Documents Collectively, the documents that constitute the substance of the Contract including but not limited to the Agreement, GMP Documents, final Drawings, final Specifications, General Conditions, Supplementary Conditions if any, Project Manual, and Modifications if any.

Contract Sum The amount stipulated as such in the GMP Amendment. The Contract Sum is the CM's entire compensation for the CM's proper, timely, and complete performance of the Work during the Construction Stage and is subject to adjustment as provided in the Contract. The Contract Sum does not include the Preconstruction Stage Compensation.

Contract Times The periods stipulated in the GMP Amendment for the achievement of associated Milestones, in consecutive days, beginning on the date established by the Notice to Proceed, including adjustments as provided in the Contract.

Contracting Authority The party identified in the Agreement, which may be the Ohio Facilities Construction Commission; an agency of the state of Ohio; an Institution of Higher Education or division thereof; a School District Board; or the legislative body of a political subdivision.

Coordination Drawings Drawings and Electronic Files prepared by the CM and Subcontractors to demonstrate how multiple-system and interdisciplinary work will be coordinated. Clash reports generated by BIM authoring software may be included in the Coordination Drawing submittals on certain projects.

Correction Period A period of one year commencing on the date of Substantial Completion of the Work or a designated portion of the Work which the Contracting Authority and Owner have agreed to take Partial Occupancy.

Cost of the Work The Cost of the Work is the sum of (without duplication): **(1)** General Conditions Costs, **(2)** Construction Stage Personnel Costs, **(3)** Subcontract Costs, and **(4)** the cost to the CM of performing (either directly with its own employees or through a CM Affiliated entity) Work the CM is permitted to self-perform during the Construction Stage as provided in the General Conditions. The Cost of the Work does not include any portion of the CM's Fee, CM's Contingency, or Preconstruction Stage Compensation.

CxA See "Commissioning Agent."

Date of Commencement The date established in a Notice to Proceed issued by the Contracting Authority to the CM to mark the start of the Construction Stage and the beginning of the running of the Contract Times.

day A calendar day of 24 hours measured from midnight to midnight, unless otherwise expressly specified to mean a business day.

Defective Work Work that does not conform to the Contract Documents; or does not meet the requirements of any applicable statute, rule or regulation, inspection, reference standard, test or approval; or has been damaged prior to the A/E's recommendation of final payment, unless responsibility for the protection thereof has been expressly assumed by the Owner; or that is not free from defects in workmanship, materials or equipment during the period of any warranty or guarantee.

Design-Assist Firm A Person capable of monitoring and assisting in the completion of the plans and specifications under ORC Section 153.50, who the CM engages to provide design-assist services.

Design Intent Statement An A/E-prepared document intended to clarify the A/E's stage submission (e.g., the A/E's Design Development Stage submission) upon which the GMP Amendment will be based. The Design Intent Statement shall include a description of all materially incomplete design elements and the intended scope, quantity, quality, and

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other characteristics of those elements that the A/E intends to describe in subsequent Drawings and Specifications for the Work.

Differing Site Condition Either **(1)** a subsurface or otherwise concealed physical condition encountered at the Site that differs materially from the conditions indicated in the Contract Documents or **(2)** an unknown physical condition of an unusual nature encountered at the Site that differs materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents.

Dispute Review Board A form of Alternative Dispute Resolution that is typically comprised of three members, selected jointly by the CM and the Contracting Authority, to monitor the progress of construction and provide recommended resolutions to disputes that are brought before them.

Drawings Graphic portions of the Contract Documents, showing the design, type of construction, location, dimension, and character of the Work to be provided by the CM, which generally includes plans, elevations, sections, details, schedules, diagrams, notes, and text.

Electronic File Information maintained in a computer system or format that is intended to facilitate a Person's use and manipulation of the information including but not limited to Word, Excel, PDF, Primavera, CAD, and BIM files all in their native format.

Enclosure, Permanent The condition in which the permanent exterior walls and roofs are in place, insulated and weathertight, and permanent windows and entrances are in place.

Enclosure, Temporary The condition in which the permanent exterior walls and roofs are in place, insulated and weathertight, and windows and entrances are provided with suitable temporary enclosures.

Extra Materials Materials required by the Contract Documents that are not incorporated into the Project but are given to the Owner to be used for future maintenance or repairs.

Final Inspection The final review of the Work by the A/E to determine whether issuance of the Certificate of Contract Completion is appropriate.

furnish Supply and deliver to the Site, or other specified location, ready for installation.

General Conditions The State's Standard General Conditions currently in effect, which may be modified by the Commission from time to time.

General Conditions Costs General Conditions Costs include only the CM's costs to provide the General Conditions Work including without limitation the costs of all of the following Site-related items: telephone, telephone charges, facsimile, telegrams, postage, photos, photocopying, hand tools, simple scaffolds (one level high), tool breakage, tool repairs, tool replacement, tool blades, tool bits, and pre-approved travel, lodging, and parking costs. General Conditions Costs also include **(1)** Bond premiums, **(2)** premiums for subcontractor default insurance to the extent incurred on account of Subcontractors enrolled for the Project, and **(3)** premiums for builder's risk insurance if the CM purchases the builder's risk policy for the Project.

General Conditions Work The Work defined as such in the General Conditions Costs Description exhibit to the Agreement and referred to under the definition of "General Conditions Costs."

GMP See "Guaranteed Maximum Price."

GMP Amendment The amendment to the Contract establishing the Contract Sum, Contract Times, and other Contract terms for a Project Phase.

GMP Documents The GMP Amendment (including all of its exhibits) signed by the Owner, Contracting Authority, and CM.

Guaranteed Maximum Price Synonymous with Contract Sum and does not refer to a cost-reimbursable financial arrangement (e.g., cost-plus, cost-plus with a guaranteed maximum price, target price, etc.).

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Hazardous Materials Any material, substance, pollutant, or contaminant that is defined, regulated, referenced, or classified in the Comprehensive Environmental Response, Compensation and Liability Act, Federal Water Pollution Control Act, Resource Conservation and Recovery Act, Clean Air Act, Hazardous Materials Transportation Uniform Safety Act, Toxic Substances Control Act, or any other Applicable Law relating to any hazardous, toxic, or dangerous waste, substance, or material. Any substance or material that, after release into the environment or upon exposure, ingestion, inhalation, or assimilation, either directly from the environment or directly by ingestion through food chains, will, or may reasonably be anticipated to, cause death, disease, behavior abnormalities, cancer or genetic abnormalities and specifically includes but is not limited to asbestos, polychlorinated biphenyls ("PCBs"), radioactive materials, including radon and naturally occurring radio nuclides, natural gas, natural gas liquids, liquefied natural gas, synthetic gas, oil, petroleum and petroleum-based derivatives and urea formaldehyde.

Indemnified Parties The State, Contracting Authority, Owner, A/E, other Separate Consultants, and their respective officials, officers, consultants, agents, representatives, and employees, in both individual and official capacities.

install Put into use or place in final position, complete and ready for intended service or use.

Institutional Designee The party identified in the Agreement empowered with a level of authority similar to the Executive Director of the Commission, which may be the university architect or engineer, director of capital facilities, or an institution vice president.

Institution of Higher Education Any state institution of higher education as defined in ORC Section 3345.011, including any state university or college, community college, state community college, technical college, university branch, community college district, technical college district, university branch district, and the applicable board of trustees or, in the case of a university branch district, any other managing authority.

Liquidated Damages A sum established in the Contract Documents, pursuant to the statutory delay forfeiture authorized under ORC Section 153.19, to be paid to the Owner due to the CM's failure to complete the Work within the Contract Time for achievement of Substantial Completion, or any applicable portion of the Work on or prior to any associated Milestone.

Material Supplier A Person under a contract with the CM to furnish materials or supplies in furtherance of the Work during the Construction Stage of the Project, including all such Persons in any tier. Material Supplier does not include any Separate Contractor unless expressly assigned in writing to the CM by the Owner and accepted by the CM.

mediation A voluntary process in which a neutral third party meets with the parties who have a disagreement or dispute and attempts to facilitate a mutually satisfactory resolution.

Milestone A principal event specified in the Contract relating to an intermediate completion date or time prior to Substantial Completion of all Work.

Modification A **(1)** written amendment to the Contract signed by both parties, **(2)** Preconstruction Services Amendment, **(3)** Change Order, **(4)** Change Directive, or **(5)** an order for a minor change in the Work.

negotiation A form of Alternative Dispute Resolution in which all parties involved are represented by those invested with the authority to agree to a determination of an adjustment in the Contract Sum, Contract Times, or both.

Neutral Facilitator An nonpartisan third-party without decision-making authority who is engaged to assist the Project's key stakeholders in developing cooperative relationships, achieving project objectives, avoiding or minimizing disputes, and nurturing a more-collaborative ethic characterized by trust, cooperation and teamwork.

Notice of Commencement A notice prepared by the Contracting Authority identifying the Project, CM, Separate Contractors, and their respective Sureties; and the name of the Contracting Authority's representative upon whom a Claim Affidavit may be served.

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Notice to Proceed A written notice provided by the Contracting Authority to the CM to establish the Date of Commencement and to authorize the CM to proceed with the Construction Stage of the Work.

OAC Ohio Administrative Code

Ohio Facilities Construction Commission The authorized contracting agent for public improvement projects in accordance with ORC Chapters 123 and 153, acting by and through its Executive Director.

ORC Ohio Revised Code

Overhead The term "Overhead" includes all of the following costs: **(1)** home-office payroll, which includes (except where specifically allowed as a Personnel Cost): payroll costs and all other compensation (including without limitation membership in trade, business, or professional organizations; professional licenses; training; and bonuses or similar plans/arrangements related to performance on, or profit from, the Project) of the CM's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by the CM in the CM's principal or a branch office (not including the CM's Site office) for general administration of the Work; **(2)** home-office expenses, which include (except where specifically allowed as a Reimbursable Expense or General Conditions Cost): all expenses of the CM's principal and branch offices including without limitation home-office telephone, telephone charges, computers, fax, postage, photos, copies, legal services, and accounting services; **(3)** all of the CM's capital expenses, including without limitation interest on the CM's capital employed for the Work and charges against the CM for delinquent payments; **(4)** except where specifically allowed as a use of the CM's Contingency, all costs due to the negligence or breach of contract of the CM, a Subcontractor, a Consultant, or anyone for whom they may be liable, including without limitation the correction of Defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property; **(5)** all costs related to insurance provided by the CM, whether required under the Contract or not, except **(a)** premiums for subcontractor default insurance in the Construction Stage if those insurance premiums are included as a General Conditions Cost and **(b)** premiums for Builder's Risk insurance in the Construction Stage if those insurance premiums are included as a General Conditions Cost; **(6)** all travel, lodging, and parking costs, except where specifically allowed as a pre-approved Reimbursable Expense or General Conditions Cost; **(7)** all applicable taxes of every kind (including but not limited to commercial activity tax ("CAT")) except where otherwise specifically allowed; **(8)** all other overhead or general administrative expenses of any kind and the costs of any item not specifically allowed: **(a)** as a Personnel Cost or a Reimbursable Expense in the Preconstruction Stage, or **(b)** as a Cost of the Work in the Construction Stage.

Owner The state of Ohio agency, Institution of Higher Education or division thereof, School District Board, or other instrumentality for whom the Project is being constructed.

Owner's Project Requirements A written document that details the functional requirements of the Project and the expectations of how it will be used and operated. These include project goals, measureable performance criteria, cost considerations, benchmarks, success criteria, and supporting information.

Partial Occupancy The condition that occurs when the Owner occupies or uses a portion of the Project prior to Contract Completion, ~~temporary~~partial occupancy is approved by authorities having jurisdiction, and items of Work cannot be completed until a subsequent date.

partnering A voluntary dispute prevention process involving team building activities to help define common goals, improve communication, and foster a problem solving attitude among a group of contracting parties that must work together throughout Contract performance to be less adversarial and more cooperative.

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Payment Bond A written guaranty from a Surety to the Owner providing financial assurance that the CM will make the required payments to Subcontractors and Material Suppliers for all labor, materials, and other services related to the Project.

Performance Bond A written guaranty from a Surety to the Owner providing financial assurance that the CM will perform the Work in accordance with the Contract Documents.

Person An individual, corporation, business trust, estate, partnership, association, or other public or private entity.

Personnel Costs The rates and fees to be paid by the Owner to the CM on account of the proper, timely, and complete performance of certain Work by the CM's employees, which rates and fees are fully loaded and include without limitation: **(1)** the portion of direct salaries and wages of the CM's personnel (whether stationed at the CM's principal or branch offices or stationed at the Site, including professional, technical, management, administrative and clerical employees, and principals engaged on the Project) to the extent of their time devoted to the Project, and **(2)** the portion of the cost of their mandatory and customary contributions and benefits (such as employment taxes and other statutory employee benefits, social security contributions, insurance, sick leave, holidays, vacations, pension and profit sharing pursuant to plans qualified under federal law, and similar benefits) related to their time devoted to the Project. Personnel Costs also include the costs of personal protective equipment (e.g., hard hats, safety glasses, hearing protection, etc.). The term "Personnel Cost(s)," when used without a modifier, refers to either a Preconstruction Stage Personnel Cost or a Construction Stage Personnel Cost.

Phase A separation in the Work of the Project by sequence or time intervals, which may include different Subcontractors for each Phase.

Preconstruction Fee The portion of the CM's Preconstruction Stage Compensation attributable to the aggregate of the CM's Overhead and profit related to the CM's proper, timely, and complete performance of the Preconstruction Stage Services. The Preconstruction Fee does not include the CM's compensation for Preconstruction Personnel Costs or Reimbursable Expenses.

Preconstruction Services The CM's services in the Preconstruction Stage as set forth in the Contract Documents. The Preconstruction Services include services performed during the Preconstruction Stage by any Design-Assist Firm the CM engages on the Project.

Preconstruction Services Amendment A written instrument executed by the Contracting Authority and CM that modifies the Contract as it pertains to the Preconstruction Stage.

Preconstruction Stage Compensation The amount stipulated as such in the Agreement. The Preconstruction Stage Compensation **(1)** is the CM's entire compensation for the CM's proper, timely, and complete performance of the Preconstruction Services, which includes Preconstruction Services performed by any Design-Assist Firms the CM engages on the Project and **(2)** is subject to adjustment as provided in the Contract.

Preconstruction Stage Personnel Costs The Personnel Costs the CM earns and the Owner pays to the CM during the Preconstruction Stage.

Preconstruction Stage Reimbursable Expenses Preconstruction Stage Reimbursable Expenses include only the following items: **(1)** travel, lodging, and parking costs when incurred in connection with the Project and approved in writing by the Contracting Authority before the cost is incurred, and **(2)** expenses described in the Preconstruction Stage Reimbursable Expenses Schedule attached to the Agreement.

Product Data Standard illustrations, schedules, diagrams, performance charts, instructions, and brochures that illustrate physical appearance, size, and other characteristics of materials and equipment.

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Progress Status Report A monthly progress report to be prepared by the CM and containing the following information for each Project Phase: **(1)** listing of actual costs for completed activities, estimates for uncompleted tasks and projections for anticipated funding requirements based on the most recently updated Project Schedule and/or Construction Progress Schedule; **(2)** identification of variances between actual and budgeted or estimated costs; **(3)** the updated Construction Progress Schedule; **(4)** progress photos; **(5)** an executive summary; **(6)** a discussion of pending items and existing or anticipated problems, status of RFIs; **(7)** a safety and accident report; **(8)** information on each Subcontractor and each Subcontractor's work as well as the entire Work, showing percentages of completion and the number and amounts of Change Orders and Change Directives and relating such information to the Construction Progress Schedule and the Contract Sum; **(9)** a list of all identified Claims, any threatened claims and issues that, in the reasonable judgment of CM, may potentially become Claims and any potential Change Orders that have been submitted to the Owner by the CM; **(10)** status of ~~Construction~~the CM's Contingency; **(11)** information on compliance with the EDGE participation goals established for the Project; **(12)** monthly procurement decisions regarding furnishings, fixtures and equipment; **(13)** status of compliance with required LEED components, if applicable; and **(14)** such other relevant information as may be reasonably required by the Owner from time to time.

Project The public improvement, of which the Work performed under the Contract Documents may be the whole or a part.

Project Manager A permanent employee of the Contracting Authority assigned to the Project and authorized to perform specific responsibilities.

Project Manual That part of Construction Documents which consists of bound volume(s) of primarily written material which generally contain Division 00 - "Procurement and Contracting Requirements," and Divisions 01 through 49 - "Specifications," and other documents pertaining to the Project.

Project Schedule A project schedule prepared by the CM that, with respect to each Phase of the Project, identifies, coordinates and integrates the anticipated design and construction schedules, the Contracting Authority's and Owner's responsibilities, government authority reviews and other activities as are necessary for the timely completion of the Work.

Proposal The offer of the CM to perform the Work set forth in a Proposal Request.

Proposal Request A document issued after execution of the GMP Amendment requesting a Proposal from the CM, which may initiate a Change Order to modify the Contract.

provide Furnish and install, complete and ready for intended use.

Punch List A document listing items of Work requiring correction or completion by the CM as a condition precedent to Contract Completion.

Record Documents Electronic files and printed documents of all nature prepared by the A/E, which incorporate the information shown on the CM's As-Built Documents. They consist of the "Record Drawings" and "Record Project Manual," Record Model, Certificate of Substantial Completion, Certificate of Contract Completion (as complete), manufacturers' warranties, certificate(s) of occupancy, approved shop drawings and other action submittals, Change Directives, Proposal Requests, Requests for Interpretation, Change Orders, balancing reports, and the final version of the approved Construction Progress Schedule.

Record Drawings The Drawings, which have been revised by the A/E to show the changes made during the construction process, conformed to represent the Work as executed by the CM.

Record Model The Building Information Model, which has been revised by the A/E to show the changes made during the construction process, conformed to represent the Work as executed by the CM.

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Record Project Manual The Project Manual of the Contract Documents, which has been revised by the A/E to show the changes made during the construction process, based on the As-Built Project Manual furnished by the CM.

Reimbursable Expenses See "Preconstruction Stage Reimbursable Expenses."

Request for Change Order A written notice from the CM accompanied by a Proposal for a change in the Work.

Request for Interpretation A written request to the A/E seeking an interpretation or clarification of the Contract Documents.

RFI See "Request for Interpretation."

Samples Physical examples, color selection items, field samples, and mock-ups furnished by the CM to illustrate functional and aesthetic characteristics of products, materials, equipment, or workmanship and establish criteria by which the Work shall be judged.

Schedule of Values A full, accurate, and detailed statement furnished by the CM reflecting a defined breakdown of the Contract Sum.

School District A local, exempted village, or city school district as defined in ORC Chapter 3311, or a joint vocational school established pursuant to ORC Section 3311.18, performing essential governmental functions of state government pursuant to ORC Sections 3318.01 to 3318.20.

School District Board The board of education of a School District.

Separate Consultant A Person engaged by the Owner or the Contracting Authority to provide Project-related professional services other than the services under this Contract. The term includes the Separate Consultant's authorized representatives, successors, assigns, and subconsultants regardless of tier.

Separate Contract The contract between the Owner or Contracting Authority and a Separate Consultant or a Separate Contractor.

Separate Contractor A Person under contract with the Owner or Contracting Authority to provide Project-related work other than the Work under this Contract. The term includes the Separate Contractor's authorized representatives, successors, assigns, and subcontractors regardless of tier.

Shop Drawings Drawings, diagrams, illustrations, and schedules specifically prepared for the Project provided by the CM or a Subcontractor to illustrate some portion of the Work. Shop Drawings are not Contract Documents. Shop Drawings on equipment shall include a written statement from the manufacturer of the equipment certifying the equipment is in compliance with the Contract Documents.

Site The location designated for the Project.

Specifications Those portions of the Contract Documents consisting of detailed written administrative, procedural, and technical requirements, included in Divisions 01 through 49, for the construction of the Work, whether physically on the Drawings or bound in separate volumes, including identification of acceptable materials, methods, equipment, quality, and workmanship.

Staffing Plan The CM's detailed plan for staffing the Project during the Construction Stage.

Stage A distinct period in the life cycle of a facility from concept through construction, to use and deconstruction or demolition. Typical Stages include the Preconstruction Stage, which includes the Program Verification, Schematic Design, Design Development, and Construction Documents stages; and the Construction Stage, which includes Construction and Closeout activities.

Standard Requirements The brief name of the "State of Ohio Standard Requirements for Public Facility Construction," including but not limited to General Conditions, and other

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Division 00 Documents and Division 01 Sections; currently in effect, which the Commission may modify from time to time.

State The government of Ohio, including any organized body, office, or agency established by the laws of this state for the exercise of any function of state government, any state institution of higher education as defined in ORC Section 3345.011, or any School District Board as defined in ORC Section 3318.01.

Subcontract Any contract or agreement between the CM and a Subcontractor for performance of a portion of the Work.

Subcontract Form The State of Ohio Subcontract Form prescribed by OAC 153:1-3-02 and required for use with the Construction Manager at Risk method of project delivery.

Subcontract Costs The sum of the contract values of all of the Subcontracts the CM enters into in furtherance of the Work. The Subcontract Costs include the cost of Subcontractor-provided surety bonds (if any).

Subcontracting Plan The CM-developed written plan which describes in detail the CM's strategy for packaging and scheduling bidding and for ensuring that the scopes of Work of the various Subcontractors are coordinated, all requirements for the Project have been assigned to the appropriate Subcontract, the likelihood of jurisdictional disputes between trades has been minimized, and proper coordination has been provided for phased construction (if any).

Subcontractor A Person under a contract with the CM to perform any part of the Work during the Construction Stage of the Project, including all such Persons in any tier. The term "Subcontractor" includes Material Suppliers, but does not include any Separate Contractor unless expressly assigned in writing to the CM by the Owner and accepted by the CM.

Substantial Completion The stage in the progress of the Work when the Work (or designated portion of the Work for which the Contracting Authority and Owner have agreed to take Partial Occupancy) is sufficiently complete in accordance with the Contract that the Owner can utilize the Work for its intended use, as determined by the A/E. The issuance of a certificate of occupancy or partial~~/temporary~~ certificate of occupancy (if applicable) is a condition precedent to the achievement of Substantial Completion.

Substantially Complete See "Substantial Completion."

Substitution An article, device, material, equipment, form of construction, or other item, proposed by the CM and approved by the A/E for incorporation or use in the Work as being functionally and qualitatively equivalent to essential attributes of a Basis of Design or Acceptable Component specified in the Contract Documents.

Supplementary Conditions Amendments to the General Conditions, issued as a separate document, which describe conditions of the Contract unique to a particular Owner or Project, which may include provisions regarding the assignment of responsibility for refuse removal, safety and security precautions and programs, temporary Project facilities and utilities, weather and fire protection, scaffolding and equipment, materials and services to be used commonly by the CM and Subcontractors and requiring the CM to provide assistance in the utilization of any applicable equipment system, preparation of operation and maintenance manuals, and training of Owner personnel for operation and maintenance of the Project. The General Conditions shall not be superseded or amended by Drawings and Specifications, unless so provided in Supplementary Conditions prepared by the Contracting Authority and approved by the Commission.

Surety A Person who provides financial assurances under a Performance Bond or Payment Bond.

Systems Manual A system focused composite document that includes the operation manual, maintenance manual, and additional information of use to the Owner after they begin using the facility.

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Unit Price The cost of providing a unit of Work including labor, materials, services, and associated expenses as described in the GMP Amendment. Unit Prices do not include the CM's Fee on account of the associated Unit Price Work.

Work The labor, materials, equipment, and services, individually or collectively which are required by the Contract Documents, to be performed or provided by the CM for the Project. The furnishing of all material, labor, detailing, layout, supplies, plants, tools, scaffolding, transportation, temporary construction, superintendence, demolition, and all other services, facilities and items reasonably necessary for the full and proper performance and completion of the requirements of the Project as set forth in the Contract Documents, and items reasonably inferable therefrom and consistent therewith for the proper execution and completion of the construction and other services required by the Contract Documents, whether provided or to be provided by the CM or a Subcontractor, or any other entity for whom the CM is responsible, and whether or not performed or located on or off of the Site.

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ARTICLE 1 - CM'S RESPONSIBILITIES

1.1 Nondiscrimination

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

1.1.1.1 As required under ORC Section 153.59, the CM agrees to both of the following:

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

.2 "no contractor, subcontractor, or any person on a contractor's or subcontractor's behalf, in any manner, shall discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color."

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

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

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

1.1.2 Hiring Under State Public Improvement Contracts.

1.1.2.1 Any provision of a hiring hall contract or agreement which obligates the CM to hire, if available, only employees referred to the CM by a labor organization shall be void as against public policy and unenforceable with respect to employment under any public improvement contract unless at the date of execution of the hiring hall contract or agreement, or within 30 days thereafter, the labor organization has procedures in effect for referring qualified employees for hire without regard to race, color, religion, national origin, military status as defined in ORC Section 4112.01, or ancestry and unless the labor organization includes in its apprentice and journeyperson's

membership, or otherwise has available for job referral without discrimination, qualified employees, both whites and non-whites (including African-Americans).

1.1.3 Affirmative Action.

1.1.3.1 The CM and Subcontractors shall comply with the State's Equal Employment Opportunity requirements described under OAC 123:2-3 through 123:2-9 that include, without limitation, the requirements described under this **Section 1.1.3**.

1.1.3.2 The CM shall demonstrate its good faith efforts to comply with the utilization goals currently established for minority and women employees and submit documentation to the EOC.

1.1.3.3 By the 10th day of each month, the CM and Subcontractors shall submit to the EOC via the internet a completed Ohio Construction Contract Information Report - Input Form 29 (I-29) for the preceding month. The form shall be submitted through the Ohio Business Gateway: http://business.ohio.gov/efiling/.

1.2 Prevailing Wages

1.2.1 The CM shall comply with the prevailing wage requirements described under ORC Chapter 4115 that include, without limitation, the requirements described under this **Section 1.2**.

1.2.2 If the Project is subject to payment of prevailing wage rates, the CM shall:

1.2.2.1 pay to laborers and mechanics performing Work on the Project the prevailing wage rates of the Project locality, as determined by the Ohio Department of Commerce, Wage and Hour Bureau;

1.2.2.2 post in a prominent place readily accessible by all workers on the Site, a legible listing of the current classifications of laborers, workers, and mechanics employed under this Contract;

1.2.2.3 ensure that the rates posted are current and remain posted in legible condition during the period of the Contract; and

1.2.2.4 not be entitled to an increase in the Contract Sum on account of an increase in prevailing wage rates, except as otherwise provided by Applicable Law.

1.2.3 The CM may access the Ohio Department of Commerce, Wage & Hour Bureau at its website, http://198.234.41.198/w3/webwh.nsf/pages/PrevailingWageBid, to obtain the current wage rates.

1.3 Royalties and Patents

1.3.1 The CM shall pay all royalties, license fees, and assume all costs incident to the use, in the performance of the Work or the incorporation in the Work, of any invention, design, process, product, or device that is the subject of patent rights or copyrights held by others.

1.3.2 If the CM has reason to believe that use of the specified item is subject to patent or copyright protection, the CM shall immediately notify the Contracting Authority.

1.4 Assignment of Antitrust Claims

1.4.1 By signing the Agreement, the CM assigns, conveys and transfers to the Contracting Authority any right, title, and interest to any claims or causes of action it may have or acquire under state or federal antitrust laws relating to any goods, products, or services purchased, procured, or rendered to the State pursuant to the Contract.

1.5 Use of Domestic Steel

1.5.1 The CM is required by law to supply domestically produced steel products used for load bearing structural purposes on all projects funded in whole or in part with State funds.

1.5.2 The A/E, CM, and Subcontractors shall comply with the requirements of the Ohio Facilities Construction Commission's policy regarding the specification and use of domestically produced steel products, including furnishing the required certifications. This policy is available on the Commission's website at http://ofcc.ohio.gov.

1.6 Drug Free Safety Program Participation

1.6.1 Throughout the performance of the Work, the CM shall be enrolled in and remain in good standing in the Ohio Bureau of Workers' Compensation ("OBWC") Drug-Free Safety Program ("DFSP") or a comparable program approved by the OBWC that meets the requirements specified in ORC Section 153.03 ("OBWC-approved DFSP").

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1.6.2 As required under ORC Section 153.03(E):

1.6.2.1 "Each contractor shall require all subcontractors with whom the contractor is in contract for the public improvement to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to a subcontractor providing labor at the project site of the public improvement."

1.6.2.2 "Each subcontractor shall require all lower-tier subcontractors with whom the subcontractor is in contract for the public improvement to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to a lower-tier subcontractor providing labor at the project site of the public improvement."

1.6.2.3 "Failure of a contractor to require a subcontractor to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to the time that the subcontractor provides labor at the project site will result in the contractor being found in breach of the contract and that breach shall be used in the responsibility analysis of that contractor or the subcontractor who was not enrolled in a program for future contracts with the State for 5 years after the date of the breach."

1.6.2.4 "Failure of a subcontractor to require a lower-tier subcontractor to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to the time that the lower-tier subcontractor provides labor at the project site will result in the subcontractor being found in breach of the contract and that breach shall be used in the responsibility analysis of that subcontractor or the lower-tier subcontractor who was not enrolled in a program for future contracts with the State for 5 years after the date of the breach."

1.6.3 Prior to authorizing a Subcontractor to commence Work on the Site, the CM shall obtain the Contracting Authority's approval, and shall also submit written confirmation of the Subcontractor's enrollment on the **Subcontractor and Material Supplier Declaration** form to the A/E.

1.6.4 In addition to OBWC-approved DFSP Basic requirements, the CM, each Subcontractor, and each Separate Contractor that provides labor on the Site shall participate in a pool that performs random drug testing of at least 5 percent of its employees who perform labor on the Site. The random drug testing percentage shall also include the on-site supervisors of the CM, Subcontractors, and Separate Contractors. Basic random drug testing shall otherwise comply with the same testing guidelines and criteria as required for OBWC-approved advanced testing. The CM and each Subcontractor shall provide evidence of required testing to the Contracting Authority upon request.

1.7 Use of the State's Web-based Project Management Software

1.7.1 If the Contracting Authority decides, in its sole discretion, to utilize the State's web-based project management software for the Project, the CM shall use such software for all compatible services required under this Contract.

1.7.2 All costs for the CM's use of the State's web-based project management software for the Project shall be included in its Preconstruction Stage Compensation and Contract Sum, as applicable. If the CM's staff or its Consultants are unfamiliar with the proper use of such software, the CM shall provide its staff and Consultants for training without additional compensation.

1.8 EDGE Participation and Reporting

1.8.1 The CM shall participate in the "Encouraging Diversity, Growth and Equity" ("EDGE") Program by subcontracting with, and using one or more, businesses certified as an EDGE Business Enterprise ("EDGE-certified Business") by the EOC.

1.8.1.1 If the CM is an EDGE-certified Business, the CM may include its own compensation under this Contract in the reporting.

1.8.1.2 The amount of EDGE participation cannot exceed 100 percent of the sum of the CM's Preconstruction Stage Compensation plus the Contract Sum.

1.8.2 The CM shall provide an EDGE Participation Report with each of the CM's invoices for Preconstruction Stage Compensation and each CM Payment Request.

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1.8.2.1 The CM shall provide status reports, produced by the CM and each applicable EDGE-certified Business for the Contract, indicating:

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

1.8.2.2 The CM shall provide reports for each EDGE-certified Business; however, the reports may be consolidated and submitted as one document.

1.8.3 The CM shall provide an EDGE Participation Final Report simultaneously with its final CM Payment Request.

1.8.3.1 The CM and each EDGE-certified Business shall provide in the report certification that the submitted document is a true and accurate accounting of the original contract amount paid to, and received by, each EDGE-certified Business.

1.8.4 The CM shall provide the EDGE Participation Reports in detail and form acceptable to the Contracting Authority.

1.8.4.1 Failure to timely submit EDGE Participation Reports may result in withholding payment from the CM.

1.8.5 If the Project is administered using the State's web-based project management software, the CM shall submit its EDGE Participation Reports, using the "Contractor Pay Request" (Agency/Higher Education) or "Applications for Payment" (School Facilities) business process.

1.8.6 The CM shall cooperate fully with requests for additional EDGE information and documentation from the EOC or Contracting Authority.

1.9 Owner Work Rules

1.9.1 The CM shall consult with the Owner to obtain full knowledge of the Owner's rules, regulations, or requirements affecting the Project.

1.10 Emergency

1.10.1 In the event of an emergency affecting the safety of the Project, other property, or individuals, the CM, without special instruction or authorization, shall act to prevent the threatened damage, injury, or loss.

1.10.2 If the CM believes that it is entitled to an adjustment of the Preconstruction Stage Compensation, Contract Sum, or Contract Times on account of its actions in response to an emergency, the CM may request a Modification by giving written notice under **Section 7.1.1** or **Section 7.3.2**, as applicable.

1.11 CM's Standard of Care

1.11.1 The CM shall perform the Work in a ~~workmanlike~~competent manner, consistent with the standards of skill and care exercised by entities licensed to perform (where required under Applicable Law) and regularly performing comparable work in the same or similar locality under the same or similar circumstances.

1.12 Limit of CM's Responsibility

1.12.1 The CM is not responsible for the A/E's negligence or the A/E's failure to properly perform the A/E's contract.

1.13 Sustainability Requirements

1.13.1 This Project shall be designed and constructed in accordance with the requirements of Am. Sub. H.B. 251 of the 126th General Assembly and the resulting rules, policies, and procedures adopted by the Ohio Facilities Construction Commission establishing Sustainability Requirements for Capital Improvements Projects, including but not limited to the applicable provisions of OAC 3318-3.

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1.13.2 If the Project is designed and constructed under the Leadership in Energy and Environmental Design ("LEED") Rating System developed by the U.S. Green Building Council or another rigorous rating system used to facilitate achievement of sustainability goals for the Project, the CM shall provide submittals certifying achievement of sustainable design rating system criteria for verification by the Green Building Certification Institute or other third party in accordance with the Contract Documents.

ARTICLE 2 - STATE'S RIGHTS AND RESPONSIBILITIES

2.1 Contracting Authority

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

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

2.1.3 The Contracting Authority shall have access to the Work at all times whenever the Project is in preparation or progress.

2.1.4 The Ohio Facilities Construction Commission requires use of its forms where indicated in the Contract Documents. The party responsible for initiating forms shall utilize the latest edition obtained from the Commission's website: http://ofcc.ohio.gov. The Commission may make modifications to its forms at any time.

2.1.4.1 The CM shall not modify any form provided by the Commission or Contracting Authority.

2.1.4.2 If the Project is administered using the State's web-based project management software, the CM shall utilize the web-based forms and reports within the applicable business process. The State's web-based project management software is sponsored by the Commission, and such web-based forms and reports are acceptable to the Commission in lieu of its paper forms.

2.1.5 The Contracting Authority is not responsible for construction means, methods, manners, techniques, sequences, procedures, or for safety precautions and programs in connection with the Work, or for the CM's failure to carry out the Work in conformity with the Contract Documents.

2.2 Owner

2.2.1 The Owner shall designate a representative authorized to act on behalf of the Owner during the Project.

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

2.2.3 The Owner shall have access to the Work at all times whenever the Project is in preparation or progress.

2.2.4 Upon issuance of the Notice to Proceed, the Owner shall provide the Site to the CM in a condition to permit the CM to perform the Work.

2.2.5 The Owner may request a change in the Work if the A/E recommends and the Contracting Authority approves the change.

2.2.6 The Owner shall communicate with the CM through the Contracting Authority.

2.2.7 The Owner is not responsible for construction means, methods, manners, techniques, sequences, procedures, or for safety precautions and programs in connection with the Work, or for the CM's failure to carry out the Work in conformity with the Contract Documents.

2.3 Approval of Owner, Contracting Authority, and State

2.3.1 The Owner, Contracting Authority, or State's review and approval of the Work and any information the CM submits to them is for the sole purpose of determining whether the Work and information are generally consistent with the Contract's intent, and will not relieve the CM of its sole responsibility for the performance, preparation, completeness, and accuracy of the Work and information.

2.4 Neutral Facilitation

2.4.1 The Contracting Authority or Owner may engage a Neutral Facilitator for the purposes of **(1)** building cooperative relationships among the Project participants to achieve discrete objectives; **(2)** encouraging educated, productive, and expedited attempts to avoid, minimize, and resolve disputes; and **(3)** maximizing the effectiveness of each participant's resources.

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2.4.1.1 For example, a Neutral Facilitator may facilitate the preconstruction organizational meeting, meetings associated with establishment of the GMP, and efforts to resolve disputes throughout the Project.

2.4.2 The Contracting Authority, Owner, and CM are entitled to interact with the Neutral Facilitator with the full expectation that **(1)** they may act, speak, and disclose information with complete candor and **(2)** all communication, whether oral or written, made in the course of facilitated sessions is confidential.

2.4.3 At any hearing or proceeding regarding any dispute arising out of or related to the Project **(1)** the Neutral Facilitator will not be competent to testify and shall not be called as a witness and **(2)** the Neutral Facilitator's testimony and work product will not be admissible.

2.4.4 The Neutral Facilitator will not **(1)** perform any services with respect to or bear any responsibility for any legal services, design-professional services, construction, or construction management associated with the Project or **(2)** have any liability whatsoever for any claims related to any legal services, design-professional services, construction, or construction management associated with the Project, including without limitation, claims for legal or design-professional errors or omissions, delays, cost overruns, faulty construction, or increased costs.

2.4.5 The Neutral Facilitator's participation in the Project will not relieve the Contracting Authority, Owner, and CM of any of their respective rights or obligations under the Contract.

2.5 CM Performance Evaluation

2.5.1 The Contracting Authority may evaluate the CM's performance during the progress of the Work, at completion of a phase of the Project, completion of the Project, or any of the foregoing. The Contracting Authority shall retain the evaluation(s).

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

2.5.1.2 The Contracting Authority may use the evaluation(s) in determining the responsibility of the CM for award of future contracts.

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

2.5.1.4 If a breach of the Contract is committed by the CM or is attributable to a Subcontractor, that breach will be used in the responsibility analysis of the CM and Subcontractor (where applicable) for future contracts with the State or subcontracts on State projects for 5 years after the date of the breach.

2.5.1.5 If the Project is administered using the State's web-based project management software, the CM shall receive and review the Contracting Authority's evaluation of the CM's performance and respond with its comments, using the "Contractor Evaluation" business process.

ARTICLE 3 - A/E'S RESPONSIBILITIES

3.1 The A/E's Contract Administration Duties

3.1.1 The A/E shall administer the Contract as provided in the Contract Documents and Architect/Engineer Agreement, including, but not limited to, performance of the functions described as follows:

3.1.1.1 The A/E shall attend and conduct progress meetings. The A/E shall prepare an agenda and produce a written report of each progress meeting, and distribute the report to the Contracting Authority, Owner, and CM within 3 business days after the meeting. The A/E shall not delegate the duty to prepare the agenda and written reports of any progress meeting.

3.1.1.2 The A/E may authorize minor changes or alterations in the Work that are consistent with the intent of the Contract Documents and do not involve adjustment of the Contract Sum or Contract Times, or both. The A/E has no authority to authorize the CM to perform additional or extra Work for which the CM may seek adjustment of the Contract Sum or Contract Times, or both.

3.1.1.3 The A/E shall review and recommend, certify, or approve applicable forms required under the Contract Documents.

3.1.1.4 The A/E shall render decisions in connection with the CM's responsibilities under the Contract Documents, and submit recommendations to the Contracting Authority for enforcement of the Contract as necessary.

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3.1.2 The A/E is the initial interpreter of all requirements of the Contract Documents. All decisions of the A/E are subject to final determination by the Contracting Authority.

3.2 Site Visits and Observation

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

3.2.1.1 The A/E shall designate a field representative, subject to the Contracting Authority's approval, to attend to the Project, observe and check the progress and quality of the Work, and take action as necessary or appropriate to achieve conformity with the Contract Documents.

3.2.1.2 The A/E shall have its consultants attend to the Project at intervals required by its agreement or the Contracting Authority.

3.2.2 The A/E is authorized to disapprove or reject Defective Work. The A/E shall immediately notify the Contracting Authority any time the A/E disapproves or rejects an item of Work.

3.2.3 The A/E is not responsible for construction means, methods, manners, techniques, sequences, procedures, or for safety precautions and programs in connection with the Work, or for the CM's failure to carry out the Work in conformity with the Contract Documents.

3.3 Testing and Inspection Services

3.3.1 Unless otherwise specified in the Contract Documents, the A/E shall apply for, secure, and pay for the costs of structural testing and special inspections under Chapter 17 of the Ohio Building Code; testing including 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; or approval required by Applicable Law.

3.4 Approval of A/E

3.4.1 The A/E's review and approval of the Work and any information the CM submits to the A/E is for the sole purpose of determining whether the Work and information are generally consistent with the Contract's intent, and will not relieve the CM of its sole responsibility for the performance, preparation, completeness, and accuracy of the Work and information.

3.5 Limitation of A/E's Authority

3.5.1 Under no circumstances is the A/E authorized to:

3.5.1.1 bind the Owner or Contracting Authority to any authorizations under, modifications of, or amendments to any contract other than as expressly described under **Section 3.1.1.2**;

3.5.1.2 accept any defective or non-conforming services, Work, or vendor-furnished items;

3.5.1.3 make any settlements on behalf of the Owner or Contracting Authority; or

3.5.1.4 assume any responsibilities of the CM or Subcontractors.

ARTICLE 4 - SUBCONTRACTORS

4.1 Applicability of Requirements

4.1.1 Sections 4.3 through **4.5** apply to all Work during the Construction Stage (including the CM's procurement of long-lead-time items before the Date of Commencement) except:

4.1.1.1 the CM's management and administration of the entire Work, including administration of Subcontracts;

4.1.1.2 General Conditions Work;

4.1.1.3 non-specialty Work valued in the aggregate for the Project at less than $200,000 if the CM obtains the Contracting Authority's written approval before commencement of that Work;

4.1.1.4 the balance of the Work under a Subcontract where the CM terminated the Subcontract for cause and the CM obtains the Contracting Authority's written approval before commencement of that portion of the Subcontract Work; and

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4.1.1.5 Work performed under a design-assist contract authorized by the Contracting Authority and entered into by the CM as described under **Section 4.8**.

4.2 Subcontracting Plan

4.2.1 The CM shall place development, review, and approval of the Subcontracting Plan on the Project Schedule.

4.2.2 Before soliciting Bids for any particular Subcontract, the Subcontracting Plan shall **(1)** include a proposed list of prequalified prospective Bidders for that Subcontract and a proposed Bidding Schedule for that Subcontract and **(2)** be submitted to and approved by the Contracting Authority.

4.3 Prequalification Criteria

4.3.1 The CM shall establish criteria for prequalification of prospective Bidders on Subcontracts that shall:

4.3.1.1 include the experience of a prospective Bidder, the prospective Bidder's financial condition, conduct and performance on previous contracts, facilities, management skills, and ability to execute the associated Subcontract properly;

4.3.1.2 further any goals set as part of the EDGE program or other diversity and inclusion program required by Applicable Law;

4.3.1.3 require a prospective Bidder to submit a valid certificate of compliance issued by the EOC under ORC Section 9.47 to establish that it has not been found in violation of any affirmative action program during the last 5 years preceding the date of the prequalification application; and

4.3.1.4 require a prospective Bidder to submit proof of current licenses to perform the associated Work as required by the Contracting Authority or by Applicable Law.

4.3.2 The CM shall include any additional criteria for specific Subcontracts required by the Owner or Contracting Authority that are consistent with the scope and needs of the Project.

4.3.3 The CM shall submit its proposed prequalification criteria for each Subcontract to the Contracting Authority and place establishment of prequalification criteria on the Project Schedule.

4.3.4 The Contracting Authority shall approve or reject, in whole or in part, the prequalification criteria submitted by the CM. The Contracting Authority will use the approved prequalification criteria for any future analysis it may conduct concerning a prospective Bidder's responsibility to perform a Subcontract.

4.4 Prequalification Process

4.4.1 The CM shall complete the Prequalification Process for each Subcontract no later than 10 days before the CM intends to solicit Bids for that Subcontract unless the Contracting Authority agrees otherwise in writing.

4.4.2 During the Prequalification Process, the CM shall develop prospective Bidders' interest in the Project and invite at least 3 prospective Bidders to submit qualifications for evaluation. The Contracting Authority or Owner may require the CM to invite and evaluate more than 3 prospective Bidders, including specifically those prospective Bidders (if any) the Owner or Contracting Authority asks the CM to contact.

4.4.2.1 To reach prospective Bidders, the CM may place a notice on **(1)** the State's public notice website created under ORC 125.182 (with assistance of the Contracting Authority or Owner), **(2)** the official website of the Owner or Contracting Authority, **(3)** on other websites such as appropriate trade association websites, news media, or other public media websites, or **(4)** any combination of the foregoing.

4.4.3 The CM shall evaluate the qualifications of each prospective Bidder that timely submits its qualifications and notify each of them whether they are qualified. The CM's determination that a Bidder that timely submits its qualifications does not meet the prequalification criteria shall be final.

4.4.4 The CM shall submit the names and qualifications of at least 3 qualified prospective Bidders to the Contracting Authority. The CM may submit the names of fewer than 3 qualified prospective Bidders if the CM submits to the Contracting Authority satisfactory documentation that fewer than 3 qualified prospective Bidders are available. The Contracting Authority, Owner, and CM may meet to review the qualifications of the prospective Bidders on the list the CM submits to the Contracting Authority.

4.4.4.1 Notwithstanding **Section 4.4.4**, the Contracting Authority may require the CM to submit the names and qualifications of more than 3 qualified prospective Bidders for all or any particular Bid package. In that case, the CM may submit the names of fewer than the required number of qualified prospective Bidders if the CM submits to

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the Contracting Authority satisfactory documentation that fewer than the required number of qualified prospective Bidders are available.

4.4.5 The Contracting Authority shall review the list the CM submits, and may rely on the CM's representations to verify that prospective Bidders meet the prequalification criteria. The Contracting Authority shall complete its review within the period agreed between the Contracting Authority and CM or otherwise with reasonable promptness. The Contracting Authority may eliminate any prospective Bidder it determines is not qualified and notify the CM of the Contracting Authority's determination and the basis for it. The CM shall promptly notify the prospective Bidder in writing of the Contracting Authority's decision to eliminate the prospective Bidder and the basis for the Contracting Authority's determination that the Bidder does not meet the prequalification criteria. The Contracting Authority's determination that the Bidder does not meet the prequalification criteria shall be final.

4.5 Subcontract Bidding Process

4.5.1 The CM shall create a Bid package for each Subcontract and solicit Bids from qualified prospective Bidders identified under **Section 4.4** for that Bid package in accordance with the Project Schedule. Execution of a GMP Amendment concerning the Work for which the CM is soliciting Bids is not a condition precedent to commencement or completion of the Subcontract Bidding Process.

4.5.2 At completion of the Subcontract Bidding Process for each Subcontract and no later than 15 days before the Work is scheduled to begin under that Subcontract, the CM and Contracting Authority will meet to review the Bids of qualified prospective Bidders identified under **Section 4.4** for that Subcontract and determine to which prospective Bidder the CM will award the Subcontract. During the review meeting, the CM shall identify the prospective Bidder to whom the CM proposes to award the Subcontract.

4.5.2.1 Each Bidder to whom the CM proposes to award a Subcontract shall to the CM's reasonable satisfaction **(1)** be qualified to perform the subcontracted portion of the Work and **(2)** have submitted a Bid, which conforms to the requirements of the Contract Documents.

- **.1** For the purpose of evaluating and reconciling the Bids, the CM may conduct scope-review meetings with Bidders that are usual and customary within the Bidders' trade. Bids that have been reconciled with other Bids for the same scope of Work through that review process will be considered in conformance with the Contract Documents.
- **.2** The CM is not required to propose to award the Subcontract to the Bidder that submitted the lowest Bid. Subject to **Section 4.7**, the CM may also propose to self-perform the Work in a Bid package even if the CM did not submit the lowest Bid for that Work.

4.5.2.2 If the Contracting Authority does not reject the CM-proposed Bidder, the CM shall enter into the Subcontract with the selected Bidder.

- **.1** All Subcontracts shall be on the **State of Ohio Subcontract Form** prescribed by OAC Section 153:1-03-02.
- **.2** No less than 10 days before Work is to be performed by the Subcontractor, or within a shorter period as mutually agreed by the CM and Contracting Authority, the CM shall submit to the A/E a **Subcontractor and Material Supplier Declaration** form through which the CM identifies the Subcontractor along with a complete copy of the executed Subcontract between the CM and Subcontractor. After receiving the form and Subcontract, the A/E shall verify that they are complete and deliver them to the Contracting Authority and Owner. If the A/E finds the form and Subcontract are incomplete, the A/E shall return them to the CM and identify the incomplete information.
- **.3** Execution of a GMP Amendment concerning the Work to be performed by the Subcontractor is a condition precedent to the CM entering into the Subcontract with that Subcontractor.
- **.4** If the Project is administered using the State's web-based project management software, the CM shall identify its Subcontractors through the "Subcontractor Supplier Declaration" business process.

4.5.2.3 If the Contracting Authority rejects the CM-proposed Bidder, the CM shall propose a replacement Bidder, which shall be evaluated as described above.

- **.1** If the majority of the Work included in the Bid package that the CM proposed to award to the rejected Bidder is covered by a GMP Amendment before the Contracting Authority rejects the CM-proposed Bidder, and the rejected Bidder was reasonably capable of performing the Work included in that Bid package, the CM may request an increase of the Contract Sum by giving written notice under **Section 7.3.2**; provided, however, that the increase shall not be greater than the difference between the Bid of the rejected Bidder and the Bid of the replacement Bidder as the CM presented those Bids as described under **Section 4.5.2**.

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.2 Notwithstanding **Section 4.5.2.3.1**, the CM shall not be entitled to any associated adjustment of the Contract Sum if the Contracting Authority rejected the CM-proposed Bidder because the Bidder was debarred as described under ORC Section 153.02.

.3 Notwithstanding **Section 4.5.2.3.1**, the CM shall not be entitled to any associated adjustment of the Construction Budget or the Contract Sum if the majority of the Work included in the Bid package that the CM proposed to award to the rejected Bidder is not covered by a GMP Amendment before the Contracting Authority rejects the CM-proposed Bidder.

4.6 Evaluation of Lower-Tier Subcontractors

4.6.1 As used in this **Section 4.6**, a "lower-tier Subcontractor" is any Subcontractor not in privity with the CM.

4.6.2 No less than 10 days before Work is to be performed by any lower-tier Subcontractor, or within a shorter period as mutually agreed by the CM and Contracting Authority, the CM shall submit to the A/E a **Subcontractor and Material Supplier Declaration** form through which the CM identifies lower-tier Subcontractors.

4.6.3 The CM's failure to timely submit the information regarding a proposed lower-tier Subcontractor may result in withholding payment in accordance with **Section 9.2.13**.

4.6.4 After receiving the **Subcontractor and Material Supplier Declaration** form, the A/E shall verify that it is complete and deliver it to the Contracting Authority and Owner. If the A/E finds the form incomplete, the A/E shall return it to the CM and identify the incomplete information.

4.6.5 If the Contracting Authority rejects any proposed lower-tier Subcontractor, the CM shall propose a replacement lower-tier Subcontractor with no adjustment of the Contract Sum. The proposed replacement lower-tier Subcontractor will be evaluated as described above.

4.6.6 If the Project is administered using the State's web-based project management software, the CM shall identify its proposed lower-tier Subcontractors through the "Subcontractor Supplier Declaration" business process.

4.7 Self-Performed Work

4.7.1 Neither the CM nor a CM Affiliated Entity shall directly perform with its own employees or other resources any Work on the Project during the Construction Stage except:

4.7.1.1 Work not subject to Bidding as described under **Section 4.1**; and

4.7.1.2 as otherwise provided in this **Section 4.7**.

4.7.2 If the CM or a CM Affiliated Entity intends to Bid on any Work subject to Bidding as described under **Section 4.1**:

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

4.7.2.2 At least 14 days before issuing Bidding Documents for the scope of Work the CM or a CM Affiliated Entity intends to Bid on, the CM shall, in writing, seek the Contracting Authority's permission for the CM or CM Affiliated Entity to Bid on that particular Work.

4.7.3 If the Contracting Authority permits the CM or CM Affiliated Entity to submit a Bid for a particular scope of Work:

4.7.3.1 The CM or CM Affiliated Entity (as applicable) shall meet in all respects the Bidder prequalification criteria approved by the Contracting Authority under **Section 4.3**.

4.7.3.2 The Bidding Documents shall specifically state that the CM or a CM Affiliated Entity may submit a Bid for that Work.

4.7.3.3 The CM shall ensure strict separation of the personnel of the CM or CM Affiliated Entity involved with Bidding on the Work from the personnel of the CM or CM Affiliated Entity otherwise involved in the Project. That separation includes, without limitation, prohibiting any communication (other than communication that is permitted by all Bidders) between those two groups before the Contracting Authority opens the associated Bids.

4.7.3.4 The CM or CM Affiliated Entity (as applicable) will be subject to all requirements applicable to the other Bidders for that Work.

4.7.3.5 The CM or CM Affiliated Entity (as applicable) shall submit its sealed Bid to the Contracting Authority no less than 4 hours before the deadline for submission of Bids to the CM for that scope of Work.

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4.7.4 If the CM or a CM Affiliated Entity submits a Bid as described under **Section 4.7.3** and less than two other Bidders submit Bids for the same Work, the Contracting Authority may require that Work to be rebid.

4.7.5 If the Contracting Authority awards to the CM or CM Affiliated Entity the right to self-perform a particular scope of Work by operation of **Sections 4.7.2** and **4.7.3**, the CM may not use CM Contingency for that Work. The foregoing prohibition applies specifically but not exclusively to using CM Contingency to make up for the CM's underestimation of that scope of Work in the CM's detailed estimate of the Cost of the Work described under **Section 5.7.6.5**.

4.7.6 If the Contracting Authority awards to a CM Affiliated Entity the right to self-perform a particular scope of Work by operation of **Sections 4.7.2** and **4.7.3**, the CM Affiliated Entity will be a Subcontractor under the Contract and the CM's Subcontract with the CM Affiliated Entity shall be on the **State of Ohio Subcontract Form** prescribed in OAC 153:1-03-02.

4.8 Design-Assist Firms

4.8.1 Authorization. After receipt of a written request from the CM, the Contracting Authority may authorize the CM to engage a Design-Assist Firm to perform a scope of design-assist services and associated Work agreed upon by the Contracting Authority and CM.

4.8.1.1 The CM may request authorization to engage a Design-Assist Firm at any point in the Project that is appropriate or necessary to facilitate the Project's design and construction.

.1 The CM may not provide design-assist services directly or through a CM Affiliated Entity.

4.8.1.2 The CM shall include in its request **(1)** a detailed description of the scope of the design-assist services and associated Work, which the CM proposes to be performed by a Design-Assist Firm; **(2)** the date that the CM will be required to establish an estimated price for the scope of Work to be performed by the selected Design-Assist Firm; **(3)** the target date that the selected Design-Assist Firm will be required to propose a price to perform the associated Work.

4.8.1.3 If the Contracting Authority authorizes the CM to engage a Design-Assist Firm, the CM shall **(1)** follow the procedures described in this **Section 4.8** and **(2)** identify in the Project Schedule the dates described in **Section 4.8.1.2**.

4.8.1.4 If the CM fails to comply with this **Section 4.8**, the Contracting Authority may revoke the CM's authorization to engage a Design-Assist Firm in addition to other remedies available to the Contracting Authority and Owner under the Contract and Applicable Law.

4.8.1.5 Notwithstanding any provision of this **Section 4.8** to the contrary, at any time before entering into the authorized design-assist contract, the CM may abandon the effort to engage a Design-Assist Firm to perform the scope of design-assist services and associated Work agreed upon by the Contracting Authority and CM.

4.8.2 Design-Assist Firm Selection. The CM shall award authorized design-assist contracts on the basis of the CM's evaluation of a submission to the CM from each potential Design-Assist Firm that **(1)** establishes the qualifications of the potential Design-Assist Firm to provide the associated design-assist services and Work and **(2)** includes a proposal for **(a)** the potential Design-Assist Firm's portion of the CM's Preconstruction Stage Reimbursable Expenses, Preconstruction Stage Personnel Costs, and General Conditions Costs; and **(b)** the potential Design-Assist Firm's Construction Stage overhead and profit mark-ups and Construction Stage contingency. The CM may also **(1)** request from the potential Design-Assist Firms bids or cost estimates for performance of the associated scope of Work during the Construction Stage and **(2)** include consideration of that information in the CM's evaluation of the potential Design-Assist Firms.

4.8.3 Design-Assist Contract Requirements. All design-assist contracts shall:

4.8.3.1 include the **State of Ohio Subcontract Form** prescribed by OAC Section 153:1-03-02;

4.8.3.2 provide that the Design-Assist Firm does not assume any professional design liability by virtue of performing the design-assist services; and

4.8.3.3 provide that **(1)** the CM may terminate the design-assist contract without cause if the CM and Design-Assist Firm fail to reach agreement on the compensation to be paid by the CM to the Design-Assist Firm on account of the Design-Assist Firm's performance of the Work associated with the design-assist contract and **(2)** in the event of that termination, **(a)** the CM shall be obligated to pay the Design-Assist Firm for design-assist services the Design-Assist Firm performed before the date of termination but **(b)** the CM shall not be obligated to pay any compensation to the Design-Assist Firm for design-assist services or the associated Work that the Design-Assist Firm did not perform on account of the termination.

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4.8.4 Additional Design-Assist Requirements. Unless the Contracting Authority agrees otherwise in writing the CM shall not be entitled to any adjustment of the Preconstruction Stage Compensation, Contract Sum, or Contract Times on account of the CM's effort to engage or engagement of a Design-Assist Firm.

4.8.4.1 In order to facilitate compensation of the Design-Assist Firm and establishment of the Contract Sum through the GMP Amendment, every Design-Assist Firm the CM engages shall be considered a Consultant under the Contract during the Preconstruction Stage and a Subcontractor during the Construction Stage.

.1 If the CM and Design-Assist Firm agree that the CM will compensate the Design-Assist Firm for design-assist services the Design-Assist Firm performs during the Preconstruction Stage **(1)** the CM and Design-Assist Firm shall set forth that agreement in their design-assist contract, **(2)** that compensation is a part of and included in the Preconstruction Stage Compensation, and **(3)** the CM will not be entitled to an increase in the Preconstruction Stage Compensation on account of the CM's engagement of the Design-Assist Firm.

.2 The compensation to be paid by the CM to the Design-Assist Firm on account of the Design-Assist Firm's performance of Work during the Construction Stage shall be included in the Contract Sum.

4.8.4.2 No less than 10 days before Work is to be performed by a Design-Assist Firm during the Preconstruction Stage, or within a shorter period as mutually agreed by the CM and Contracting Authority, the CM shall submit to the A/E a **Subcontractor and Material Supplier Declaration** form through which the CM identifies the Design-Assist Firm as a Subcontractor. After receiving the form, the A/E shall verify that it is complete and deliver it to the Contracting Authority and Owner. If the A/E finds the form incomplete, the A/E shall return it to the CM and identify the incomplete information.

.1 If the Project is administered using the State's web-based project management software, the CM shall identify its Design-Assist Firms through the "Subcontractor Supplier Declaration" business process.

4.8.4.3 No less than 10 days before Work is to be performed by a Design-Assist Firm during the Construction Stage, or within a shorter period as mutually agreed by the CM and Contracting Authority, the CM shall submit to the Contracting Authority and A/E a detailed estimate of the Work to be performed by the Design-Assist Firm and a complete copy of the executed Subcontract between the CM and Design-Assist Firm. After receiving the estimate and Subcontract, the A/E shall verify that they are complete and deliver them to the Contracting Authority. If the A/E finds the estimate and Subcontract incomplete, the A/E shall return them to the CM and identify the incomplete information.

.1 Execution of a GMP Amendment concerning the Work to be performed by a Design-Assist Firm in the Construction Stage is a condition precedent to the CM incurring an obligation to pay the Design-Assist Firm on account of the Design-Assist Firm's performance of that Work in the Construction Stage.

4.9 Replacement of Subcontractors and Design-Assist Firms

4.9.1 The CM shall not replace any Subcontractor after execution of the Subcontract without the prior written approval of the Contracting Authority.

4.9.2 The CM shall not replace any Design-Assist Firm after execution of the design-assist contract without the prior written approval of the Contracting Authority.

4.10 CM's Responsibility

4.10.1 The CM is fully responsible for all acts and omissions of its Subcontractors and is responsible for scheduling and coordinating the Work of its Subcontractors.

4.10.1.1 The CM is fully responsible for any delay, interference, disruption, or hindrance attributable to its Subcontractors.

4.10.1.2 The CM shall require that each of its Subcontractors have a competent supervisor at the Site whenever the Subcontractor is performing Work.

4.10.1.3 The CM shall bind its Subcontractors to the terms of the Contract Documents, so far as applicable to the Work of the Subcontractor, and shall not agree to any provision, which seeks to bind the State to terms inconsistent with or at variance from the Contract Documents.

4.10.2 The CM will not be relieved of its full responsibility for Subcontractors and their performance of the Work by **(1)** the participation of the Owner, Contracting Authority, and A/E in the processes described under this **Article 4** or other related provisions of the Contract Documents or **(2)** the Contracting Authority's rejection of a Bidder or failure to reject a Bidder under **Section 4.4.5**.

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4.11 Contingent Assignment of Subcontracts

4.11.1 The CM hereby assigns its agreement with each Subcontractor to the Contracting Authority provided that the assignment is effective only after termination of the Contract by the Contracting Authority and only for those agreements that the Contracting Authority accepts by notifying the CM and applicable Subcontractor in writing. The Contracting Authority may re-assign accepted agreements.

4.12 Prompt Payment

4.12.1 The CM shall make payments to Subcontractors in accordance with Applicable Law, including ORC Section 4113.61 that include, without limitation, the requirements described under this **Section 4.12**.

4.12.1.1 If a Subcontractor requests payment in time to allow the CM to include the request in its CM Payment Request, the CM shall pay within 10 days after receipt of payment from the State:

.1 To a Subcontractor other than a Material Supplier, an amount equal to the percent of completion allowed by the Contracting Authority for the Subcontractor's Work.

.2 To a Material Supplier, an amount equal to all or that portion of the CM Payment Request that represents the materials furnished by the Material Supplier.

4.12.2 The CM may reduce the amount to be paid to a Subcontractor pursuant to **Section 4.12.1** at a rate equal to the percentage retained from the CM and may withhold amounts necessary to **(1)** resolve disputed liens or claims involving the Work of the Subcontractor or **(2)** account for the failure of the Subcontractor to perform its obligations under its agreement with the CM.

4.12.2.1 Labor Payments.

.1 Partial payments to the Subcontractor for labor performed under either a Unit Price or lump sum Subcontract shall be made at the rate of 92 percent of the amount invoiced through the Subcontractor's request for payment that shows the Work of the Subcontractor is 50 percent complete.

.2 After the Work of the Subcontractor is 50 percent complete, as evidenced by payments of at least 50 percent of the total amount due under the Subcontract, no additional funds shall be retained from payments for labor.

4.12.2.2 Material Payments.

.1 The CM shall pay the Subcontractor at the rate of 100 percent of the scheduled value for materials incorporated into the Project.

.2 The CM shall pay the Subcontractor at the rate of 92 percent of the invoice cost, not to exceed the scheduled value in a Unit Price or lump sum Subcontract, for materials delivered to the Site, or other off-site storage location approved by the A/E, provided the Subcontractor provides the information required by **Sections 9.2.11.2.1** and **9.2.11.2.2** with its request for payment.

4.12.3 If the CM fails to comply with this **Section 4.12**, the CM shall pay to the applicable Subcontractor 18 percent interest, compounded annually, on any unpaid amount beginning on the 11th day after receipt of payment from the State.

4.12.4 In order to establish lien rights, Subcontractors shall comply with Applicable Law, including ORC Sections 1311.26, 1311.261, and 1311.29.

4.12.5 If the Contracting Authority receives a Claim Affidavit from a Subcontractor, it shall proceed as required by Applicable Law, including ORC Sections 153.63 and 1311.31.

4.12.6 Laborers, Subcontractors, and Material Suppliers may secure payment rights in accordance with Applicable Law, including ORC Section 153.56.

ARTICLE 5 - PRECONSTRUCTION SERVICES

5.1 General Requirements

5.1.1 Commencement.

5.1.1.1 The CM's Preconstruction Services will begin on the date set forth in a notice that the Contracting Authority will issue to the CM ("Notice to Commence Services").

5.1.2 Scope of Preconstruction Services.

5.1.2.1 The CM shall perform the Preconstruction Services, which consist of the activities and stages set forth in **Sections 5.2** through **5.7**, inclusive, and include any services necessary to comply with the ORC Section 3379.10

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Percent for Arts Program. The CM shall provide its services according to a Staffing Plan approved by the Contracting Authority.

5.1.3 Consultation.

5.1.3.1 The CM and A/E shall jointly schedule and attend regular meetings with the Contracting Authority and Owner. The CM shall consult with the Contracting Authority, Owner, and A/E regarding Site use and improvements and the selection of materials, building systems, and equipment. The CM shall provide recommendations to the Contracting Authority, Owner, and A/E on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, budgets and possible economies.

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

5.1.4 Project Schedule.

5.1.4.1 The CM shall provide and maintain a Project Schedule with a logical sequence of events coordinated with the A/E's Design Schedule; reasonable periods of time for the Contracting Authority, Owner, and A/E to review the CM's deliverables and for the CM to revise and resubmit those deliverables; and sufficient detail to properly anticipate and monitor progress on the Project.

5.1.5 Long-Lead-Time Items.

5.1.5.1 The CM shall recommend to the Contracting Authority, Owner, and A/E a schedule for procurement of long-lead-time items that will constitute part of the Work as required to meet the Project Schedule.

5.1.5.2 The Owner may procure long-lead-time items itself before the Contract Sum is established. In that case, after the Contract Sum is established, the Owner will assign the contracts for the long-lead-time items to the CM, who shall accept responsibility for those items as if procured by the CM. The CM shall expedite the delivery of long-lead-time items.

5.2 Organizational Meeting

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

5.2.2 During the organizational meeting, the attendees will:

5.2.2.1 review the responsibilities of each of the Contracting Authority and Owner's key personnel involved in the Project;

5.2.2.2 review the scope of the CM's services and the responsibilities of each of the CM's key personnel involved in the Project;

5.2.2.3 review the scope of the A/E's services and the responsibilities of each of the A/E's key personnel involved in the Project;

5.2.2.4 review and establish lines of communication between the Contracting Authority, Owner, A/E, and CM;

5.2.2.5 review then-available programming and other documents that reflect the current status of the Project's design;

5.2.2.6 review the various periods of time established in **Article 4** and **Article 5** to determine whether any adjustments are needed in view of the Project's scope, schedule, and budget requirements while providing reasonable periods for the Contracting Authority, Owner, and A/E if applicable, to review the CM's deliverables and for the CM to revise and resubmit those deliverables;

.1 If the parties agree to adjust the periods as described under **Section 5.2.2.6**, they will promptly enter into an associated Modification.

5.2.2.7 review and reach agreement on the number and timing of GMP Amendments and GMP Proposal and Amendment processes for the Project in view of the Project's scope, schedule, and budget requirements;

.1 Unless the parties agree otherwise, there will be one GMP Amendment and one GMP Proposal and Amendment process, which will commence on the date that marks expiration of 50 percent of the time allotted in the Project Schedule for the Construction Documents Stage.

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.2 If the parties agree to adjust the number and timing of the GMP Amendments and GMP Proposal and Amendment processes to other than as described under **Section 5.2.2.7.1**, they will promptly enter into an associated Modification. Through that Modification, the parties shall **(1)** memorialize their agreement regarding the number and timing of the GMP Amendments and GMP Proposal and Amendment processes and **(2)** identify the anticipated scope of Work subject to each GMP Amendment. Through that Modification, the parties may also agree to **(1)** adjust the documentation requirements under **Section 5.7.6** as it applies to each GMP Amendment and **(2)** adjust the periods under **Section 5.7** as it applies to the GMP Proposal and Amendment process for each GMP Amendment.

5.2.2.8 review and reach agreement on the scope and timing of the A/E's deliverables and other information the CM needs to properly prepare its proposed GMP Amendment(s) and to solicit Bids for the Work; and

5.2.2.9 review and reach agreement on timing and sequencing requirements for the A/E and CM's deliverables and related review and revision periods.

5.2.3 If the CM has not submitted a proposed Project Schedule to the Contracting Authority, Owner, and A/E before the organizational meeting or if the organizational meeting resulted in changes to a previously submitted Project Schedule, within 5 days after the organizational meeting is adjourned the CM shall submit a proposed or revised Project Schedule to the Contracting Authority, Owner, and A/E.

5.2.3.1 The Contracting Authority, Owner, CM, and A/E will promptly thereafter consult with one another as necessary to reach agreement on the initial Project Schedule, which shall be used as the basis for moving forward with the Project subject to revision as described elsewhere in the Contract.

5.2.4 Within 5 days after the organizational meeting is adjourned, the A/E will prepare and distribute the meeting's minutes.

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

5.3 Program Verification Stage

5.3.1 Commencement. Unless the Contracting Authority directs otherwise in writing, the Program Verification Stage will begin upon completion of the activities described under **Section 5.2**.

5.3.2 In addition to performing those services required to comply with **Sections 5.3.3** and **5.3.4**, during the Program Verification Stage, the CM shall:

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

5.3.2.2 if a GMP Amendment has been entered into, notify the Contracting Authority, Owner, and A/E in writing of any revision of the Project that would cause a change in the established Contract Sum or Contract Times;

.1 If the Contracting Authority and Owner approve of any such revision, the parties shall promptly enter into an associated Modification.

5.3.2.3 meet with the Contracting Authority, Owner, and A/E at intervals acceptable to the Contracting Authority and Owner, to review drawings and other documents that depict the current status of the Program Verification Stage of the Project;

5.3.2.4 review the preliminary building needs, design, schedule, budget, and other information furnished by the Contracting Authority or Owner and arrive at a mutual understanding of the Project's requirements with the Contracting Authority, Owner, and A/E;

5.3.2.5 review and provide comments to the A/E's investigation of existing conditions and verification of the accuracy of Owner-provided information about existing conditions, as appropriate;

5.3.2.6 assist the A/E in the evaluation of the Project's impact on adjacent properties and rights-of-way; and

5.3.2.7 evaluate Site use and improvements, selection of materials, building systems and equipment, constructability, logistics, availability and suitability of labor and materials, time requirements, costs of alternative designs or materials, and possible economies.

5.3.3 Review of Provisional Program Documents.

5.3.3.1 The A/E will submit the provisional Program Documents to the Contracting Authority, Owner, and CM on or before the date identified in the Project Schedule for that submission.

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5.3.3.2 Within 10 days after receiving the provisional Program Documents, the CM shall perform a detailed review of the provisional Program Documents. At the completion of that review, the CM shall provide a written "Opinion of Document Characteristics" to the Contracting Authority, and send a copy of the Opinion to the A/E.

5.3.3.3 Through that Opinion, the CM shall document to the Contracting Authority the CM's opinion of the provisional Program Documents in terms of what the CM would reasonably expect to see in program documents on a similar project. The Opinion shall individually address each of the following topics at a minimum:

.1 clarity of the documents;

.2 completeness of the documents;

.3 coordination of the documents;

.4 constructability of the Work described in the documents to the extent appropriate during the Program Verification Stage;

.5 whether the Work described in the documents appears consistent with the Project Schedule;

.6 whether the Work described in the documents appears consistent with the Construction Budget; and

.7 if a GMP Amendment has been entered into, whether the Work described in the documents is consistent with the GMP Documents and the established Contract Sum and Contract Times.

5.3.3.4 If a GMP Amendment has been entered into, the CM shall include with the Opinion a detailed description of any change in the scope of the Work described in the provisional Program Documents as compared to the scope of the Work described in the GMP Documents and an estimate of the cost and time impact of each change.

5.3.3.5 If it is the CM's opinion that the provisional Program Documents do not reflect what the CM would reasonably expect to see in program documents on a similar project:

.1 The CM shall also describe and identify in writing specific examples of the deficiencies.

.2 The CM shall immediately meet to discuss the Opinion with the Contracting Authority, Owner, and A/E. The Contracting Authority and the Owner will thereafter determine an appropriate course of action, which may include the A/E's revision and resubmission of the provisional Program Documents and the CM's re-evaluation of them.

.3 The CM shall not proceed with its services under **Section 5.3.4** until further notice from the Contracting Authority.

5.3.3.6 If the Project is administered using the State's web-based project management software, the CM shall receive the provisional Program Documents and issue its Opinion of Document Characteristics to the Contracting Authority, Owner, and A/E through the "Program of Requirements" business process.

5.3.4 CM's Program Verification Stage Submission.

5.3.4.1 Within 14 days after the completion of the activities described under **Section 5.3.3** (except as provided under **Section 5.3.3.5**), and on the basis of the provisional Program Documents and other Contracting Authority-provided information, the CM shall prepare the following documents and submit them to the Contracting Authority, Owner, and A/E:

.1 a preliminary Construction Progress Schedule ("Program Schedule") for the Project in accordance with the requirements described under **Section 6.5** to the extent appropriate during program verification; and

.2 an updated Staffing Plan.

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

.1 For any Work that is subject to an executed GMP Amendment at the time of the CM's Program Verification Stage Submission, the CM shall include associated line items for the CM's Fee and CM's Contingency.

.2 For any Work that is not subject to an executed GMP Amendment at the time of the CM's Program Verification Stage Submission, the CM shall include reasonable contingencies for design development/refinement and price escalation, and line items for the estimated CM's Fee and CM's Contingency.

.3 If the Program Estimate exceeds the Construction Budget ~~by more than 5 percent of the Budget~~ or varies from the A/E's program estimate of the Construction Cost by more than 5 percent of that estimate, the Contracting Authority may require the CM to immediately work with the A/E to develop viable proposals to reconcile the estimates with each other and the Construction Budget. The CM will present those proposals as an addendum to its Program Verification Stage Submission.

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5.3.4.3 If the Project is administered using the State's web-based project management software, the CM shall create, approve, and submit the CM's Program Verification Stage Submission to the Contracting Authority, Owner, and A/E through the "Program of Requirements" business process.

5.3.5 Program Documents Review.

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

5.3.5.2 Unless the Contracting Authority agrees otherwise in writing, within 5 business days after the review meeting, the A/E and CM shall revise their respective Program Verification submissions to reflect the adjustments and clarifications agreed upon in the review meeting, and resubmit those documents to each other, the Owner, and Contracting Authority.

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

5.4 Schematic Design Stage

5.4.1 Commencement. Unless the Contracting Authority agrees otherwise in writing, the Schematic Design Stage will begin upon completion of the activities described in **Section 5.3**.

5.4.2 In addition to performing those services required to comply with **Sections 5.4.3** through **5.4.5**, during the Schematic Design Stage, the CM shall:

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

5.4.2.2 if a GMP Amendment has been entered into, notify the Contracting Authority, Owner, and A/E in writing of any revision of the Project that would cause a change in the established Contract Sum or Contract Times;

.1 If the Contracting Authority and Owner approve of any such revision, the parties shall promptly enter into an associated Modification.

5.4.2.3 meet with the Contracting Authority, Owner, and A/E at intervals acceptable to the Contracting Authority and Owner, to review Drawings and other documents that depict the current status of the Schematic Design Stage of the Project;

5.4.2.4 review and provide comments to the A/E's further evaluation or refinement of the Approved Program of Requirements and the A/E's development of the Schematic Design Documents;

5.4.2.5 assist the A/E with identifying and analyzing requirements of Applicable Law;

5.4.2.6 review and provide comments to the A/E's investigation of existing conditions and verification of the accuracy of Owner-provided information about existing conditions, as appropriate;

5.4.2.7 assist the Owner and A/E with filing documents required for the approvals of governmental authorities with jurisdiction over the Project;

5.4.2.8 coordinate the location of new grading, drainage, and Site utilities;

5.4.2.9 update and re-issue the Project Schedule as necessary to keep the Contracting Authority, Owner, and A/E apprised of the schedule's current status;

5.4.2.10 prepare a preliminary analysis of the types and quantities of labor required for the Project;

5.4.2.11 make recommendations to the Contracting Authority, Owner, and A/E for actions designed to minimize adverse effects of labor shortages;

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

5.4.2.13 provide recommendations on constructability, logistics, 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.

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5.4.3 Preliminary Life Cycle Cost Analysis.

5.4.3.1 The A/E will submit the preliminary Life Cycle Cost Analysis to the CM. The CM shall promptly review, comment on, and forward the preliminary Life Cycle Cost Analysis with the CM's comments to the Owner and Contracting Authority.

5.4.4 Review of Provisional Schematic Design Documents.

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

5.4.4.2 Within 10 days after receiving the provisional Schematic Design Documents, the CM shall review the documents in detail. At the completion of that review, the CM shall provide a written "Opinion of Document Characteristics" to the Contracting Authority and Owner, and send a copy of the Opinion to the A/E.

5.4.4.3 Through that Opinion, the CM shall document the CM's opinion of the provisional Schematic Design Documents in terms of what the CM would reasonably expect to see in schematic design documents on a similar project. The Opinion shall individually address each of the following topics at a minimum:

- **.1** clarity of the documents;
- **.2** completeness of the documents;
- **.3** coordination of the documents;
- **.4** constructability of the Work described in the documents to the extent appropriate during schematic design;
- **.5** whether the Work described in the documents appears consistent with the Project Schedule;
- **.6** whether the Work described in the documents appears consistent with the Construction Budget; and
- **.7** if a GMP Amendment has been entered into, whether the Work described in the documents is consistent with the GMP Documents and the established Contract Sum and Contract Times.

5.4.4.4 If a GMP Amendment has been entered into, the CM shall include with the Opinion a detailed description of any change in the scope of the Work described in the provisional Schematic Design Documents as compared to the scope of the Work described in the GMP Documents, and an estimate of the cost and time impact of each change.

5.4.4.5 If it is the CM's opinion that the provisional Schematic Design Documents do not reflect what the CM would reasonably expect to see in schematic design documents on a similar project:

- **.1** The CM shall also describe and identify in writing specific examples of the deficiencies.
- **.2** The CM shall immediately meet to discuss the Opinion with the Contracting Authority, Owner, and A/E. The Contracting Authority and Owner will thereafter determine an appropriate course of action, which may include the A/E's revision and resubmission of the provisional Schematic Design Documents and the CM's re-evaluation of them.
- **.3** The CM shall not proceed with its services under **Section 5.4.5** until further notice from the Owner.

5.4.4.6 If the Project is administered using the State's web-based project management software, the CM shall receive the provisional Schematic Design Documents and issue its Opinion of Document Characteristics to the Contracting Authority, Owner, and A/E through the "Design Review" business process.

5.4.5 CM's Schematic Design Submission.

5.4.5.1 Within 14 days after the completion of the activities described under **Section 5.4.4** (except as provided under **Section 5.4.4.5**), and on the basis of the provisional Schematic Design Documents and other Owner-provided information, the CM shall prepare the following documents and submit them to the Contracting Authority, Owner, and A/E:

- **.1** a preliminary Construction Progress Schedule ("Schematic Design Schedule") for the Project, to the extent appropriate during schematic design, that shall identify preliminary manpower requirements by critical trade;
- **.2** cost evaluations of alternative materials and systems;
- **.3** a schedule analysis of alternative phasing and sequencing;
- **.4** a preliminary Site Logistics Plan indicating how the CM intends to use the Site and illustrating things such as areas to be used for lay down of material and equipment; office and storage trailer locations; vehicular access gates with ingress and egress routes; locations of wheel wash and concrete truck wash-out activities; and offloading and hoisting locations; and
- **.5** an updated Staffing Plan.

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5.4.5.2 If not all of the Work is subject to an executed GMP Amendment at the time of the CM's Schematic Design Stage Submission, the CM shall include an estimate of the Construction Cost ("Schematic Design Estimate") using area, volume or similar conceptual estimating techniques.

.1 For any Work that is subject to an executed GMP Amendment at the time of the CM's Schematic Design Stage Submission, the CM shall include associated line items for the CM's Fee and CM's Contingency.

.2 For any Work that is not subject to an executed GMP Amendment at the time of the CM's Schematic Design Stage Submission, the CM shall include reasonable contingencies for design development/refinement and price escalation, and line items for the estimated CM's Fee and CM's Contingency.

.3 If the Schematic Design Estimate exceeds the Construction Budget ~~by more than 5 percent of the Budget~~ or varies from the A/E's schematic design estimate of the Construction Cost by more than 5 percent of that estimate, the Contracting Authority may require the CM to immediately work with the A/E to develop viable proposals to reconcile the estimates with each other and the Construction Budget. The CM will present those proposals as an addendum to its Schematic Design Stage Submission.

5.4.5.3 If the Project is administered using the State's web-based project management software, the CM shall create, approve, and submit the CM's Schematic Design Stage Submission to the Contracting Authority, Owner, and A/E through the "Design Review" business process.

5.4.6 Schematic Design Documents Review.

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

5.4.6.2 Unless the Contracting Authority agrees otherwise in writing, within 5 business days after the review meeting, the A/E and CM shall revise their respective submissions to reflect the adjustments and clarifications agreed upon in the review meeting, and resubmit those documents to each other, the Owner, and Contracting Authority.

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

5.5 Design Development Stage

5.5.1 Commencement. Unless the Contracting Authority agrees otherwise in writing, the Design Development Stage will begin upon completion of the activities described in **Section 5.4**.

5.5.2 In addition to performing those services required to comply with **Sections 5.5.3** through **5.5.5**, during the Design Development Stage, the CM shall:

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

5.5.2.2 if a GMP Amendment has been entered into, notify the Contracting Authority, Owner, and A/E in writing of any revision of the Project that would cause a change in the established Contract Sum or Contract Times;

.1 If the Contracting Authority and Owner approve of any such revision, the parties shall promptly enter into an associated Modification.

5.5.2.3 meet with the Contracting Authority, Owner, and A/E at intervals acceptable to the Contracting Authority and Owner, to review Drawings and other documents that depict the current status of the Design Development Stage of the Project;

5.5.2.4 schedule any necessary meetings with the A/E and Contracting Authority and provide recommendations and information for discussion at such meetings regarding the assignment of responsibilities for refuse removal and for safety precautions and programs; temporary Project facilities and utilities, weather protection, fire protection and scaffolding; and equipment, materials and services for common use of Subcontractors, if any;

5.5.2.5 develop the Construction Progress Schedule in increasing detail taking into account A/E-provided information and related requirements and the Owner's occupancy requirements;

5.5.2.6 update and re-issue the Project Schedule as necessary to keep the Contracting Authority, Owner, and A/E apprised of the schedule's current status;

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5.5.2.7 refine the analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical portions of the Work;

5.5.2.8 make recommendations to the Contracting Authority, Owner, and A/E for actions designed to minimize adverse effects of labor shortages;

5.5.2.9 assist the Owner and A/E with filing documents required for the approvals of governmental authorities with jurisdiction over the Project; and

5.5.2.10 provide recommendations on value engineering, constructability, logistics, site use and improvements, availability and suitability of materials, equipment, labor and systems, long-lead items, safety and security plans, quality control, time requirements for construction, and factors related to the cost of the Project including costs of alternative designs or materials, preliminary budgets, and possible economies of scale.

5.5.3 Life Cycle Cost Analysis.

5.5.3.1 The A/E will submit the revised Life Cycle Cost Analysis to the CM. The CM shall promptly review, comment on, and forward the revised Life Cycle Cost Analysis with the CM's comments to the Owner and Contracting Authority.

5.5.4 Review of Provisional Design Development Documents.

5.5.4.1 The A/E shall submit the provisional Design Development documents to the Contracting Authority, Owner, and CM on or before the date identified in the Project Schedule for that submission.

5.5.4.2 Within 10 days after receiving the provisional Design Development Documents, the CM shall review the documents in detail. At the completion of that review, the CM shall provide a written "Opinion of Document Characteristics" to the Contracting Authority and Owner, and send a copy of the Opinion to the A/E.

5.5.4.3 Through that Opinion, the CM shall document the CM's opinion of the provisional Design Development Documents in terms of what the CM would reasonably expect to see in design development documents on a similar project. The Opinion shall individually address each of the following topics at a minimum:

- **.1** clarity of the documents;
- **.2** completeness of the documents;
- **.3** coordination of the documents;
- **.4** constructability of the Work described in the documents;
- **.5** whether the Work described in the documents appears consistent with the Project Schedule;
- **.6** whether the Work described in the documents appears consistent with the Construction Budget; and
- **.7** if a GMP Amendment has been entered into, whether the Work described in the documents is consistent with the GMP Documents and the established Contract Sum and Contract Times.

5.5.4.4 If a GMP Amendment has been entered into, the CM shall include with the Opinion a detailed description of any change in the scope of the Work described in the provisional Design Development Documents as compared to the scope of the Work described in the GMP Documents, and an estimate of the cost and time impact of each change.

5.5.4.5 If it is the CM's opinion that the provisional Design Development Documents do not reflect what the CM would reasonably expect to see in design development documents on a similar project:

- **.1** The CM shall also describe and identify in writing specific examples of the deficiencies.
- **.2** The CM shall immediately meet to discuss the Opinion with the Contracting Authority, Owner, and A/E. The Contracting Authority and Owner will thereafter determine an appropriate course of action, which may include the A/E's revision and resubmission of the documents and the CM's re-evaluation of them.
- **.3** The CM shall not proceed with its services under **Section 5.5.5** until further notice from the Owner.

5.5.4.6 If the Project is administered using the State's web-based project management software, the CM shall receive the provisional Design Development Documents and issue its Opinion of Document Characteristics to the Contracting Authority, Owner, and A/E through the "Design Review" business process.

5.5.5 CM's Design Development Submission.

5.5.5.1 Within 14 days after the completion of the activities described under **Section 5.5.4** (except as provided under **Section 5.5.4.5**), and on the basis of the provisional Design Development Documents and other Owner-provided information, the CM shall prepare the following documents and submit them to the Contracting Authority, Owner, and A/E:

- **.1** an updated Project Schedule;

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.2 a written description of all proposed or previously agreed upon Alternates (if any);

.3 a written description of all proposed or previously agreed upon Allowances (if any);

.4 a developed Construction Progress Schedule ("Design Development Schedule") for the entire Project;

.5 a cash-flow forecast for the Project;

.6 a refined Site Logistics Plan; and

.7 an updated Staffing Plan.

5.5.5.2 If not all of the Work is subject to an executed GMP Amendment at the time of the CM's Design Development Stage Submission, the CM shall include in its Design Development Stage Submission a detailed, unit-cost estimate of the Construction Cost ("Design Development Estimate").

.1 For any Work that is subject to an executed GMP Amendment at the time of the CM's Design Development Stage Submission, the CM shall include associated line items for the CM's Fee and CM's Contingency.

.2 For any Work that is not subject to an executed GMP Amendment at the time of the CM's Design Development Stage Submission, the CM shall include reasonable contingencies for design development/refinement and price escalation, and line items for the estimated CM's Fee and CM's Contingency.

.3 If the Design Development Estimate exceeds the Construction Budget ~~by more than 5 percent of the Budget~~ or varies from the A/E's design development estimate of the Construction Cost by more than 5 percent of that estimate, the Contracting Authority may require the CM to immediately work with the A/E to develop viable proposals to reconcile the estimates with each other and the Construction Budget. The CM will present those proposals as an addendum to its Design Development Stage Submission.

5.5.5.3 If the Project is administered using the State's web-based project management software, the CM shall create, approve, and submit the CM's Design Development Stage Submission to the Contracting Authority, Owner, and A/E through the "Design Review" business process.

5.5.6 Design Development Documents Review.

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

5.5.6.2 Unless the Contracting Authority agrees otherwise in writing, within 5 business days after the review meeting, the A/E and CM shall revise their respective Design Development submissions to reflect the adjustments and clarifications agreed upon in the review meeting, and resubmit those documents to each other, the Owner, and Contracting Authority.

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

5.6 Construction Documents Stage

5.6.1 Commencement. Unless the Contracting Authority agrees otherwise in writing, the Construction Documents Stage will begin upon completion of the activities described in **Section 5.5**.

5.6.2 In addition to performing those services required to comply with **Sections 5.6.3** through **5.6.5**, during the Construction Documents Stage, the CM shall:

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

5.6.2.2 if a GMP Amendment has been entered into, notify the Contracting Authority, Owner, and A/E in writing of any revision of the Project that would cause a change in the established Contract Sum or Contract Times;

.1 If the Contracting Authority and Owner approve of any such revision, the parties shall promptly execute an associated Modification.

5.6.2.3 meet with the Contracting Authority, Owner, and A/E at intervals acceptable to the Contracting Authority and Owner, to review Drawings and other documents that depict the current status of the Construction Documents Stage of the Project;

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5.6.2.4 update and re-issue the Project Schedule and Construction Progress Schedule as necessary to keep the Contracting Authority, Owner, and A/E apprised of the schedules' current status;

5.6.2.5 develop, prepare, and compile all forms and information needed to properly bid and complete the Project including without limitation the "front-end" of the Project Manual;

5.6.2.6 work with the A/E to prepare Division 01 of the Specifications (the CM shall not amend the General Conditions except by Supplementary Conditions approved as provided under **Section 12.4.1**);

5.6.2.7 ensure that the scopes of Work of the various Subcontractors is coordinated, all requirements for the Project have been assigned to the appropriate subcontract, the likelihood of jurisdictional disputes between trades has been minimized, and proper coordination has been provided for Phased construction (if any);

5.6.2.8 refine the analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical portions of the Work;

5.6.2.9 make recommendations to the Contracting Authority, Owner, and A/E for actions designed to minimize adverse effects of labor shortages;

5.6.2.10 assist the Owner and A/E with filing documents required for the approvals of governmental authorities with jurisdiction over the Project; and

5.6.2.11 provide recommendations on value engineering, constructability, logistics, site use and improvements, availability and suitability of materials, equipment, labor and systems, long-lead items, safety and security plans, quality control, time requirements for construction, and factors related to the cost of the Project including costs of alternative designs or materials, preliminary budgets, and possible economies of scale.

5.6.3 During the A/E's completion of the Construction Documents:

5.6.3.1 The CM shall verify that the Construction Documents include requirements and assignment of responsibilities for safety precautions and programs and for temporary facilities for common use of the CM and Subcontractors.

5.6.3.2 The CM shall review the Construction Documents for each Bid package to minimize areas of conflict, gaps, and overlaps in the Work to be performed by various Subcontractors.

5.6.3.3 In conjunction with the A/E, the CM shall identify areas that the CM recognizes as having incomplete documentation and uncoordinated multi-discipline Work.

5.6.3.4 With the prior written consent of the Owner, which may have been given in a GMP Amendment, the CM shall assist the A/E to develop and include Alternates in the Construction Documents.

5.6.4 Review of Provisional Construction Documents.

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

5.6.4.2 Within 10 days after receiving the provisional Construction Documents, the CM shall review the documents in detail. At the completion of that review, the CM shall provide a written "Opinion of Document Characteristics" to the Contracting Authority and Owner, and send a copy of the Opinion to the A/E.

5.6.4.3 Through that Opinion, the CM shall document the CM's opinion of the provisional Construction Documents in terms of what the CM would reasonably expect to see in construction documents on a similar project. The Opinion shall individually address each of the following topics at a minimum:

- **.1** clarity of the documents;
- **.2** completeness of the documents;
- **.3** coordination of the documents;
- **.4** constructability of the Work described in the documents;
- **.5** whether the Work described in the documents appears consistent with the Project Schedule;
- **.6** whether the Work described in the documents appears consistent with the Construction Budget; and
- **.7** if a GMP Amendment has been entered into, whether the Work described in the documents is consistent with the GMP Documents and the established Contract Sum and Contract Times.

5.6.4.4 If a GMP Amendment has been entered into, the CM shall include with the Opinion a detailed description of any change in the scope of the Work described in the Construction Documents as compared to the scope of the Work described in the GMP Documents, and an estimate of the cost and time impact of each change.

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5.6.4.5 If it is the CM's opinion that the provisional Construction Documents do not reflect what the CM would reasonably expect to see in construction documents on a similar project:

.1 The CM shall also describe and identify in writing specific examples of the deficiencies.

.2 The CM shall immediately meet to discuss the Opinion with the Contracting Authority, Owner, and A/E. The Contracting Authority and Owner will thereafter determine an appropriate course of action, which may include the A/E's revision and resubmission of the provisional Construction Documents and the CM's re-evaluation of them.

.3 The CM shall not proceed with its services under **Section 5.6.5** until further notice from the Owner.

5.6.4.6 If the Project is administered using the State's web-based project management software, the CM shall receive the provisional Construction Documents and issue its Opinion of Document Characteristics to the Contracting Authority, Owner, and A/E through the "Design Review" business process.

5.6.5 CM's Construction Documents Submission.

5.6.5.1 Within 14 days after the completion of the activities described under **Section 5.6.4** (except as provided under **Section 5.6.4.5**), and on the basis of the provisional Construction Documents and other Owner-provided information, the CM shall prepare the following documents and submit them to the Contracting Authority, Owner, and A/E:

.1 an updated Staffing Plan;

.2 an updated Project Schedule;

.3 a fully developed Construction Progress Schedule;

.4 a fully developed submittal schedule;

.5 a revised cash-flow forecast for the Project; and

.6 a fully developed Site Logistics Plan.

5.6.5.2 If all of the Work is not subject to an executed GMP Amendment at the time of the CM's Construction Documents Stage Submission, the CM shall include a detailed, unit cost estimate of the Construction Cost ("Construction Documents Estimate").

.1 For any Work that is subject to an executed GMP Amendment at that time, the CM shall include associated line items for the CM's Fee and CM's Contingency.

.2 For any Work that is not subject to an executed GMP Amendment at that time, the CM shall include reasonable contingencies for price escalation, and line items for the estimated CM's Fee and CM's Contingency.

.3 If the Construction Documents Estimate exceeds the Construction Budget ~~by more than 5 percent of the Budget~~ or varies from the A/E's construction documents estimate of the Construction Cost by more than 5 percent of that estimate, the Contracting Authority may require the CM to immediately work with the A/E to develop viable proposals to reconcile the estimates with each other and the Construction Budget. The CM will present those proposals as an addendum to its Construction Documents Stage Submission.

5.6.5.3 If the Project is administered using the State's web-based project management software, the CM shall create, approve, and submit the CM's Construction Documents Stage Submission to the Contracting Authority, Owner, and A/E through the "Design Review" business process.

5.6.6 Construction Documents Review.

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

5.6.6.2 Unless the Contracting Authority agrees otherwise in writing, within 5 business days after the review meeting, the A/E and CM shall revise their respective Construction Documents submissions to reflect the adjustments and clarifications agreed upon in the review meeting, and resubmit those documents to each other, the Owner, and Contracting Authority.

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

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5.7 GMP Proposal and Amendment

5.7.1 Commencement. Unless the Contracting Authority agrees otherwise in writing as provided under **Section 5.2.2.7** or **Section 5.7.1.1**, the GMP Proposal and Amendment process will begin on the date that marks expiration of 50 percent of the time allotted in the Project Schedule for the Construction Documents Stage.

5.7.1.1 This **Section 5.7** and related provisions of this Contract are based upon the assumption that there will be only one GMP Amendment for the Project. The parties recognize, however, that during the Preconstruction Stages, they may decide to use more than one GMP Amendment for the Project in order to accommodate Phased construction. In that case, the parties will execute a GMP Amendment for each Phase with each amendment after the first one supplementing the previous amendment(s).

5.7.2 The purpose of the GMP Amendment is to establish the commercial terms of the Contract rather than to modify its substantive terms.

5.7.3 At the beginning of the GMP Proposal and Amendment process, the Contracting Authority, Owner, A/E, and CM shall agree upon and identify in writing which documents will be the starting point for the Basis Documents. Those Basis Documents may be revised and developed further throughout the GMP Proposal and Amendment process.

5.7.4 If the GMP Proposal and Amendment process takes place before the completion of the Construction Documents Stage for the associated Work:

5.7.4.1 within 14 days after commencement of the GMP Proposal and Amendment process, the A/E shall prepare and submit the Design Intent Statement to the Contracting Authority, Owner, and CM.

5.7.4.2 within 14 days after receiving the Design Intent Statement, the CM shall prepare and submit the GMP Proposal to the Contracting Authority and Owner, and send a copy of it to the A/E; and

5.7.4.3 the CM shall provide in the GMP Proposal for the A/E's further development of the Construction Documents consistent with and reasonably inferable from the Design Intent Statement and then-current design documents, Construction Budget, and Project Schedule.

5.7.5 If the GMP Proposal and Amendment process takes place after the completion of the Construction Documents Stage for the associated Work, within 14 days after the start of the GMP Proposal and Amendment process, the CM shall prepare and submit the GMP Proposal to the Contracting Authority and Owner, and send a copy of it to the A/E.

5.7.6 Unless the Contracting Authority agrees otherwise in writing as described under **Section 5.2.2.7**, the CM shall include the following documents and information in the GMP Proposal:

5.7.6.1 a completed and signed proposed GMP Amendment, through which the CM proposes the Contract Sum, the Cost of the Work, the CM's Fee, the CM's Contingency, and the Contract Times (the required form of the GMP Amendment is attached to the Agreement);

5.7.6.2 a complete list of the Basis Documents which, at a minimum, identifies each of those documents by number, title, and date;

5.7.6.3 a detailed constructability review of the Construction Documents;

5.7.6.4 a complete list of the assumptions and clarifications made by the CM in the preparation of the GMP Proposal;

5.7.6.5 a detailed estimate of the Construction Cost for the Work that is the subject of the GMP Proposal that **(1)** allocates the cost of each of item of trade Work to labor and materials/equipment organized by trade categories and clearly identifies whether the CM proposes that the Work will be performed by the CM, a CM Affiliated Entity, or a Subcontractor; **(2)** provides a detailed breakdown of the CM's Construction Stage Personnel Costs and General Conditions Costs; and **(3)** does not contain a lump-sum estimate for any item other than the CM's Fee and the CM's Contingency;

5.7.6.6 the current Project Schedule, which shall be fully developed for the Work that is the subject of the GMP Proposal;

5.7.6.7 the current Construction Progress Schedule, which shall be fully developed for the Work that is the subject of the GMP Proposal;

5.7.6.8 an updated Staffing Plan including an outline of the qualifications and experience of the CM's proposed project manager and proposed superintendent, including references, unless the CM previously submitted that information and the CM's project manager and superintendent were approved;

5.7.6.9 a detailed scope-of-Work description for each anticipated Subcontract for the Work that is the subject of the GMP Proposal;

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5.7.6.10 a detailed scope-of-Work description for all Work that is the subject of the GMP Proposal and that the CM proposes to perform itself or through a CM Affiliated Entity if the requirements of **Section 4.7** are met (otherwise this scope of Work will be performed by a Subcontractor);

5.7.6.11 a complete list of all Allowances (if any) including a detailed description with related measurement and payment terms;

5.7.6.12 a complete list of all Unit Price Work (if any) including a detailed description with related measurement and payment terms;

5.7.6.13 a complete list of all Alternates (if any) including a detailed description with related measurement and payment terms; and

5.7.6.14 a complete list of all performance incentives/bonuses (if any) applicable to the Work that is the subject of the GMP Proposal including a detailed description of the incentives/bonuses and related measurement/entitlement and payment terms.

5.7.7 By submitting a GMP Proposal or a revised GMP Proposal (as applicable), the CM represents and affirms as to the scope of Work which is the subject of the GMP Proposal that:

5.7.7.1 the GMP Documents are sufficient to provide for completion of the Work, and include all Work, whether or not shown or described, which may be reasonably inferred to be required or useful for the completion of the Work in accordance with Applicable Law and customary standards of the construction industry; and

5.7.7.2 the CM is familiar with Applicable Law and reasonably observable local and Site conditions that may in any manner affect cost, progress, or performance of the Work.

5.7.8 After the Contracting Authority, Owner, and A/E have had a reasonable period to review the GMP Proposal, the Contracting Authority, Owner, A/E, and CM shall meet to discuss the GMP Proposal and agree on necessary clarifications or adjustments of the GMP Proposal. Unless the Contracting Authority agrees otherwise in writing, within 5 business days after the review meeting, the CM shall revise the GMP Proposal to reflect the clarifications and adjustments, and resubmit it to the Contracting Authority, Owner, and A/E. After the Contracting Authority, Owner, and A/E have had a reasonable period to review the revised GMP Proposal, the Contracting Authority, Owner, A/E, and CM shall meet to discuss the revised GMP Proposal and agree on necessary clarifications or adjustments of the GMP Proposal.

5.7.9 If the CM's proposed Contract Sum exceeds the CM's most-recent, pre-GMP Proposal estimate of the Construction Cost of the scope of Work which is the subject of the GMP Proposal (as that estimate was adjusted on account of CM proposals intended to reconcile that estimate with the Construction Budget that the Contracting Authority has accepted), the Contracting Authority may in its complete discretion **(1)** require the CM to re-perform previously completed Preconstruction Services as necessary to reconcile the Contract Sum with that estimate; or **(2)** terminate the Agreement.

5.7.9.1 If the Contracting Authority chooses to proceed under **Section 5.7.9** clause **(1)**, the Contracting Authority may require the CM to re-perform previously completed Preconstruction Services as necessary to reconcile the proposed Contract Sum with the CM's most-recent, pre-GMP Proposal estimate of the Construction Cost of the scope of Work which is the subject of the GMP Proposal (as that estimate was adjusted on account of CM proposals intended to reconcile that estimate with the Construction Budget that the Contracting Authority has accepted).

5.7.10 The period for the Contracting Authority's acceptance of the proposed GMP Amendment will be no less than the later of the date 30 days after the date of the initial review meeting under **Section 5.7.8** or the date 10 days after the date of any subsequent review meeting under **Section 5.7.8**. After expiration of the acceptance period, the GMP Proposal will not be effective without written acceptance by the CM.

5.7.11 Subject to **Section 5.7.11.1**, the GMP Amendment shall become binding and effective upon execution by the Contracting Authority and CM, with concurrence of the Owner. Thereafter, the GMP Amendment, and the Work will be subject to Modifications as provided in the Contract Documents.

5.7.11.1 It is expressly understood by the CM that none of the rights, duties, and obligations described in the GMP Amendment shall be valid and enforceable unless the Director of the Office of Budget and Management first certifies that there is a balance in the Owner's appropriation not already encumbered to pay existing obligations.

5.7.11.2 If the Project is administered using the State's web-based project management software, the Contracting Authority, Owner, and CM shall execute and distribute the GMP Amendment using the "Change Order" (Agency/Higher Education) or "Contract Modification" (School Facilities) business process with the "GMP Amendment" workflow.

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5.7.12 If the GMP Amendment is entered into before the completion of the Construction Documents Stage for the associated Work, as the Drawings and Specifications are developed, the A/E shall inform the CM, Owner, and Contracting Authority 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.

5.7.12.1 Upon prior written approval of the Owner and Contracting Authority of any such changes or adjustments in Project requirements or in construction materials, systems, or equipment, the CM, with the assistance of the A/E, shall revise the detailed estimate of Construction Cost and Project Schedule, as applicable, incorporating such changes or adjustments.

5.7.13 The Contracting Authority may direct the A/E to revise the A/E-prepared GMP Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Amendment. The A/E will deliver the revised A/E-prepared GMP Documents to the Contracting Authority, Owner, and CM for review. When the Contracting Authority, Owner, and CM approve of the revised A/E-prepared GMP Documents, the revised A/E-prepared GMP Documents will be become part of the GMP Amendment.

5.7.14 Before the Contracting Authority accepts the GMP Proposal and issues a Notice to Proceed, the CM shall not incur any cost under the Contract Sum without the Contracting Authority's prior written authorization.

5.8 Building and Trade Permits and Licenses

5.8.1 Plan Approval.

5.8.1.1 The A/E shall secure the required structural, plumbing, HVAC, and electrical plan approvals.

5.8.1.2 The CM shall schedule and attend all intermediate and final inspections required for any permit applicable to the Work. The CM shall schedule the State Fire Marshal or local fire authority for the life safety inspection for occupancy permits. The CM shall give the A/E, Contracting Authority, and Owner reasonable notice of the dates and times arranged for inspections.

.1 The CM shall pay for any reinspections required as a result of the CM's failure to receive approval of its Work.

5.8.2 Trade Permits and Licenses.

5.8.2.1 The CM shall obtain, maintain, and pay for any permit, inspection, or license applicable to the CM's particular trade.

5.8.3 Local Permits.

5.8.3.1 The CM shall secure and pay the fees for any permits, inspections, licenses, capacity charges, or tap fees required by local authorities having jurisdiction over the Project. The CM shall give the A/E, Contracting Authority, and Owner reasonable notice of the date arranged for inspections.

5.8.4 National Pollutant Discharge Elimination System ("NPDES") Storm Water General Permit.

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

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

5.8.4.3 The A/E shall prepare and process the required Notice of Termination ("NOT") prior to Contract Completion.

ARTICLE 6 - CONSTRUCTION AND CLOSEOUT

6.1 Commencement of Work on the Site

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

6.1.2 Until the Contract Sum and Contract Times are established through a GMP Amendment for a particular scope of Work, the Contracting Authority shall not issue a Notice to Proceed for that scope of Work and the CM shall not commence that scope of Work. This **Section 6.1.2** is not intended to preclude the use of multiple GMP Amendments on the Project or to restrict the appropriate use of Change Directives.

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6.2 CM's General Responsibilities

6.2.1 Consistent with the CM Staffing Plan approved by the Contracting Authority, the CM shall maintain a competent, full-time staff at the Site at all times that Work is in preparation or progress on the Project and shall establish and implement on-Site organization and authority so that the Work is accomplished in conformance with the Project Schedule.

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

6.2.3 The CM must afford every Separate Consultant and Separate Contractor proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of their services and work.

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

6.2.5 The intent of **Sections 6.2.2** through **6.2.4** is to benefit the Separate Consultants and Separate Contractors, and to demonstrate that the Separate Consultants and Separate Contractors are intended third-party beneficiaries of the CM's obligations under the Contract.

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

6.2.7 The CM shall not delay the Work on account of any claim, dispute, or action between the CM and a Separate Consultant or Separate Contractor.

6.2.8 The CM shall develop and keep current the Construction Progress Schedule in accordance with **Section 6.5**, and prepare and keep current a schedule of submittals that is coordinated with the Construction Progress Schedule, for the A/E and Contracting Authority's acceptance.

6.2.9 The CM shall monitor the progress of the Work for conformance with the Construction Progress Schedule and shall initiate revisions as required by **Section 6.5.14**.

6.2.10 The CM shall establish the Project's regular working hours, subject to the Owner's approval.

6.2.11 The CM shall coordinate the Work with the activities and responsibilities of the A/E, Owner, and Contracting Authority to complete the Project in accordance with the Contract Documents.

6.2.12 In the event of default of the CM, the CM shall cooperate with the A/E, Owner, Contracting Authority, and CM's Surety to achieve the Substantial Completion date and Contract Completion.

6.2.13 The CM shall remove all snow and ice as may be required for reasonably safe access to the Site including, but not limited to, building entries, driveways, parking lots, and sidewalks.

6.2.14 The CM shall keep a daily log containing a record of weather, number of workers on Site for the CM, identification of equipment, Work accomplished, problems encountered, and other similar relevant data.

6.3 Construction Procedures

6.3.1 The CM is solely responsible for and has control over all construction means, methods, manners, techniques, sequences, and procedures, for safety precautions and programs in connection with the Work, and for coordinating all portions of the Work.

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6.3.1.1 If the Contract Documents give instructions that affect construction means, methods, manners, techniques, sequences, or procedures, the CM shall evaluate the jobsite safety of them and, except as stated below, shall be fully and solely responsible for the jobsite safety of the means, methods, manners, techniques, sequences, or procedures.

6.3.1.2 If the CM determines that the means, methods, manners, techniques, sequences, or procedures specified in the Contract Documents may not be safe, the CM shall give timely written notice to the A/E, Owner, and Contracting Authority. The CM shall not proceed with that portion of the Work without further written instructions from the A/E in accordance with **Article 7**.

6.3.2 The CM shall lay out and coordinate all lines, levels, elevations, and measurements for all of the Work, coordinate and verify existing conditions, and notify the A/E of discrepancies and conflicts before proceeding with installation or excavation.

6.3.3 The CM shall perform all cutting, fitting, or patching required for the Work and shall not endanger the Project by cutting, excavating, or otherwise altering the Project, or any part of it.

6.3.3.1 If the CM requires sleeves for the Work, the CM shall furnish and install the sleeves. The CM is responsible for the exact location and size of all holes and openings required to be formed or built for the Work.

6.3.3.2 The CM's patching shall match and blend with the existing or adjacent surface(s).

6.3.4 The CM shall comply with ORC Sections 3781.25 through 3781.32. In addition, before starting excavation or trenching, the CM shall determine the location of any underground utilities and notify any public authority or utility having jurisdiction over the Project and secure any required approval.

6.3.4.1 The CM shall give notice at least 2 business days in advance of excavation to the owners of underground utilities registered with the Ohio Underground Utility Protection Services ("OUPS" at http://oups.org, phone 811 or 800-362-2764), and the owners of underground utilities shown on the Drawings and Specifications who are not registered members of OUPS. The owner of an underground utility is required within 48-hours' notice to stake, mark, or otherwise designate the location of its utilities in the construction area together with its approximate depth. In the event that any underground utility owner fails to timely perform, the CM shall notify the A/E and contact the owner of the underground utility.

6.3.5 The CM shall install all Work in accordance with the Contract Documents and any installation recommendations of the manufacturer, including required temperature and humidity limits for installation of the various materials.

6.3.6 The CM shall comply with all requirements and conditions of the NPDES general permit, including, but not limited to, implementing and maintaining the sedimentation and erosion control measures specified in the storm water pollution prevention plan prepared by the A/E pursuant to **Section 5.8.4**, which are related to the Work, maintaining records of its construction activities, removing materials no longer required, and taking proper action if there is a reportable quantity spill.

6.4 Construction Supervision

6.4.1 Unless waived by the Contracting Authority in writing, the CM shall provide continuous supervision at the Site by a competent superintendent when any Work is being performed and the CM's superintendent shall not be involved with any work other than the Project.

6.4.2 The CM's project manager and superintendent shall each have the responsibility and authority to act on behalf of the CM. All communications to the CM's project manager or superintendent shall be binding as if given directly to the CM.

6.4.3 For all Subcontracts in excess of $200,000, the CM shall submit an outline of the qualifications and experience of the Subcontractor's proposed project manager and proposed superintendent, including references, to the Contracting Authority no less than 10 days before the Subcontractor is scheduled to begin Work on the Site. For all other Subcontracts, upon receiving a request from the Contracting Authority, the CM shall submit an outline of the qualifications and experience of the Subcontractor's proposed project manager and proposed superintendent, including references, to the Contracting Authority.

6.4.3.1 The Contracting Authority may reject the Subcontractor's proposed project manager or proposed superintendent. If the Contracting Authority does not notify the CM of the rejection within 30 days after receiving the required information, it shall indicate that the Contracting Authority has no objection, but does not affect the Contracting Authority's rights under **Section 6.12.2** or any other provision relative to that project manager or superintendent.

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6.4.3.2 If the Contracting Authority rejects the Subcontractor's proposed project manager or proposed superintendent, the CM shall cause the Subcontractor to replace the project manager or superintendent (as appropriate) with someone acceptable to the Contracting Authority at no additional cost.

6.4.4 The CM and its Subcontractors subject to **Section 6.4.3** shall not replace their respective project managers or superintendents without prior written approval of the Contracting Authority.

6.4.4.1 If the CM or a Subcontractor subject to **Section 6.4.3** proposes to change its project manager or superintendent, the CM shall submit written justification to the Contracting Authority, along with the name and qualifications of the proposed replacement.

6.4.4.2 The procedure provided in **Section 6.4.3** shall be conducted to evaluate the CM or Subcontractor's (as applicable) proposed replacement project manager or superintendent.

6.5 Construction Progress Schedule

6.5.1 The CM shall prepare and maintain a resource-loaded Construction Progress Schedule using the critical-path method of scheduling that provides the following information:

6.5.1.1 a graphic presentation of the sequence of the Work for the Project in the media and format required for the Project;

6.5.1.2 identification of each stage of the Work and any Milestone dates;

6.5.1.3 identification of activities and durations for review and approval of Shop Drawings and other action submittals, fabrication and review of mock-up Work, product review and procurement, fabrication, shop inspection, and delivery, including, but not limited to, lead time, coordination drawing delivery, Substantial Completion, Punch List, Punch List Correction, Project close-out requirements, occupancy requirements, and Contract Completion;

6.5.1.4 identification of disruptions and shutdowns due to other operations;

6.5.1.5 identification of the critical path of the Work;

6.5.1.6 identification of the crew size and total resource hours for each activity in the schedule; and

6.5.1.7 the CM's signature and date indicating approval.

6.5.2 The CM shall develop the Construction Progress Schedule using commercially available, personal computer software acceptable to the Contracting Authority and shall submit all baseline and updated schedules to the A/E in the schedules' native electronic format.

6.5.3 The Construction Progress Schedule shall not exceed the time limits current under the Contract Documents, shall provide for reasonable, efficient, and economical execution of the Project, and shall relate to the entire Project to the extent required by the Contract Documents.

6.5.4 The CM shall use the Construction Progress Schedule to plan, organize, and execute the Project, record and report actual performance and progress, and show how it plans to coordinate and complete all remaining Work within applicable Milestones. The Project participants shall use the Construction Progress Schedule as a tool for scheduling and reporting sequenced progress of the Work. The CM shall provide a clear graphics legend and other data including, but not limited to, Milestone dates, constraints, and other items required by the Project, A/E, Contracting Authority, and Owner. Each submission shall show the Contracting Authority's Project number and Project name, and provide a signature approval and date line for the CM.

6.5.5 The CM shall provide in each schedule: Activity identification and description for each activity broken down to a maximum duration that is appropriate for the activity, responsibility of the CM, CM's resources and crew size for each activity, provide early start, early finish, late start, late finish dates. Each schedule shall show predecessor activities and successor activities for each activity, entry free float, total float, and percentage of completion, and identify the appropriate predecessors and successors for all related activities.

6.5.6 The Construction Progress Schedule shall show all submittal dates, review and approval durations for coordination drawings, Shop Drawings, other action submittals, and mock-up Work.

6.5.7 The CM shall submit the initial and all updates of the Construction Progress Schedule in graphic and tabular form to the A/E. With each monthly schedule update, the CM shall include a list of all changes to the previously approved baseline schedule or monthly updated schedule.

6.5.7.1 After receiving the Construction Progress Schedule, the A/E shall review and submit a copy of the Construction Progress Schedule to the Contracting Authority and Owner for review and acceptance, or reject ~~it,~~ and return it to the CM with recommendations for revisions.

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6.5.7.2 If the Project is administered using the State's web-based project management software, the CM shall create, approve, and submit the initial and all updates of the Construction Progress Schedule to the A/E, Contracting Authority, and Owner through the "Schedule Approvals" business process.

6.5.8 The Construction Progress Schedule shall be managed using early start dates and early finish dates. The CM must exhaust existing float before claiming additional time for a Change Order, or show that it is not possible to use float to cover the time requirements of the Change Order.

6.5.9 The CM's failure to timely submit and properly maintain an approved Construction Progress Schedule may result in withholding payment in accordance with **Section 9.2.13**.

6.5.10 For each progress meeting, the CM shall provide a 2- to 6-week look-ahead schedule, as appropriate for the Project.

6.5.11 On a weekly basis, the CM shall prepare and submit to the A/E a written report describing:

6.5.11.1 activities begun or finished during the preceding week;

6.5.11.2 activities in progress and expected completion;

6.5.11.3 activities to be started or finished in the upcoming 2 weeks, including but not limited to, the CM's workforce size and total resource hours associated with those activities; and

6.5.11.4 other information requested by the A/E.

6.5.12 The A/E shall attach the above information to the minutes of the weekly progress meetings.

6.5.13 The CM shall provide monthly Progress Status Reports to the Contracting Authority, A/E, and Owner, which shall include recommendations for adjusting the Construction Progress Schedule to meet Milestone dates and the Substantial Completion date.

6.5.13.1 If it is apparent to the A/E that the CM may be unable to meet critical path activities, Milestone completion dates, or the Substantial Completion date; the A/E shall direct the CM to submit within 3 days a recovery plan to avoid or minimize delay to the Project.

6.5.13.2 A recovery plan shall include, but is not limited to, adjustments to one or more of the following:

- **.1** workforce
- **.2** hours per shift
- **.3** shifts per workday
- **.4** workdays per week
- **.5** equipment
- **.6** activity logic

6.5.13.3 If the A/E approves the recovery plan, the CM shall prepare a revised Construction Progress Schedule approved in accordance with **Section 6.5.7**. If the A/E does not approve the recovery plan, the CM shall submit within 3 days an alternate recovery plan to the A/E in writing for review and approval in accordance with **Section 6.5.7**.

6.5.14 The CM shall update the Construction Progress Schedule on a monthly basis, or other interval approved by the Contracting Authority, in accordance with **Section 6.5.7**.

6.5.14.1 The updated Construction Progress Schedule approved by the CM shall serve as an affirmation that the CM can meet the requirements of the updated Construction Progress Schedule.

6.5.14.2 The CM shall submit a tabular copy showing all changes to the previously approved schedule including, but not limited to, logic, float, and actual start date of activities. The original or initially approved Construction Progress Schedule and all subsequent Construction Progress Schedules submitted by the CM, and accepted by the A/E, shall serve as an affirmation that the CM agrees to and can meet the applicable requirements of the updated Construction Progress Schedule.

6.5.15 The CM's failure to timely submit an approved, updated Construction Progress Schedule may result in withholding payment in accordance with **Section 9.2.13**.

6.6 Progress Meetings

6.6.1 The A/E shall schedule a weekly progress meeting for the CM and other Persons involved in the Project. The purpose of the progress meeting is to review progress on the Project during the previous week, discuss anticipated progress during the following weeks, review critical operations, and discuss critical problems.

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6.6.2 The CM shall be represented at every progress meeting by a Person authorized with signature authority to make decisions regarding possible modification of the Contract Documents or Construction Progress Schedule.

6.6.2.1 The A/E shall notify the CM and other Persons involved in the Project of the time and place of the progress meeting that shall thereafter be the same day and hour of the week for the duration of the Project, unless the A/E notifies the CM and other Persons involved in the Project of a different day and hour at least 2 days in advance.

6.6.2.2 The CM shall have any of its Subcontractors attend the progress meeting as determined advisable by the CM, or as requested by the A/E.

6.6.3 The A/E shall prepare a written report of each progress meeting and distribute the report to the Contracting Authority, Owner, and CM. The A/E shall not delegate the duty to prepare a written report of any progress meeting.

6.6.3.1 If any Person in attendance objects to anything in a report of a progress meeting, the Person shall notify the A/E, Contracting Authority, and any other affected Person in writing explaining the objection within 5 days.

6.6.3.2 The report of each progress meeting shall reflect any objection made to the report of the previous progress meeting and any response.

6.6.3.3 If the Project is administered using the State's web-based project management software, the CM shall receive written reports of progress meetings from the A/E through the "Meeting Minutes" business process, and issues identified during progress meetings that require resolution by one or more Project participants shall be documented through the "Action Items" business process.

6.7 Project Coordination

6.7.1 The CM shall prepare drawings ("Coordination Drawings") after the CM and appropriate Subcontractors ("Coordination Participants") **(1)** determine the sequence of the Project, **(2)** identify the areas requiring special attention ("Coordination Areas"), and **(3)** determine the need for a coordination drawing for any Coordination Area. The CM shall prepare the Coordination Drawings with Computer-Aided Design ("CAD") or Building Information Modeling ("BIM") software acceptable to the Contracting Authority. The Coordination Drawings shall show the sheet metal work with plan and elevation dimensions, which specifically locate all HVAC ductwork, HVAC equipment, and HVAC piping for each Coordination Area based upon the information, discussion, and resulting consensus of the Coordination Participants during the coordination meetings.

6.7.1.1 After the CM completes the Coordination Drawings, the CM shall forward a copy of the Coordination Drawings to the A/E, Contracting Authority, and Owner.

6.7.1.2 The A/E shall review the Coordination Drawings to determine whether the Coordination Participants achieved the goals listed in **Section 6.7.1**. The A/E shall report any concerns, in writing, to the Coordination Participants within 14 days after receiving the drawings.

6.7.1.3 If the Project is administered using the State's web-based project management software, the CM shall submit the Coordination Drawings to the A/E, and CxA if applicable, through the "Submittals" business process.

6.8 Additional Tests and Inspections

6.8.1 If the A/E or the Contracting Authority determines that any portion of the Work requires special inspection, testing, or approval not otherwise required under the Contract Documents, the A/E shall order such inspection, testing, or approval.

6.8.1.1 If the special inspection, testing, or approval reveals Defective Work, the CM shall pay all associated costs and will not be entitled to any related adjustment of the Contract Times. Those costs may include, but are not limited to:

- **.1** the cost of the special inspection, testing, or approval;
- **.2** the cost of additional special inspections, testing, or approvals to evaluate remedial Work;
- **.3** the cost of correcting the Defective Work; and
- **.4** all related Owner-incurred fees and charges of contractors, engineers, architects, attorneys, and other professionals.

6.8.1.2 The Contracting Authority may deduct the costs described under **Section 6.8.1.1** from payments then or thereafter due the CM. If payments then or thereafter due the CM are not sufficient to cover those amounts, the CM shall immediately pay the amount of the insufficiency to the Owner.

6.8.1.3 If the special inspection, testing, or approval reveals that the Work complies with the Contract Documents and the CM believes that it is entitled to an adjustment of the Contract Sum or Contract Times, or both, on account

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of the special inspection, testing, or approval, the CM may request a Change Order by giving written notice under **Section 7.3.2** within 7 days after the special inspection, testing, or approval.

6.8.2 If the CM is aware of a need for inspection, testing, or approval, or of a need to have any inspection, testing, or approval completed by a particular time to avoid delay, then the CM shall timely communicate such information to the A/E and Contracting Authority.

6.8.3 Except as described under **Section 6.8.1**, the Owner shall pay for any inspection, testing, or approval that did not become a requirement until after the Contract Sum for the associated Work is initially established.

6.8.4 The CM shall coordinate with and give the A/E, Contracting Authority, and Owner reasonable notice of the anticipated dates of all inspections, testing, or approvals.

6.8.5 Within 5 days after completion of an inspection, testing, or approval, the A/E shall provide an original report/certificate of the inspection, testing, or approval to the CM and Contracting Authority with a recommendation for or against acceptance of the results therein.

6.9 Review of Contract Documents and Field Conditions

6.9.1 Before starting each portion of the Work, the CM shall carefully study and compare the various Contract Documents relative to that portion of the Work, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the Site affecting it.

6.9.2 If the CM finds any perceived ambiguity, conflict, error, omission, or discrepancy on or between any of the Contract Documents, or between any of the Contract Documents and any Applicable Law, the CM, before proceeding with the Work, shall promptly submit a Request for Interpretation ("RFI") to the A/E for an interpretation or clarification.

6.9.2.1 Before submitting any RFI to the A/E, the CM shall carefully review the Contract Documents to ensure that the Contract Documents do not answer the RFI.

6.9.2.2 The A/E shall respond to an RFI within 3 days of receiving the RFI.

6.9.2.3 Any interpretation or clarification of the Contract Documents made by any Person other than the A/E, or in any manner other than writing, shall not be binding and the CM shall not rely upon it.

6.9.2.4 If the Project is administered using the State's web-based project management software, the CM shall submit RFIs to the A/E through the "Requests for Interpretation" business process.

6.9.3 If the CM believes that it is entitled to an adjustment of the Contract Sum or Contract Times, or both, on account of clarifications or instructions issued by the A/E in response to a RFI, the CM may request a Change Order by giving written notice under **Section 7.3.2** within 7 days of receiving the A/E's RFI response.

6.9.4 If the CM does not notify the A/E per **Section 6.9.3**, the CM will have accepted the RFI response without an adjustment to the Contract Sum or Contract Times.

6.10 Protection of the Project

6.10.1 The CM shall protect the Work from weather and maintain the Work and all materials, apparatus, and fixtures free from injury or damage until Substantial Completion of the Work.

6.10.1.1 The CM shall at all times cover or protect the Work.

6.10.1.2 The CM, at its expense, shall remove, and replace with new, any Work damaged as a result of the CM's failure to provide coverage or protection.

6.10.1.3 The CM, at its expense, shall repair or replace any adjacent property, including, but not limited to, roads, walks, shrubbery, plants, trees, or turf, damaged during performance of the Work.

6.10.1.4 After the date of Substantial Completion, the Owner is responsible for protecting and maintaining all materials, apparatus, and fixtures for the occupied portion of the Project free from injury or damage.

6.10.2 The CM shall protect the Project and existing or adjacent property from damage at all times and shall erect and maintain necessary barriers, furnish and keep lighted necessary danger signals at night, and take reasonable precautions to prevent injury or damage to individuals or property.

6.10.3 The CM shall not load, or permit any part of the Project to be loaded, in any manner that endangers the Project, or any portion thereof. The CM shall not subject any part of the Project or existing or adjacent property to stress or pressure that endangers the Project or property.

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6.10.4 The CM shall provide all temporary bracing, shoring, and other structural support required for safety of the Project and proper execution of the Work.

6.10.5 Vibration, Noise, and Dust Control.

6.10.5.1 The CM shall provide controls/barriers for vibrations, noise, and dust control in occupied buildings as required by the construction operations.

6.10.5.2 The CM will not be permitted to exhaust or release unfiltered air, dust, construction debris, or other undesirable products into the exterior atmosphere or into occupied areas of the building outside the Site. The Project Manager may limit or stop the Work if the CM does not maintain proper air-quality standards.

6.10.5.3 In certain occupied buildings, tasks might be of such a nature that noise and vibration cannot be tolerated. In such spaces, Work shall be scheduled for other than normal working hours. The CM is cautioned that weekend or overtime work, if required, shall be performed at no additional cost. Permission to work other than standard hours shall be received from the Contracting Authority prior to the occurrence. Weekend and overtime Work shall be reflected in the Construction Progress Schedule.

6.10.5.4 The CM is responsible for vibration control and control of transmission of noise arising from the Work. Principal considerations that shall be given to noise and vibration control are:

.1 Noise control in compliance with Occupational Safety and Health Administration ("OSHA") requirements for the health and safety of building occupants; control shall be for all areas of the facility, including equipment rooms, boiler rooms, and fan rooms.

.2 Vibration control to limit sound produced by construction equipment, and for protection of the equipment existing in a building and the building structure.

.3 Vibration control to provide for maximum usefulness of the facility by keeping levels of vibration within ranges conducive to study and work or other uses for which the facility is designed.

6.11 Materials and Equipment

6.11.1 The CM shall bring to or store at the Site only the materials and equipment required in the Work. If possible, materials and equipment should be installed in their final positions when brought to the Site.

6.11.1.1 The CM shall properly store and protect all materials and equipment it provides to the Project.

6.11.1.2 The CM shall timely remove from the Site any materials or equipment no longer required for the Work.

6.11.2 The CM shall not allow materials or equipment to damage the Project or adjacent property, nor to endanger any individual at or near the Site.

6.11.3 If the CM provides an Acceptable Component, the CM shall be solely responsible for the costs of coordination and modification required.

6.11.4 If the CM provides approved Substitutions that require changes to the Contract Documents, the CM shall be solely responsible for the additional costs incurred as a result, including, but not limited to, changes to the design by the A/E.

6.11.5 The A/E shall consider Requests for Substitutions after the Contract Sum is initially established only when the CM can conclusively demonstrate to the A/E the following conditions:

6.11.5.1 the specified Basis of Design Components, Acceptable Components, or previously-approved Substitutions, through no fault of the CM or a Subcontractor, are not available; or

6.11.5.2 the specified Basis of Design Components, Acceptable Components, or previously-approved Substitutions will not perform as designed or intended.

6.11.6 The CM's incorporation of unapproved Substitutions in the Work shall constitute Defective Work.

6.12 Labor

6.12.1 The CM shall maintain a sufficient workforce and enforce good discipline and order among its employees and the employees of its Subcontractors. The CM shall not permit employment of individuals not skilled in tasks assigned to them.

6.12.2 The CM shall dismiss from the Project any individual employed by the CM or a Subcontractor who the Contracting Authority finds, in its sole discretion, to be incompetent, guilty of misconduct, or detrimental to the Project.

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6.12.3 The CM shall employ all legal efforts to minimize the likelihood or effect of any strike, Work stoppage, or other labor disturbance. Informational pickets shall not justify any Work stoppage.

6.13 Safety Precautions

6.13.1 The CM shall take reasonable precautions to ensure the safety of individuals on the Project.

6.13.1.1 The CM is responsible for designing and implementing its own safety program, including compliance with OSHA regulations. The CM's safety plans, such as fall protection, hazards, communications, competent person, etc., shall meet or exceed the Owner's safety plan (if any).

6.13.2 The CM shall pay any fine or cost incurred because of the CM's violation, or alleged violation, of Applicable Law.

6.13.3 Before starting any Work, the CM shall submit to the Contracting Authority a copy of the CM's site-specific safety plan and safety manuals.

6.13.4 The CM shall not introduce Hazardous Materials to the Project or burn any fires on the Site.

6.13.4.1 The CM shall notify the Project Manager 24 hours before the start of non-routine or non-recurring hot-work. Use of sources of fire, flame or sparks and flammable materials shall be kept to an absolute minimum. At the beginning of the Project, the CM shall inform the Project Manager of the CM's intent to use blowtorches, welding apparatus or similar exposed flame and sparking devices. Similar notice shall be given in regard to the use of flammable liquids, adhesives, and cleaners.

6.13.4.2 The CM shall furnish an appropriate number of fire extinguishers (minimum of 1), which shall be within the immediate areas where work is being done at all times. The extinguisher shall be adequate and suitable for the class of fire likely to be caused by the CM's operations.

6.13.5 Work Stoppage Due to Hazardous Materials.

6.13.5.1 If the CM encounters material the CM reasonably believes to be, or contain, a Hazardous Material that has not been rendered harmless, the CM shall immediately stop Work in the affected area and verbally report the condition to the Contracting Authority and A/E, and within 1 business day deliver written notice of the condition to the Contracting Authority and A/E.

6.13.5.2 The Contracting Authority will promptly determine the necessity of the Owner retaining a qualified environmental consultant to evaluate the suspected Hazardous Material and to issue a related written report. Where appropriate, the Owner will engage a licensed abatement contractor to remove the material or render it harmless as directed.

6.13.5.3 The CM shall resume Work in the affected area upon written notice from the A/E that **(1)** the suspect material was evaluated and found not to be or contain a Hazardous Material, or **(2)** the suspect material has been removed or rendered harmless.

6.13.5.4 If the CM knowingly or negligently proceeds with the Work in an area where a Hazardous Material exists and has not been rendered harmless, the CM shall be solely responsible for all related claims, damages, losses, and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from performing the Work in the affected area.

6.13.5.5 The term "rendered harmless" means that the level of exposure is less than any applicable exposure standards set forth in Applicable Law.

6.13.6 ~~Material~~ Safety Data Sheets.

6.13.6.1 The CM shall identify any material it uses at the Site with a ~~Material~~ Safety Data Sheet ~~("MSDS").~~ ("SDS") meeting the requirements of OSHA's Hazard Communication Standard (formerly known as a Material Safety Data Sheet).

6.13.6.2 The CM shall maintain a notebook containing all of its applicable ~~MSDSs~~SDSs. This notebook shall be kept at the Site for the duration of the Project.

6.14 Construction Facilities, Utilities, and Equipment

6.14.1 Facilities.

6.14.1.1 The CM shall provide and maintain in a clean condition suitable temporary facilities, equipment, services, and enclosed storage for its use at the Site.

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6.14.1.2 The CM shall provide and maintain in a clean condition:

.1 suitable facilities, equipment, and services for use by the A/E and Contracting Authority;

.2 adequate space, equipment, and furnishings to conduct progress meetings, and store approved documents and permits; and

.3 adequate sanitary facilities for use by all Persons at the Site.

6.14.2 Environmental Controls.

6.14.2.1 The CM shall protect its Work and materials from weather and damage from heat, cold, and humidity.

6.14.2.2 Until the permanent HVAC system is complete and available for use:

.1 The CM shall make arrangements and pay for installation and maintenance of temporary heating and ventilating systems; and

.2 The CM shall pay the costs incurred in operating the temporary heating and ventilating systems.

6.14.2.3 When the permanent HVAC system is complete and available for use:

.1 The CM shall start up and maintain operation of the permanent HVAC system, including filters, and promptly remove temporary heating and ventilating systems.

.2 If the Project consists entirely of new construction, the CM shall pay the costs of energy consumed in operating the permanent HVAC system until Substantial Completion.

.3 If the Project is a renovation of an existing building or structure, addition(s) to an existing building or structure, or any combination of new construction and renovation work that does not allow separate metering of utilities, the Owner shall pay the costs of energy consumed in operating the permanent HVAC system.

6.14.2.4 From the date of Substantial Completion, the Owner shall pay the cost of operating the permanent HVAC system for the occupied portion of the Project.

6.14.2.5 If the permanent HVAC system is used during construction, the CM shall furnish an extended warranty and service contract in effect until the expiration of the Correction Period.

6.14.3 Water and Drainage.

6.14.3.1 The CM shall provide water necessary for the Work until the permanent plumbing system is available for use.

6.14.3.2 The CM shall provide temporary drainage and dewatering necessary for the Work and shall employ pumps, trenches, drains, sumps, and other necessary elements required to provide satisfactory working conditions for the protection, execution, and completion of the Project.

6.14.3.3 The CM shall make arrangements and pay for installation and maintenance of temporary plumbing systems until the permanent plumbing system is available for use.

6.14.3.4 When the permanent plumbing system is complete and available for use:

.1 The CM shall start up and maintain operation of the permanent plumbing systems, and make arrangements and pay for removal of temporary plumbing systems.

.2 If the Project consists entirely of new construction, the CM shall pay the costs of water consumed and sewerage charges until Substantial Completion.

.3 If the Project is a renovation of an existing building or structure, addition(s) to an existing building or structure, or any combination of new construction and renovation work that does not allow separate metering of utilities, the Owner shall pay the costs of water consumed and sewerage charges.

6.14.3.5 From the date of Substantial Completion, the Owner shall pay the costs of water consumed and sewerage charges for the occupied portion of the Project.

6.14.3.6 If the permanent plumbing system is used during construction, the CM shall furnish an extended warranty and service contract in effect until the expiration of the Correction Period.

6.14.4 Electric Service.

6.14.4.1 The CM shall provide temporary light and power; pay the charges for temporary electric service installation, and removal if required.

6.14.4.2 If the Project consists entirely of new construction, the CM shall pay the cost of energy consumed until Substantial Completion.

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6.14.4.3 If the Project is a renovation of an existing building or structure, addition(s) to an existing building or structure, or any combination of new construction and renovation work that does not allow separate metering of utilities, the Owner shall pay the cost of energy consumed.

6.14.4.4 From the date of Substantial Completion, the Owner shall pay the cost of energy consumed for the occupied portions of the Project.

6.14.4.5 If the permanent electrical system is used during construction, the CM shall furnish an extended warranty and service contract in effect until the expiration of the Correction Period.

6.14.5 Hoisting Facilities.

6.14.5.1 The CM shall erect and maintain any hoisting equipment required for its Work.

6.14.5.2 If the electric service requirements of hoisting facilities differ from that available at the Site, the CM shall provide and pay for all necessary connections.

6.14.5.3 If a permanent elevator is identified in the Contract Documents to be used for hoisting materials or personnel during construction, the CM shall furnish an extended warranty and service contract in effect until the expiration of the Correction Period.

6.15 Progress Cleaning

6.15.1 The CM shall remove all waste materials, rubbish, and mud attributable to the Work to an appropriate disposal location at or near the Site.

6.15.2 The CM shall perform weekly broom cleaning of hard flooring surfaces in the area of the Work.

6.15.3 The CM shall remove, once each working day or as appropriate for the Project, all waste materials and rubbish from the disposal location at or near the Site.

6.15.4 The CM shall remove, as appropriate for the Project or as the A/E or Owner directs, any waste materials or rubbish from areas adjacent to the Project.

6.15.4.1 The CM shall dispose of waste materials, rubbish, and construction debris in a lawful manner in approved recycling facilities or landfills.

6.15.5 If the CM fails to clean up during the progress of the Work, the Contracting Authority may clean up on behalf of the CM and at the CM's expense. If the CM fails to maintain the areas adjacent to the Project clean and free of waste materials and rubbish, the Contracting Authority may also direct the local jurisdiction responsible for the area to have the area cleaned to its satisfaction at the CM's expense.

6.15.5.1 The Contracting Authority may deduct the cleaning costs from payments then or thereafter due the CM. If payments then or thereafter due the CM are not sufficient to cover those amounts, the CM shall immediately pay the amount of the insufficiency to the Owner.

6.15.6 The CM shall remove excavated material and spoil to a suitable off-site location approved by the Contracting Authority.

6.15.6.1 If the Owner designates a location on its property for disposal or storage of clean topsoil and/or subsoil in the Contract Documents, the CM shall remove such materials to the designated location.

6.16 Use of Premises

6.16.1 The CM shall use corridors, stairs, and elevators as designated by the Contracting Authority. The CM shall exercise extreme care to not exceed the carrying capacity of elevators or damage the cab interior in any way.

6.16.2 Loitering or wandering through interior of buildings or exterior grounds outside the limits of the Work will not be permitted.

6.16.3 The CM shall confine its apparatus, materials, and the operations of its workers to the limits indicated by law, ordinances, permits, and the directions of the A/E or Project Manager.

6.16.4 No signs or advertising of any kind will be permitted on or about the Site, except those appearing on trucks and trailers.

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6.16.5 Smoking and Tobacco Products.

6.16.5.1 All State buildings are smoke free. Smoking will not be permitted in any indoor area. The ban on tobacco products will be observed in all indoor and outdoor areas and parking areas on all State owned and leased property. The CM shall enforce these restrictions on any individual employed by the CM or a Subcontractor.

6.17 Interruption of Existing Services

6.17.1 Whenever it becomes necessary to interrupt existing services in use by the Owner or its tenants, including but not limited to sewer, water, gas, and steam lines, electric, telephone, and cable service, the CM shall continue the associated Work on a non-stop 24-hour per day basis until that Work is completed and the service restored, or at an alternate time required by the Contracting Authority.

6.17.2 Before beginning that Work, the CM shall apply in writing to, and receive approval in writing from, the Owner, through the A/E, to establish a time when interruption of the service will cause a minimum of interference with the activities of the Owner and its tenants.

6.18 Explosives and Blasting

6.18.1 The CM shall not conduct blasting on, or bring explosives to, the Site without the prior written approval of the Contracting Authority, Owner, and other authorities with jurisdiction.

6.18.2 The CM shall perform all blasting, storing, and handling of explosives as required under Applicable Law.

6.18.2.1 The CM shall carry appropriate liability insurance coverage, as required by the Contract Documents, for its blasting and explosives storage and handling operations. Immediately upon request, the CM shall deliver evidence of that insurance to the Contracting Authority.

6.19 Building Commissioning

6.19.1 If the Project scope includes building commissioning, the CM shall participate in the Commissioning Process, as prescribed in the Contract Documents.

6.19.2 The CM shall permit the A/E, or a third-party Commissioning Agent ("CxA") if applicable, access to commission performance based equipment, fixtures, and/or systems (e.g., HVAC, fire protection, smoke evacuation, fume hoods, emergency power, etc.), prior to Substantial Completion.

6.19.3 The A/E, or CxA if applicable, shall promptly notify, in writing, the CM of any deficiency identified during the Commissioning Process.

6.19.4 To facilitate the Commissioning Process, the CM shall submit 4 sets of Operation and Maintenance Manuals for dynamic and engineered systems to the A/E, and CxA if applicable, for approval. This submission shall occur within 30 days following approval of all related CM submittals required by the Contract Documents.

6.20 Action Submittals

6.20.1 Submittal Description. Shop Drawings, Product Data, Samples, and other submittals for the A/E's review and action shall be provided by the CM for any item required by the Contract Documents but not fully described in the Contract Documents, unless waived by the A/E, and include, but are not limited to:

6.20.1.1 construction of the various parts, method of joinery, type of materials, grade, quality and thickness of materials, alloy of materials, profiles of all sections, reinforcement, method of hanging doors or installing windows, anchorage, and type and grade of finish;

6.20.1.2 capacities, types of materials and performance charts that are pertinent to the materials, and performance charts that are pertinent to the equipment item; and

6.20.1.3 wiring diagrams, control diagrams, schematic diagrams, working and erection dimensions, arrangement and specifications.

6.20.2 Form of Submittals. The CM shall provide a transmittal letter, review and stamp its approval, and transmit the submittals to the A/E in accordance with the submittal schedule established by the A/E and CM.

6.20.2.1 The CM shall submit a minimum of 1 reproducible and 3 copies of Shop Drawings, and a minimum of 4 copies of any other submittal, except when using the State's web-based project management software under **Section 6.20.2.4**.

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6.20.2.2 The data shown on the Shop Drawings shall be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to communicate to the A/E the materials and equipment that the CM proposes to provide.

6.20.2.3 Each Sample shall be identified clearly as to materials, supplier, pertinent data such as catalog numbers, the intended use, and other uses as the A/E may require enabling the A/E to review the submittal.

6.20.2.4 If the Project is administered using the State's web-based project management software, the CM shall submit electronic files of its submittals for review, using the "Submittals" business process.

6.20.3 Variation from Contract Documents. If the submittals show variations from the requirements of the Contract Documents, the CM shall specifically and clearly identify the variations in its letter of transmittal.

6.20.3.1 Variations that may affect the construction quality, cost or timeline shall be submitted by the A/E to the Contracting Authority for review, and if approved, shall be incorporated into the Work by Change Order.

6.20.3.2 The CM shall not be relieved of responsibility for deviations from the Contract Documents by the A/E's approval of submittals.

6.20.3.3 Submittals are not Contract Documents. In the event of conflicts between submittals and the Contract Documents, the Contract Documents take precedence and govern the Work.

6.20.4 CM's Submittal Review. The CM shall review and stamp "approved" all submittals before forwarding them to the A/E. If it is apparent to the A/E that the CM has not reviewed the submittals, or has conducted an incomplete review, the A/E may reject the submittals.

6.20.4.1 The CM shall field verify conditions as necessary and make corrections of dimensions, locations of various items, encroachments of work of Separate Contractors, or variations from the requirements of the Contract Documents.

6.20.4.2 If required by the Contract Documents or Applicable Law, the CM shall have Shop Drawings or other submittals prepared by Persons possessing expertise and experience in an appropriate trade or profession or by a registered architect, professional engineer, or other professional.

6.20.4.3 By approving and submitting submittals, the CM represents that the CM has determined and verified materials, field measurements, and field construction criteria related to the associated Work, or shall do so, and has checked and coordinated the information contained within the submittals with the requirements of the Work and of the Contract Documents.

6.20.5 A/E's Submittal Review. The A/E shall review submittals for conformity with design intent within 14 days of receiving them or in accordance with the approved submittal schedule, or other period as mutually agreed by the A/E and CM. The A/E's review of submittals is to determine if the items covered by the submittals will, after installation and incorporation into the Work, conform to the Contract Documents and be compatible with the design concept of the Project as a functioning whole.

6.20.5.1 The CM shall make corrections required by the A/E and resubmit the required number of corrected copies of submittals until approved, which resubmission shall be acted upon by the A/E within 14 days of receiving them, or other period mutually agreed by the A/E and CM.

6.20.5.2 When resubmitting corrected submittals, the CM shall direct the A/E's attention to revisions made by noting revisions on the resubmittal.

6.20.5.3 The CM shall pay all reasonable costs of the A/E, Owner, and Contracting Authority for attendant delay, interference, hindrance or disruption of the Project due to excessive resubmittals without fault of the A/E, Owner, or Contracting Authority. Resubmittals in excess of 2 without fault of the A/E, Owner or Contracting Authority may be determined excessive by the Contracting Authority.

6.20.5.4 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 CM stating that the submittal is being held, within 7 days of receiving it.

6.20.5.5 If coordinating submittals are not received within the period required for action on previously received submittals that are held in accordance with **Section 6.20.5.4**, review of the previously received submittals may be delayed.

6.20.5.6 The A/E's review shall not extend to means, methods, manners, techniques, sequences, or procedures of construction, or to safety precautions or incident programs.

6.20.5.7 The review and approval of a separate item shall not indicate approval of the assembly in which the item functions.

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6.20.6 Risk of Nonpayment. The CM shall not commence any portion of the Work requiring Shop Drawings, Product Data, Samples, or other submittals until the submittal has been approved by the A/E. If the CM starts Work before the A/E's final approval of the submittal, the CM does so at its own risk that payment may not be approved by the Contracting Authority or made by the Owner for the related Work.

6.20.7 Equipment Statement. Shop Drawings on equipment shall include the following written statement from the manufacturer of the equipment:

6.20.7.1 "This equipment submitted for approval shall perform as specified when installed in the arrangement shown on this drawing and in the Contract Documents and in conjunction with all other accessories such as flues, breechings, piping, controls, and equipment not furnished by this manufacturer, but required as an accessory or supplement to this equipment, providing that the accessory or supplementary items perform as specified and are installed as shown in the Contract Documents."

.1 The CM will be deemed to have included the above statement as required even if the associated Shop Drawing does not actually contain the statement.

6.20.7.2 This equipment statement shall not be required for Samples, Product Data, and other standard submittals that are not created specifically for this Project.

6.21 Warranty

6.21.1 The CM warrants to the Contracting Authority and Owner that all materials and equipment furnished under the Contract shall be new and of good quality unless otherwise required or permitted by the Contract Documents, that the Work shall be free from defects not inherent in the quality required or permitted, and that the Work shall conform to the requirements of the Contract Documents. Work not conforming to those requirements, including Substitutions not properly approved and authorized, may be considered Defective Work. If required by the A/E, the CM shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

6.21.1.1 If the CM or a Subcontractor recommends a particular product, material, system, or item of equipment for incorporation into the Project and the Owner accepts that recommendation, the above warranty includes a warranty from the CM to the Owner that the recommended product, material, system, or item of equipment is fit and appropriate for the associated purpose.

6.22 Uncovering the Work

6.22.1 If the CM covers Work contrary to the requirements of the Contract Documents or contrary to the written request of the Contracting Authority or A/E, the CM shall, if the Contracting Authority or A/E requests in writing, uncover that Work for observation, correct it if not in conformity with the Contract Documents, and recover it at the CM's expense without adjustment of the Contract Times.

6.22.2 If the CM covers Work in accordance with the Contract Documents and not contrary to a request from the A/E or Contracting Authority for an opportunity to observe the Work prior to covering, the CM shall, if the A/E requests in writing, uncover that Work.

6.22.2.1 If the uncovered Work is Defective Work, the CM shall pay the costs of uncovering, correcting, and recovering the Work and shall not be entitled to an adjustment of the Contract Times.

6.22.2.2 If the uncovered Work is not Defective Work and the CM believes that it is entitled to an adjustment of the Contract Sum or Contract Times, or both, on account of the uncovering and recovering of the Work, the CM may request a Change Order by giving written notice under **Section 7.3.2** within 7 days after the Contracting Authority or A/E observes the uncovered Work.

6.23 Correction of the Work

6.23.1 Before Substantial Completion.

6.23.1.1 If the CM provides Defective Work or fails or neglects to perform the Work in accordance with the Construction Progress Schedule, the Contracting Authority or A/E may issue a written notice to the CM and CM's Surety directing the CM to correct the Defective Work or recover schedule deficiencies. Unless otherwise specified in that written notice, the CM shall begin to correct the Defective Work and recover the schedule deficiencies within no more than 3 days after the Contracting Authority issues the written notice ("72-Hour Notice").

6.23.1.2 If the CM fails to promptly commence and diligently pursue correction of Defective Work or recovery of schedule deficiencies required under **Section 6.23.1.1**, the Owner may correct the Defective Work or take action to recover schedule deficiencies without giving further notice to the CM or CM's Surety.

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6.23.2 After Substantial Completion.

6.23.2.1 In addition to the CM's other obligations under the Contract Documents, if any of the Work is found to be Defective Work after Substantial Completion, the CM shall correct it promptly after receipt of written notice from the A/E, Contracting Authority, or Owner to do so, unless the Contracting Authority and Owner have previously acknowledged and accepted the Defective Work in writing. The A/E, Contracting Authority, or Owner may send a copy of the written notice to the CM's Surety, but are not obligated to do so.

6.23.2.2 During the Correction Period. If the Contracting Authority or Owner issues a notice under **Section 6.23.2.1** during the Correction Period, the Owner may correct the Defective Work itself without giving further notice to the CM or the CM's Surety if the CM fails to **(1)** notify the Owner in writing of the CM's intent to correct the Defective Work within 7 days after the Contracting Authority or Owner issues the notice and **(2)** thereafter promptly commence and diligently pursue correction of Defective Work.

6.23.2.3 The Correction Period:

- **.1** commences on the date of Substantial Completion of the Work or a designated portion of the Work which the Contracting Authority and Owner have agreed to take Partial Occupancy;
- **.2** relates only to the CM's specific obligation and opportunity to correct the Work during the Correction Period;
- **.3** does not establish a period of limitation with respect to any of the CM's other obligations under the Contract Documents;
- **.4** has no relationship to the time within which the State or Owner may seek to enforce the Contract;
- **.5** does not establish a period of limitation within respect to the commencement of litigation to establish the CM's liability under the Contract or otherwise; and
- **.6** shall not be extended by corrective Work performed by the CM under this **Section 6.23.2**.

6.23.2.4 After the Correction Period. If the Owner issues notice under **Section 6.23.2.1** after expiration of the Correction Period, the Owner may correct the Defective Work itself without giving further notice to the CM or CM's Surety if the CM fails to **(1)** notify the Owner in writing of the CM's intent to correct the Defective Work within 14 days after the Owner issues the notice and **(2)** thereafter promptly commence and diligently pursue correction of Defective Work.

6.23.3 Emergency Correction of Defective Work.

6.23.3.1 Notwithstanding any other provision of the Contract to the contrary, if in the Contracting Authority or Owner's opinion the Defective Work presents a threat of imminent harm or danger to people, property, or the environment, the Contracting Authority or Owner may order the CM to immediately correct Defective Work or the Owner may correct the Defective Work itself without any prior notice to the CM or CM's Surety.

6.23.4 Responsibility for Costs of Correction.

6.23.4.1 The CM shall pay all of the costs and damages associated with the correction of Defective Work and the recovery of schedule deficiencies under this **Section 6.23**. Those costs and damages may include, but are not limited to, the related fees and charges of contractors, engineers, architects, attorneys, and other professionals; and the cost of correcting or replacing adjacent work. The Contracting Authority may deduct those costs and damages from payments then or thereafter due the CM. If payments then or thereafter due the CM are not sufficient to cover those amounts, the CM shall immediately pay the amount of the insufficiency to the Owner.

6.24 Acceptance of Defective Work

6.24.1 The Owner may accept any Defective Work instead of requiring its removal or correction, in which case the Contract Sum must be equitably reduced as described under **Article 7**.

6.24.1.1 The Owner may only accept Defective Work though a deduct Change Order that makes explicit reference to this **Section 6.24**.

6.24.2 None of the following will constitute **(1)** acceptance of Defective Work, **(2)** a release of the CM's obligation to perform the Work in accordance with the Contract, or **(3)** a waiver of any rights set forth in the Contract or otherwise provided by Applicable Law:

6.24.2.1 observations or inspections by the Owner, Contracting Authority, or A/E;

6.24.2.2 the making of any payment;

6.24.2.3 Substantial Completion or the issuance of a Certificate of Substantial Completion;

6.24.2.4 Partial Occupancy and the Owner's use or occupancy of the Work or any part of it;

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6.24.2.5 Contract Completion or the issuance of a partial or final Certificate of Contract Completion;

6.24.2.6 any review or approval of a submittal;

6.24.2.7 any inspection, test, or approval by other Persons; or

6.24.2.8 any correction of Defective Work by the Owner.

6.25 Project Document Maintenance and Submittal

6.25.1 During Construction.

6.25.1.1 The CM shall maintain in good order at a secure location on the Site:

.1 a complete copy of all Contract Documents; Shop Drawings, Product Data, Samples and similar required submittals; manufacturer operating and maintenance instructions; certificates; warranties; RFIs and responses thereto; and other Project-related documents, all marked currently and accurately to record field changes and selections made during construction and to show actual installation where installation varies from Work as originally shown, including the exact location and depth of underground utility lines; and

.2 a set of Drawings and Specifications, approved in accordance with **Section 5.8.1.1**, and the records required by **Section 6.2.14**.

6.25.1.2 Before submitting each CM Payment Request, the CM shall record all changes on the Contract Documents, neatly in a contrasting color, noting new information not shown on the original Contract Documents. Failure to record all changes may cause payment to be withheld or delayed by the Contracting Authority.

6.25.1.3 The CM shall keep a record of changes made to the Specifications, noting particularly any approved variation from manufacturer's installation instructions and recommendations.

6.25.1.4 If the CM uses Shop Drawings to indicate as-built conditions, the CM shall cross-reference the Shop Drawing sheet numbers to the corresponding sheet numbers on the Contract Documents. The CM shall note related numbers where applicable.

6.25.1.5 The CM shall at all times permit access to the documents described in this **Section 6.25.1** to authorized representatives of the State, local authorities having jurisdiction, Contracting Authority, Owner, and A/E.

6.25.2 Before Contract Completion.

6.25.2.1 The CM, as a condition precedent to execution of the Certificate of Contract Completion and final payment, shall organize the As-Built Documents into manageable sets, bind the sets with durable paper cover sheets, and deliver the As-Built Documents to the A/E.

6.25.2.2 The CM's As-Built Documents submission shall include, but is not limited to:

.1 Certificate of Occupancy;

.2 inspection certificates for pressure piping, elevator, boiler, electrical, plumbing or piping purification, etc.;

.3 Letter of Approval from the local fire authority or State Fire Marshal for the fire suppression system;

.4 Operation and Maintenance Manuals, organized into suitable sets of manageable size. Indexed data bound in individual binders, with pocket folders for folded sheet information and appropriate identification marked on the front and the spine of each binder;

.5 neatly and accurately marked sets of As-Built Documents, and other Contract Documents reflecting the actual construction of the Project;

.6 detailed Drawings reflecting the exact location of any concealed utilities, mechanical or electrical systems, and components;

.7 assignment to the Owner of all warranties and guarantees, including the most-recent address and telephone number of any Subcontractors or manufacturers;

.8 an affidavit to certify that all Subcontractors have been paid in full for all Work performed or materials furnished for the Project;

.9 final certified payroll reports; and

.10 an affidavit to certify that the CM and each of its Subcontractors, regardless of tier, have complied with all requirements of ORC Chapter 4115.

6.25.2.3 By submitting the As-Built Documents to the A/E, the CM certifies that its As-Built Documents are complete, correct, and accurate.

6.25.2.4 If the Project is administered using the State's web-based project management software, the CM shall document submission of its As-Built Documents to the A/E, using the "Transmittals" business process.

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6.25.3 Record Documents.

6.25.3.1 The A/E shall revise the original Contract Documents and related Electronic Files with the information contained on the As-Built Documents. The A/E shall label the revised original Contract Documents and related Electronic Files as "Record Documents" and reflect the date of the A/E's incorporation of the As-Built Documents.

6.25.3.2 The Owner may thereafter use the Record Documents for any purpose relating to the Project including, but not limited to, additions to or completion of the Project.

6.26 Final Cleaning

6.26.1 Before requesting the Substantial Completion inspection of the Work, the CM shall clean the Site, remove waste materials and rubbish attributable to the Project, and restore the property to its original condition so that upon Substantial Completion, the premises are ready for occupancy by the Owner.

6.26.2 If the CM performs any Work after final cleaning, the CM shall clean the affected area as provided above so that upon Substantial Completion, the premises are ready for occupancy by the Owner.

6.26.3 Final cleaning shall be done to the reasonable satisfaction of the A/E and Contracting Authority.

6.27 Substantial Completion

6.27.1 CM's Punch List.

6.27.1.1 When the CM considers the Work, or a designated portion thereof, Substantially Complete the CM shall inspect the Work and prepare a list of Defective Work and incomplete or unacceptable Work ("CM's Punch List"). The CM shall list all items of Work not in compliance with the Contract Documents, including items the CM is requesting to be deferred.

- **.1** The CM shall proceed to correct all items listed on the CM's Punch List and certify that the incomplete items listed on the CM's Punch List are to its knowledge an accurate and complete list by signing the CM's Punch List.
- **.2** The CM's failure to include an item on the CM's Punch List shall not alter the CM's responsibility to complete the Work in accordance with the Contract Documents.
- **.3** The CM shall submit the signed CM's Punch List to the A/E, together with a request for the Substantial Completion inspection of the Work.

6.27.1.2 If the Project is administered using the State's web-based project management software, the CM shall submit the CM's Punch List, using the "Punch List" business process.

6.27.2 Substantial Completion Inspection.

6.27.2.1 Within 3 business days after receipt of the request for the Substantial Completion inspection of the Work, the A/E shall notify the CM of acceptance or rejection of the request, stating reasons for any rejection.

- **.1** Within 7 days after its acceptance of the CM's request, the A/E shall conduct the Substantial Completion inspection to determine whether the Work, or designated portion, is in conformity with the Contract Documents and Substantially Complete. The A/E shall notify the CM, Contracting Authority, and Owner of the scheduled time of the inspection.
- **.2** If the A/E determines that the Work is Substantially Complete, within 3 business days after the Substantial Completion inspection, the A/E shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion and include a list of Defective, incomplete, or unacceptable Work ("A/E's Punch List"). The A/E's Punch List shall include **(1)** the items on the CM's Punch List that are not yet completed or corrected as of the date of the Substantial Completion inspection, and **(2)** comments from the Contracting Authority and Owner.
- **.3** The A/E shall submit the Certificate of Substantial Completion to the Contracting Authority, Owner, and CM for their written acceptance. Upon their acceptance and consent of the CM's Surety, and subject to the Owner's right to withhold payment, the Owner shall release retainage as described under **Section 9.2.12.3**.
- **.4** The A/E's failure to include an item on the A/E's Punch List shall not alter the Contractor's responsibility to complete the Work in accordance with the Contract Documents.
- **.5** If the A/E accepts the request for the Substantial Completion inspection and subsequently determines that the Work is not Substantially Complete, the A/E may request compensation for expenses related to excessive Punch List activities. The Contracting Authority may deduct that additional compensation to the A/E from payments then or thereafter due the CM. If payments then or thereafter due the CM are not

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sufficient to cover those amounts, the CM shall immediately pay the amount of the insufficiency to the Owner.

6.27.3 Completion of Punch List Items.

6.27.3.1 Within 30 days after the date of Substantial Completion and before the date of Contract Completion, the CM shall complete all items on the A/E's Punch List. After completing all items on the A/E's Punch List, the CM shall provide a written request for Final Inspection of the Work to the A/E.

.1 If Work on the A/E's Punch List cannot be timely completed, the CM shall justify in writing to the reasonable satisfaction of the Contracting Authority and A/E, the reasons the items cannot be completed, and the CM may propose, for the Contracting Authority and A/E's approval, a time when the CM shall complete those items.

.2 Within 3 business days after receipt of the CM's request for Final Inspection, the A/E shall complete a Final Inspection of the Work for compliance with the Contract Documents.

.3 If multiple inspections of items on the A/E's Punch List are required due to the CM's failure to properly and timely complete them, the CM shall pay any additional costs incurred by the A/E, Owner, and Contracting Authority resulting from any attendant delay. The Contracting Authority may deduct those additional costs from payments then or thereafter due the CM. If payments then or thereafter due the CM are not sufficient to cover those amounts, the CM shall immediately pay the amount of the insufficiency to the Owner.

6.27.3.2 If the Project is administered using the State's web-based project management software, the CM shall receive the A/E's Punch List and submit its request for Final Inspection, using the "Punch List" business process.

6.28 Partial Occupancy

6.28.1 The Owner may occupy or use a portion of the Project prior to Contract Completion if:

6.28.1.1 the building authority with jurisdiction over the Project issues a ~~temporary or~~ partial certificate of occupancy for the portion of the Project the Owner intends to occupy;

6.28.1.2 the A/E with the Owner's assistance has provided written notice of the Partial Occupancy to the insurers providing property insurance for the Project; and

6.28.1.3 the Contracting Authority has received notice of the Partial Occupancy from the A/E and has consented to it.

6.28.2 Before the Owner commences Partial Occupancy, the Owner, Contracting Authority, A/E, and CM shall proceed as described under **Section 6.27** for the area designated for Partial Occupancy.

6.28.3 The CM shall be relieved of the obligation to maintain the area accepted for Partial Occupancy, but shall remain obligated to complete and correct the Work and to carry the insurance required by the Contract Documents during performance of any such Work.

6.29 Demonstration and Training, Operating Appurtenances

6.29.1 The CM, as a condition precedent to execution of the Certificate of Contract Completion and final payment, shall perform demonstration and training of the Owner's maintenance personnel as specified in the Contract Documents.

6.29.2 The CM, as a condition precedent to execution of the Certificate of Contract Completion and final payment, shall organize and submit operating appurtenances and loose items related to operation and maintenance of the completed Project to the Owner, including, but not limited to:

6.29.2.1 keys to door and window hardware, panels, and other devices not directly provided to the Owner from the manufacturer;

6.29.2.2 operating handles, levers, cranks, specialized wrenches or drivers, remote controls, and similar items; and

6.29.2.3 extra materials (e.g., attic stock).

6.29.3 If the Project is administered using the State's web-based project management software, the CM shall document submission of its operating appurtenances to the Owner, using the "Transmittals" business process.

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6.30 Contract Completion

6.30.1 Partial Contract Completion.

6.30.1.1 When items of Work cannot be completed until a subsequent date, the A/E shall prepare a partial Certificate of Contract Completion that shall include a detailed list of the deferred Work and the date(s) by which the CM will complete that Work.

6.30.1.2 The A/E shall submit the partial Certificate of Contract Completion to the Contracting Authority, Owner, and CM for their written acceptance. Upon their acceptance of the partial Certificate of Contract Completion and consent of the CM's Surety, the Contracting Authority may release payment to the CM, as determined in the sole discretion of the Contracting Authority.

6.30.2 Final Contract Completion.

6.30.2.1 When all items on the A/E's Punch List have been completed to the satisfaction of the A/E, all requirements of the Contract Documents have been completed, and the provisions of **Sections 6.25** through **6.29** have been fulfilled, the A/E shall prepare and recommend execution of a final Certificate of Contract Completion.

6.30.2.2 The date that the Contracting Authority executes the final Certificate of Contract Completion is the date of Contract Completion.

ARTICLE 7 - MODIFICATIONS

7.1 General

7.1.1 Preconstruction Services Amendments.

7.1.1.1 Preconstruction Stage obligations under this Contract may be modified only through a Preconstruction Services Amendment prepared by the Contracting Authority and signed by both the CM and Contracting Authority, with concurrence of the Owner.

7.1.1.2 The CM may initiate a Preconstruction Services Amendment by submitting written notice to the Owner and Contracting Authority accompanied by a Proposal meeting the requirements of **Section 9.1.5** or **Section 9.1.6** as applicable.

7.1.1.3 If the Project is administered using the State's web-based project management software, the CM shall initiate a Preconstruction Services Amendment using the "Change Order" (Agency/Higher Education) or "Contract Modifications" (School Facilities) business process.

7.1.2 Changes in the Work.

7.1.2.1 The Contracting Authority may order changes in the Work without invalidating the Contract. Subject to the limitations stated in this **Article 7** and elsewhere in the Contract Documents, a change in the Work may be accomplished by a Change Order, Change Directive, or order for a minor change in the Work.

- **.1** The CM shall proportionately increase the amount of the Bonds whenever the Contract Sum is increased.
- **.2** If notice of any change affecting the Contract is required by the provision of any Bond, notice is the CM's responsibility, and the amount of each applicable Bond shall be adjusted accordingly.

7.1.2.2 The CM shall not proceed with any change in the Work without the Contracting Authority's prior written authorization except as provided under **Sections 1.10** and **7.5**.

7.1.2.3 Except as provided in **Section 1.10**, the CM's failure to obtain prior written authorization for a change in the Work constitutes a waiver by the CM of an adjustment to the Contract Sum or Contract Times, or both, for the related Work.

7.1.2.4 The CM shall perform all changes in the Work under the applicable provisions of the Contract Documents, and the CM shall proceed promptly with the change unless otherwise provided in the Change Order, Change Directive, or order for a minor change in the Work.

7.1.3 Paperwork Consolidation.

7.1.3.1 Related Modifications, with the same or similar justification (e.g., Owner Request or field resolution), may be consolidated into the same Change Order.

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

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7.1.3.3 Modifications resulting from errors or omissions shall not be combined with other Modifications for which the A/E will receive a fee.

7.1.4 Modification Numbering.

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

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

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

7.1.5 Modification Log.

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

- **.1** number of the Modification;
- **.2** a brief description of the Modification;
- **.3** cost of the Modification;
- **.4** schedule impact of the Modification; and
- **.5** dates sent to, and received from, the parties.

7.1.6 Reconciliation of Unit Price Items.

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

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

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

- **.1** If a Unit Price is adjusted as described under **Section 7.1.6.3**, the new Unit Price will only apply to the units of Work performed that are **(1)** less than the 20 percent threshold if the Unit Price is changed on account of an over-estimation of the scheduled quantity of a Unit Price item involved in the Work or **(2)** in excess of the 20 percent threshold if the Unit Price is changed on account of an under-estimation of the scheduled quantity of a Unit Price item involved in the Work.

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

7.2 Change Order Procedure

7.2.1 A Change Order is a written instrument prepared by the A/E and executed by the Contracting Authority and CM, stating their agreement upon all of the following:

7.2.1.1 a change in the Work;

7.2.1.2 the amount of the adjustment of the Contract Sum, if any; and

7.2.1.3 the extent of the adjustment of the Contract Times, if any.

7.2.2 Except with the Contracting Authority's written consent as explicitly provided under **Section 7.4.8**, the CM is not entitled to reserve any rights or take other similar action with respect to a Change Order if the effect or intent of the reservation or action would be to accommodate a further adjustment of the Contract Sum or Contract Times, or both, after the CM signs the Change Order. By signing a Change Order, the CM irrevocably certifies that the elements of a Change Order described in **Section 7.2.1** are completely satisfied, and waives all rights, if any, to seek further adjustment of the Contract Sum or Contract Times, or both, at a later date with respect to the associated change in the Work including without limitation on account of the "cumulative impact" of the associated change in the Work in combination with one or more other changes in the Work.

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

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7.2.4 If the CM is in agreement with the Change Order under **Section 7.2.1**, the CM shall sign and return the Change Order to the A/E within 3 days after receiving it.

7.2.4.1 If the Project is administered using the State's web-based project management software, the CM shall indicate its agreement with the Change Order using the "Change Order" (Agency/Higher Education) or "Contract Modifications" (School Facilities) business process.

7.2.5 When the A/E receives the Change Order signed by the CM, the A/E will recommend approval by signing the form and transmitting the Change Order and the revised Change Order Log to the Owner.

7.2.6 When the Owner receives the Change Order, the Owner may sign the form accepting the Change Order, attach certification of funding, and transmit the Change Order to the Contracting Authority; or, if the Owner does not accept the Change Order, the Owner will reject and return it to the A/E.

7.2.7 When the Contracting Authority receives the Change Order, the Contracting Authority may sign the form approving the Change Order, and transmit the fully executed Change Order to all signers; or, if the Contracting Authority does not accept the Change Order, the Contracting Authority will reject and return it to the A/E.

7.2.8 When the Change Order is signed by the CM, Owner, and Contracting Authority, the fully executed Change Order modifies the Contract Documents and authorizes and directs the CM to proceed, and the CM shall promptly proceed with the associated change in the Work.

7.3 Initiation of Change Orders

7.3.1 Proposal Request.

7.3.1.1 The A/E shall prepare and issue a Proposal Request to the CM to obtain the CM's Proposal for the adjustment of the Contract Sum or Contract Times, or both, associated with a contemplated Modification.

.1 In any Proposal for an adjustment of the Contract Sum, the CM shall specifically identify the items set forth in **Section 7.7**.

.2 In any Proposal for an adjustment of the Contract Times, the CM shall specifically identify the items set forth in **Section 7.8**.

.3 The CM's cost of preparing and providing Proposals is included in the Contract Sum.

7.3.1.2 The CM shall respond with a Proposal to the A/E and Contracting Authority within 14 days after receiving the Proposal Request. The allowable time for the CM's response may be extended by written agreement of the CM and A/E.

7.3.1.3 The CM shall hold the Proposal valid and open for acceptance for at least 45 days. The acceptance period may be adjusted by mutual consent of the CM and Contracting Authority. The time limits described under this **Section 7.3.1.3** apply only to Proposals submitted in response to a Proposal Request.

7.3.1.4 A Proposal may be accepted by the Contracting Authority only through a Change Order. A Proposal Request does not authorize the CM to proceed with a change in the Work.

7.3.1.5 If the CM does not timely submit a Proposal within the time required in **Section ~~7.3.1.3~~7.3.1.2**, the CM waives its right to an adjustment to the Contract Sum or Contract Times, or both, associated with the contemplated change in the Work.

7.3.1.6 If the Project is administered using the State's web-based project management software, the CM shall respond to a Proposal Request issued by the A/E with its Proposal using the "Change Order" (Agency/Higher Education) or "Contract Modifications" (School Facilities) business process.

7.3.2 Request for Change Order.

7.3.2.1 The CM may initiate a change in the Work by submitting written notice to the A/E accompanied by a Proposal meeting the requirements of **Section 7.3.1**.

7.3.2.2 If the Project is administered using the State's web-based project management software, the CM shall initiate its Request for Change Order using the "Change Order" (Agency/Higher Education) or "Contract Modifications" (School Facilities) business process with the "Request for Change Order" workflow.

7.4 Change Directives

7.4.1 A Change Directive is a written order prepared by the A/E and executed by the Contracting Authority directing a change in the Work and may, if necessary:

7.4.1.1 state a proposed basis for adjustment, if any, in the Contract Sum or Contract Times, or both; or

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7.4.1.2 limit the scope of the change in the Work on a time and materials basis, not to exceed a fixed adjustment of the Contract Sum.

7.4.2 If a change in the Work must start immediately to avoid an imminent impact to the schedule of the Project, the A/E may prepare a Change Directive, for the Contracting Authority's and the Owner's signatures pursuant to **Section 7.4.1**, authorizing the CM to proceed.

7.4.3 A Change Directive shall be used to direct a change in the Work in the absence of total agreement on the terms of a Change Order.

7.4.3.1 For the purposes of clarity, the Contract refers to a Change Directive as if it is only to be used in the absence of total agreement on the terms of a Change Order concerning the associated change of the Work. A Change Directive may also be used in the absence of agreement as to whether the subject of the Change Directive actually constitutes a change in the Work; such as the situation described under **Section 7.5.3**.

7.4.4 Upon receipt of a Change Directive, the CM shall promptly proceed with the change in the Work involved.

7.4.5 The CM may sign the Change Directive to accept the proposed basis for adjustment, if any, of the Contract Sum or Contract Times, or both. Thereafter, the A/E shall prepare and the A/E, Contracting Authority, Owner, and CM shall promptly execute an associated Change Order as described under **Section 7.2**.

7.4.6 Within 14 days after receiving the Change Directive, the CM shall respond with a Proposal meeting the requirements of **Section 7.3.1** to the A/E and Contracting Authority for adjustment of the Contract Sum or Contract Times, or both, on account of the change, unless the Change Directive is performed on a time and materials basis under **Section 7.4.1.2**. If the Change Directive is performed on a time and materials basis, the CM shall submit its Proposal within 7 days after completing the Work.

7.4.6.1 The Proposal for the adjustment of the Contract Sum, if any, shall include: **(1)** written documentation as described under **Section 7.7**; and **(2)** a written statement from the CM that the proposed adjustment is the entire adjustment in the Contract Sum associated with the change.

7.4.6.2 The Proposal for the change in the Contract Times, if any, shall include: **(1)** written documentation as described under **Section 7.8**; and **(2)** a written statement from the CM that the proposed adjustment is the entire adjustment of the Contract Times associated with the change.

7.4.7 If the CM does not respond to a Change Directive as required under **Section 7.4.5** or **Section 7.4.6**, the Contracting Authority shall determine the adjustments, if any, of the Contract Sum and Contract Times. If the CM does not agree with the Contracting Authority's determination, the CM shall initiate a Claim under **Article 8** within 10 days of the date that the Contracting Authority issues its determination, and the CM's failure to do so shall constitute an irrevocable waiver of the Claim.

7.4.8 Pending final determination of the total adjustment of the Contract Times on account of a Change Directive, the period of time not in dispute for that change in the Work may be included in the Construction Progress Schedule accompanied by a Change Order indicating the parties' agreement with part or all of the time adjustment.

7.4.9 If the Contracting Authority, Owner, and CM agree on the adjustments of the Contract Sum and Contract Times associated with a Change Directive, the A/E shall prepare an appropriate Change Order within 7 days after receiving the CM's Proposal. The A/E, Contracting Authority, Owner, and CM shall promptly sign the Change Order as described under **Section 7.2**.

7.4.10 If the Contracting Authority, Owner, and CM do not agree on the adjustments of the Contract Sum and Contract Times associated with a Change Directive within 60 days after the Change Directive is issued, the Contracting Authority shall determine the adjustments, if any, of the Contract Sum and Contract Times. If the CM does not agree with the Contracting Authority's determination, the CM shall initiate a Claim under **Article 8** within 10 days of the date that the Contracting Authority issues its determination, and the CM's failure to do so shall constitute an irrevocable waiver of the Claim.

7.4.11 If the Project is administered using the State's web-based project management software, the CM shall respond to a Change Directive issued by the A/E with its Proposal using the "Change Order" (Agency/Higher Education) or "Contract Modifications" (School Facilities) business process.

7.5 Minor Changes in the Work

7.5.1 The A/E may order minor changes in the Work not involving adjustment of the Contract Sum or extension of the Contract Times and not inconsistent with the intent of the Contract Documents. Those changes shall be effected by written order issued to the CM.

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7.5.2 The CM shall promptly carry out each order for a minor change in the Work if the CM agrees that the order does not involve adjustment of the Contract Sum or Contract Times, or both.

7.5.3 If the CM reasonably believes that it would be entitled to an adjustment of the Contract Sum or Contract Times, or both, on account of an order for a minor change in the Work, the CM, within 3 business days after receiving the order, shall give the Contracting Authority and A/E written notice of the CM's position, and not proceed with the subject Work without first receiving a Change Directive or Change Order related to it.

7.5.4 The CM waives its right to an adjustment of the Contract Sum or Contract Times on account of an order for a minor change in the Work by:

7.5.4.1 starting the Work that is the subject of the order for a minor change in the Work; or

7.5.4.2 failing to give the notice described under **Section 7.5.3** within 3 business days after receiving the order for a minor change in the Work.

7.5.5 If the Project is administered using the State's web-based project management software, the order for a minor change in the Work shall be documented through the "Action Items" business process.

7.6 Differing Site Conditions

7.6.1 If the CM encounters a Differing Site Condition, the CM shall stop Work on that Differing Site Condition and give immediate written notice of the condition to the A/E and Contracting Authority.

7.6.1.1 The CM's failure to give notice of the Differing Site Condition as required under this **Section 7.6.1** shall constitute an irrevocable waiver of any associated Claim.

7.6.1.2 The written notice of a Differing Site Condition under this **Section 7.6.1** shall be required before the notice of Claim under **Article 8**.

7.6.2 Promptly after receiving notice from the CM under **Section 7.6.1**, the A/E shall investigate to determine whether the CM has encountered a Differing Site Condition. The A/E shall give written notice of its determination to the Contracting Authority and CM within 10 days after completing the investigation.

7.6.2.1 If the A/E determines that the CM has encountered a Differing Site Condition and the Contracting Authority agrees with the A/E's determination, the A/E shall process an appropriate Change Order.

7.6.2.2 If the A/E determines that the CM has encountered a Differing Site Condition but the Contracting Authority disagrees with the A/E's determination, the A/E shall process an appropriate Change Directive through which the Contracting Authority may convey its disagreement with the A/E's determination.

7.6.2.3 If the A/E determines that the CM has not encountered a Differing Site Condition and the CM does not agree with that determination, the CM shall initiate a Claim under **Article 8** within 10 days of the date that the A/E issues its determination.

7.7 Change Order Cost or Credit Determination

7.7.1 General.

7.7.1.1 The maximum cost or credit resulting from a change in the Work shall be determined as described below.

.1 Proposals shall include the information required by **Section 7.7.1.4**.

.2 A Unit Price Proposal shall only be valid when incorporated into the Contract by Change Order except for Unit Price Work included in the GMP Amendment.

.3 The maximum cost or credit includes all compensation for impact costs. Additional costs for impacts shall not be allowed.

7.7.1.2 The CM shall not assign any portion of the Work to another Person whereby the CM would benefit directly or indirectly from the double application of charges for overhead or profit.

7.7.1.3 The Contracting Authority may require notarized invoices for material costs and may audit the records of the CM and Subcontractors.

7.7.1.4 For each change in the Work, the CM shall furnish a detailed Proposal itemized on the **Proposal Worksheet Summary Form (CM at Risk)** published by the Ohio Facilities Construction Commission through which the CM shall document the related changes in the Contract Sum as described under **Section 7.7.2**. Any Subcontractor pricing shall ~~also~~ be itemized on the appropriate **Proposal Worksheet Summary Form**.

7.7.1.5 Section 7.7.2 establishes the exclusive and maximum amount that the Owner shall pay for any Change Order, including, but not limited to, all amounts for interference with, delay, hindrance, disruption, or impact of the

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Work ("Pricing Criteria"). These Pricing Criteria also govern the value of deduct Change Orders and the CM's entitlement to additional compensation or damages through the Claims and dispute resolution processes on account of changes in the Work. In order to expedite the review and approval process, Proposals shall be prepared in the categories and order listed in **Section 7.7.2**.

7.7.2 Pricing Criteria.

7.7.2.1 CM Construction Stage Personnel Costs: The CM's on-Site management, supervision, and administrative personnel not subject to prevailing wage under to ORC Chapter 4115. These costs will be calculated on an hourly basis according to the rates set forth in the Personnel Costs Rate Schedule attached to the Agreement.

.1 In no event will the CM be entitled to an increase in the Contract Sum on account of Construction Stage Personnel Costs unless the CM actually incurs additional Construction Stage Personnel Costs solely on account of the associated change in the Work.

.2 Under no conditions will the increase under this **Section 7.7.2.1** exceed those additional Construction Stage Personnel Costs the CM actually incurs.

7.7.2.2 Labor: Field labor directly involved in the Work based upon the actual rate of pay to the worker. If the Project is subject to payment of prevailing wage rates, field labor shall be paid according to the relevant classification of labor as established in the applicable prevailing wage determination for the Project locality, as determined by the Ohio Department of Commerce, Wage and Hour Bureau.

.1 In no event will the CM be entitled to an increase in the Contract Sum on account of labor costs unless the CM actually incurs additional labor costs solely on account of the associated change in the Work.

.2 Under no conditions will the increase under this **Section 7.7.2.2** exceed those additional labor costs the CM actually incurs.

.3 The cost for supervision above the level of working forepersons (such as general forepersons, superintendent, project manager, etc.) is included in the adjustment under **Section 7.7.2.1** for the CM and under **Section 7.7.2.10** for Subcontractors.

7.7.2.3 Fringes: Fringe benefit credit for labor provided under **Section 7.7.2.2** is only allowable for prevailing wage fringe benefits pursuant to ORC Chapter 4115, including, but not limited to, Health and Welfare, vacation, apprenticeship training, and certain types of pension plans. The parties shall defer to the Ohio Department of Commerce's policy on which benefits are granted fringe benefit credit. Each fringe benefit for which credit is requested shall be calculated on an hourly basis and listed as a separate line item. The CM shall submit documentation supporting the calculation of the amounts for each fringe benefit for each worker classification, including labor provided by Subcontractors.

7.7.2.4 Allowable Payroll Expenses: Allowable payroll expenses for labor provided under **Section 7.7.2.2** including payroll taxes as well as other benefits that are required by Applicable Law, such as federal and state Unemployment and Workers' Compensation shall each be a separate line item and shall not be credited for compliance with ORC Chapter 4115.

7.7.2.5 Equipment Rentals: All charges for certain non-owned heavy or specialized equipment at up to 100 percent of the documented rental cost. No rental charges shall be allowed for hand tools, minor equipment, simple scaffolds, etc. Downtime due to repairs, maintenance and weather delays shall not be allowed. CM shall submit copies of actual paid invoices to substantiate rental costs.

7.7.2.6 Owned Equipment: All charges for certain heavy or specialized equipment owned by the CM or Subcontractor performing the Work at up to 100 percent of the cost listed by the current edition of the Associated Equipment Distributors' *AED Green Book* heavy equipment rental rates. No recovery shall be allowed for hand tools, minor equipment, simple scaffolds, etc. The longest period of time that the equipment is to be required for the Work shall be the basis for the pricing. Downtime due to repairs, maintenance, and weather delays shall not be allowed.

7.7.2.7 Trucking: A reasonable delivery charge or per-mile trucking charge for delivery of required materials or equipment. Charges for use of a pick-up truck shall not be allowed.

7.7.2.8 Materials: The actual cost (including all discounts, rebates or related credits) of all materials incorporated into the changed Work. Documentation shall show costs, quantities, or Unit Prices of all items, as appropriate.

.1 The cost or credit for reusable materials (e.g., concrete form lumber, shoring, or temporary enclosures) shall be limited to 33 percent of the material cost for each use.

7.7.2.9 CM's General Conditions Costs: The CM's General Conditions Costs to the extent attributable to an associated change in the Contract Time for achievement of Substantial Completion resulting from the change in the Work.

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.1 In no event shall the Contract Sum adjustment per day of Contract Time adjustment exceed an amount equal to **(1)** the sum of the General Conditions Costs line items in the CM's Schedule of Values attached to the GMP Amendment, **(2)** divided by the total number of days of the original Contract Time for achievement of Substantial Completion.

.2 The CM shall **(1)** exclude the Bond premium from the Schedule of Values for the purposes of the calculation under **Section 7.7.2.9.1**, and **(2)** include the actual adjustment of the Bond premium attributable to an associated change in the Contract Sum.

.3 If the CM purchases the builder's risk insurance for the Project, the CM shall **(1)** exclude the builder's risk insurance premium from the Schedule of Values for the purposes of the calculation under **Section 7.7.2.9.1**, and **(2)** include the actual adjustment of the builder's risk insurance premium attributable to an associated change in the Contract Sum.

7.7.2.10 Subcontractor Overhead and Profit: Adjustment of the Contract Sum on account of a change in Subcontractor-performed Work shall include the Subcontractor's aggregate overhead and profit allowance equal to 15 percent of the sum of the Subcontractor's costs described under **Sections 7.7.2.2** through **7.7.2.8** that are associated with that changed Work.

.1 The allowance applies to CM Affiliated Entities and to each Subcontractor tier.

.2 The allowance covers: the costs required to schedule and coordinate the Work, telephone, telephone charges, facsimile, telegrams, postage, photos, photocopying, hand tools, simple scaffolds (one level high), tool breakage, tool repairs, tool replacement, tool blades, tool bits, home office estimating and expediting, home office clerical and accounting support, home office labor (management, supervision, engineering), all other home office expense, legal services, travel, and parking expenses.

.3 An exception is allowed for shop or engineering labor on items in **Section 7.7.2.10.2**, which shall not be subject to Prevailing Wage rates for steel fabricators, sheet metal fabricators, and sprinkler system fabricators performing work off-site. Recovery for these matters shall be allowed on an hourly basis under items in **Sections 7.7.2.2**, **7.7.2.3**, and **7.7.2.4** of these Pricing Criteria.

.4 An exception is allowed for field supervision labor on items in **Section 7.7.2.10.2**, for those portions of the Change Order Work that will be performed, or was performed, at times when the superintendent is not required to be on site under **Section 6.4**, including but not limited to overtime hours due to acceleration and extensions of the Contract Times. Recovery for this matter will be allowed on an hourly basis under items in **Sections 7.7.2.2**, **7.7.2.3**, and **7.7.2.4** of these Pricing Criteria.

7.7.2.11 CM's Fee: Adjustment of the Contract Sum on account of a change in the Work shall include an allowance for the CM's Fee equal to **(1)** the percentage for the CM's Fee identified in the Agreement times **(2)** the sum of the costs described under **Sections 7.7.2.1** through **7.7.2.10**.

7.7.2.12 Miscellaneous: Adjustment of the Contract Sum on account of a change in Work may include the following costs with no allowance for CM's Fee under **Section 7.7.2.11** or Subcontractor overhead and profit under **Section 7.7.2.10**.

.1 The premium portion only for approved overtime (labor and fringes). The straight time portion is included in items in **Sections 7.7.2.2**, **7.7.2.3**, and **7.7.2.4**.

.2 State sales tax shall be allowed on items as defined by **Section 12.7.2**.

7.7.3 Costs that shall not be reimbursed for Change Order Work include the following:

7.7.3.1 Voluntary employee deductions including, but not limited to, deductions for charitable donations or U.S. savings bonds.

7.7.3.2 Employee profit sharing.

7.8 Time Extension

7.8.1 Every adjustment of the Contract Times associated with any change in the Work shall be determined as provided in this **Section 7.8**, which establishes the CM's maximum entitlement for any change in the Work, including without limitation all adjustments for interference, delay, hindrance, or disruption of the Work. This **Section 7.8** also governs time adjustments for deduct Change Orders and the CM's entitlement to additional time through the Claims and dispute resolution processes on account of changes in the Work.

7.8.2 The CM shall substantiate all changes in the Contract Times with:

7.8.2.1 A written description of the nature of the interference, disruption, hindrance or delay;

7.8.2.2 Identification of Persons and events responsible for the interference, disruption, hindrance or delay;

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7.8.2.3 Date, or anticipated date, of commencement of the interference, disruption, hindrance or delay;

7.8.2.4 Identification of activities by schedule activity number and name on the Construction Progress Schedule, which may be affected by the interference, disruption, hindrance or delay, or new activities created by the interference, disruption, hindrance or delay and the relationship with existing activities;

7.8.2.5 Anticipated duration of the interference, disruption, hindrance or delay and of any remobilization period;

7.8.2.6 Specific number of days of extension requested and specific number of days for remobilization requested;

7.8.2.7 Recommended action to avoid or minimize any future interference, disruption, hindrance or delay;

7.8.2.8 A detailed written Proposal as described under **Section 7.7** for an increase in the Contract Sum that would fully compensate the CM for all costs of acceleration of the Work needed to completely overcome the associated delay, if any.

7.8.3 Critical Path. Time extensions shall depend upon the extent to which the Work on the critical path of the Construction Progress Schedule is affected, if applicable.

7.8.3.1 A Change Order granting a time extension may provide that the Contract Times shall be extended for only those specific elements so interfered with, disrupted, hindered, or delayed and related remobilization and that remaining Milestone dates shall not be altered and may further provide for adjustment of Liquidated Damages.

7.9 Examination and Audit of CM's Records

7.9.1 The Contracting Authority and Owner may examine all books, records, documents and other data of the CM and its Subcontractors related to the bidding, pricing, or performance of the Work for the purpose of evaluating any CM Payment Request, Proposal,, Modification, or Claim.

7.9.2 The above-referenced materials shall be made available at the office of the CM or Subcontractor, as applicable, at all reasonable times for inspection, audit, and reproduction until the expiration of 6 years after the date of Substantial Completion of all Work.

7.9.2.1 The CM shall maintain, and require its Subcontractors to maintain, complete and accurate business records at its principal place of business. If the principal place of business is greater than 50 miles from the Site, the CM shall timely make records available, and shall require its Subcontractors to timely make records available, at the office of the Contracting Authority or Owner upon request for the records.

7.9.3 To the extent that the CM or a Subcontractor, as applicable, informs the Contracting Authority or Owner in writing that any documents provided to the Contracting Authority or Owner are trade secrets, the Contracting Authority or Owner shall treat these documents, to the extent permitted by law, as trade secrets of the CM or Subcontractor, as applicable.

7.9.3.1 If a dispute arises with any other Person about whether that Person should be given access to the documents, the CM or Subcontractor as applicable, shall indemnify the Contracting Authority and Owner against all costs, expenses, and damages, including but not limited to attorneys' fees, incurred or paid by reason of that dispute.

7.9.4 The right of inspection, audit, and reproduction extends to all documents necessary to permit adequate evaluation of the cost of pricing data submitted along with the computations and projections used therein.

7.9.5 If the Contract has been terminated, in whole or in part, the records relating to the Work terminated shall be made available to the Contracting Authority or Owner for a period of 6 years from the date of any applicable final settlement or payment, as applicable.

7.9.6 Records that relate to disputes, litigation, or settlement of Claims arising out of the performance of the Work shall be made available until the dispute, litigation or Claims have been finally decided or settled.

ARTICLE 8 - DISPUTE RESOLUTION

8.1 Initiation of a Claim

8.1.1 Every Claim shall accrue upon the date of occurrence of the event giving rise to the Claim.

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8.1.2 Except as provided under **Section 1.10**, the CM shall initiate every Claim by giving written notice of the Claim to the A/E and Contracting Authority within 10 days after occurrence of the event giving rise to the Claim, with the following exceptions:

8.1.2.1 The 10-day time limit on initiating a Claim arising from a determination of the Contracting Authority concerning a Change Directive begins to run on the date that the Contracting Authority issues its determination under **Section 7.4.7** or **Section 7.4.10**, as applicable.

8.1.2.2 The 10-day time limit on initiating a Claim arising from the response of the A/E to a RFI begins to run on the date that the A/E issues the A/E's response to the Request for Interpretation.

8.1.2.3 The 10-day time limit on initiating a Claim arising from the A/E's determination concerning a Differing Site Condition begins to run on the date that the A/E issues the A/E's determination under **Section 7.6**.

8.1.3 The CM's written notice of a Claim shall provide the following information to permit timely and appropriate evaluation of the Claim, determination of responsibility, and opportunity for mitigation:

8.1.3.1 nature and anticipated amount of the impact, including all costs for any interference, disruption, hindrance, or delay, which shall be calculated in accordance with **Section 7.7** and be a fair and reasonably accurate assessment of the damages suffered or anticipated by the CM;

8.1.3.2 identification of the circumstances responsible for causing the impact, including, but not limited to, the date or anticipated date, of the commencement of any interference, disruption, hindrance, or delay;

8.1.3.3 identification of activities on the Construction Progress Schedule that will be affected by the impact or new activities that may be created and the relationship with existing activities;

8.1.3.4 anticipated impacts and anticipated duration of any interference, disruption, hindrance, delay, or impact, and any remobilization period; and

8.1.3.5 recommended action to avoid or minimize any interference, disruption, hindrance, delay, or impact.

8.1.4 The CM's failure to initiate a Claim as and when required under this **Section 8.1** shall constitute the CM's irrevocable waiver of the Claim.

8.1.5 The A/E, in consultation with the Contracting Authority, shall respond to the written notice of the Claim within a reasonable time of receipt, but not to exceed 10 days.

8.2 Substantiation of Claims

8.2.1 Within 30 days after the initiation of a Claim, the CM shall submit 4 copies of all information and statements required to substantiate a Claim as provided in this **Article 8** and all other information that the CM believes substantiates the Claim. The CM shall file the 4 copies by delivery of 1 copy to the A/E, 1 copy to the Owner, and 2 copies to the Contracting Authority.

8.2.2 The CM shall substantiate all of its Claims by providing the following minimum information:

8.2.2.1 a narrative of the circumstances, which gave rise to the Claim, including without limitation the start date of the event or events and the actual or anticipated finish date;

8.2.2.2 detailed identification of the Work (e.g., activity codes from the Construction Progress Schedule) affected by the event giving rise to the Claim;

8.2.2.3 copies of the CM's daily log (**Section 6.2.14**) for each day of impact;

8.2.2.4 copies of relevant correspondence and other information regarding or supporting CM entitlement;

8.2.2.5 copies of the CM's most recent income statement and complete and detailed job-cost report, including segregated general and administrative expenses for the most recent reporting period, and for the period of the Contract, if available, and similar information for any Subcontractor claim included; and

8.2.2.6 the notarized certification described under **Section 8.5.1.1**.

8.2.3 The CM's failure to comply with the requirements of this **Section 8.2** shall constitute an irrevocable waiver of any related Claim.

8.3 Substantiation of Claims for Increase of the Contract Sum

8.3.1 The CM shall substantiate each Claim for an increase of the Contract Sum with:

8.3.1.1 written documentation as described under **Section 7.7** of the actual additional direct and indirect costs to the CM due to the event giving rise to the Claim;

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8.3.1.2 a written statement from the CM that the increase requested is the entire increase in the Contract Sum associated with the Claim; and

8.3.1.3 the general substantiation documentation described under **Section 8.2**.

8.3.2 The CM's failure to comply with the requirements of this **Section 8.3** shall constitute an irrevocable waiver of any related Claim.

8.4 Substantiation of Claims for Extension of the Contract Times

8.4.1 The CM shall substantiate each Claim for an extension of the Contract Times with:

8.4.1.1 written documentation as described under **Section 7.8** of the actual delay to the critical path of the Construction Progress Schedule due to the event giving rise to the Claim;

8.4.1.2 a detailed written Proposal as described under **Section 7.7** for an increase in the Contract Sum that would fully compensate the CM for all costs of acceleration of the Work needed to completely overcome the associated delay together with a statement consistent with **Section 8.3.1.2**;

8.4.1.3 a written statement from the CM that the extension requested is the entire extension of the Contract Times associated with the Claim; and

8.4.1.4 the general substantiating documentation described under **Section 8.2**.

8.4.2 In addition to the requirements of **Section 8.4.1**, if adverse weather conditions are the basis for a Claim for additional time, the CM shall document the Claim with data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on a critical element of the scheduled construction. The support for and evaluation of all adverse weather Claims shall be based upon average weather conditions during the 5 years immediately preceding the dates at issue in the Claim as those weather conditions were recorded at the government-controlled weather-recording facility nearest to the Site.

8.4.3 The CM's failure to comply with the requirements of this **Section 8.4** shall constitute an irrevocable waiver of any related Claim.

8.5 Certification of the Claim

8.5.1 The CM shall certify each Claim within 30 days after initiating the Claim under **Section 8.1** or before Contract Completion, whichever is earlier, by providing the notarized certification specified in **Section 8.5.1.1**, signed and dated by the CM:

8.5.1.1 "The undersigned Construction Manager certifies that the Claim is made in good faith; that the supporting data is accurate and complete to the best of the Construction Manager's knowledge and belief; that the amount requested is a fair, reasonable, and necessary adjustment for which the Construction Manager believes the State is liable; and that the undersigned is duly authorized to certify the Claim on behalf of the Construction Manager."

8.5.2 The date that the CM's certified and fully substantiated Claim is received by the Contracting Authority, or the date that the CM is required to certify and fully substantiate a Claim pursuant to **Sections 8.2.1** and **8.5.1**, shall trigger the 120-day period for exhaustion of administrative remedies pursuant to ORC Section 153.16(B).

8.5.3 The CM's failure to comply with the requirements of this **Section 8.5** shall constitute an irrevocable waiver of any related Claim.

8.6 Delay and Delay Damage Limitations; Derivative Claims

8.6.1 Subject to other provisions of the Contract, the CM will be entitled to an extension of the Contract Times on account of delay in the commencement or progress of Work on the critical path of the Construction Progress Schedule caused by acts of Nature or the public enemy, acts of the government not arising from the CM's failure to comply with Applicable Law, fires, floods, epidemics, weather, and labor disputes beyond the CM's control.

8.6.2 Notwithstanding any other provision of the Contract Documents to the contrary, the CM shall not be entitled to an increase in the Contract Sum, or an extension of the Contract Times, or both:

8.6.2.1 on account of the impact of any normal adverse weather on any of the Work or on account of the impact of any abnormal adverse weather on Work not on the critical path;

8.6.2.2 to the extent that a delay occurs concurrently with a delay attributable to the CM; or

8.6.2.3 on account of the delay of any Work not on the critical path.

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8.6.3 Notwithstanding any other provision of the Contract Documents to the contrary, the CM shall not be entitled to an increase in the Contract Sum or any type of damages on account of a delay in the commencement or progress of Work on the critical path unless **(1)** the delay is caused by the Owner and **(2)** the delay was not authorized or permitted under the Contract.

8.6.4 Notwithstanding any other provision of the Contract Documents to the contrary, the CM shall not be entitled to an increase in the Contract Sum or any type of damages arising from a delay in the commencement or progress of any of the Work caused by the occurrence or non-occurrence of an event beyond the Owner's control such as acts of Nature or the public enemy, acts of the government, fires, floods, epidemics, labor disputes, unusual delivery delays, weather, or damages caused by the CM.

8.6.5 Derivative Claims. Notwithstanding any other provision of the Contract to the contrary, if the Owner prosecutes a claim, suit, or appeal against a Separate Consultant or Separate Contractor to recover damages the CM suffers on account of the acts or neglects of a Separate Consultant or Separate Contractor or a person or entity for whom either is legally responsible, the Owner's liability to the CM shall not exceed the amount the Owner actually recovers from the Separate Consultant or Separate Contractor on account of those damages less the costs the Owner incurs recovering them. The Owner is not obligated to prosecute any such claim, suit, or appeal.

8.7 Liquidated Damages

8.7.1 If the CM fails to achieve a Milestone within the associated Contract Time, it would be difficult, if not impossible, to determine the Owner's resulting damages. Therefore, if the CM fails to achieve a Milestone within the associated Contract Time, the CM shall (at the Owner's option) pay to or credit the Owner the Liquidated Damages per day sum determined according to the following schedule for each day that the CM fails to achieve a Milestone within the associated Contract Time.

Contract Sum	Liquidated Damages per day
Less than $1,000,000	$500
From $1,000,000.01 to $2,000,000	$1,000
From $2,000,000.01 to $5,000,000	$2,000
From $5,000,000.01 to $10,000,000	$5,000
From $10,000,000.01 to $20,000,000	$7,500
From $20,000,000.01 to $50,000,000	$10,000
More than $50,000,000	$15,000

8.7.2 If the CM simultaneously fails to achieve two or more Milestones, the Owner shall be entitled to recover the sum of the associated Liquidated Damages per day rates.

8.7.3 The Liquidated Damages described in this **Section 8.7** are only intended to compensate the Owner for the damages the Owner itself incurs as a direct result of the CM's failure to achieve the Milestones within their associated Contract Times.

8.7.4 The Liquidated Damages described in this **Section 8.7** are not intended to compensate the Owner for any damages the Owner incurs on account of **(1)** any claims attributable to the CM that are brought by others including Separate Consultants and Separate Contractors as a result of the CM's failure to achieve the Milestones within their associated Contract Times or **(2)** any failure of the CM to timely, properly, and completely perform the Contract other than the failure to achieve the Milestones within their associated Contract Times.

8.7.5 The parties acknowledge that the above-listed Liquidated Damages per day sums are not penalties but are a reasonable estimate of the damages the Owner itself would incur as a direct result of the CM's failure to achieve the Milestones within their associated Contract Times. The parties each irrevocably waive the right (if any) to challenge the validity and enforceability of those Liquidated Damages per day sums. Notwithstanding any other provision of the Contract Documents to the contrary, if a court determines that the Liquidated Damages per day sums or their application are void and unenforceable, the Owner shall be entitled to recover the actual damages that it incurs on account of the CM's failure to achieve one or more of the Milestones within the Contract Times.

8.7.6 In addition to other rights that the Owner may have relative to Liquidated Damages, the Contracting Authority may deduct Liquidated Damages from the Contract Sum as the damages accrue. If payments then or thereafter due the CM are not sufficient to cover such amounts, the CM shall immediately pay the amount of the insufficiency to the Owner.

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8.8 Mutual Waiver of Consequential Damages

8.8.1 Except as provided under **Section 8.8.2**, the Owner and CM each waive against the other all Claims for consequential damages that may arise out of or relate to this Contract.

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

8.8.1.2 The CM's waiver includes Claims for unabsorbed home-office overhead; any other form of overhead in excess of that specifically provided for under **Section 7.7**; delay damages except as otherwise specifically provided for in **Section 8.6**; increased cost of funds for the Project; lost opportunity to work on other projects; losses of financing, business, and reputation; loss of profit except anticipated profit arising directly from properly performed Work; loss of bonding capacity; and consequential damages arising from termination of the Contract or related to insolvency.

8.8.2 Notwithstanding **Section 8.8.1**, this **Section 8.8**:

8.8.2.1 does not apply to any damages that would be covered by insurance provided in connection with the Project if the Contract did not include **Section 8.8.1**;

8.8.2.2 does not apply to the CM's indemnity obligations for third-party claims against the Indemnified Parties even if those claims are for damages that **Section 8.8.1** would otherwise preclude;

8.8.2.3 does not preclude the Owner's recovery of Liquidated Damages under **Section 8.7**; and

8.8.2.4 does not apply to Claims for damages arising from the Owner's or the CM's gross negligence or willful misconduct.

8.8.3 This **Section 8.8** shall survive termination of the Contract.

8.9 Review of the Claim

8.9.1 The A/E shall review the Claim and prepare a written analysis of its content, which shall include:

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

8.9.1.2 identification of relevant Contract Documents and language;

8.9.1.3 an analysis of whether the CM complied with the requirements of the Contract Documents pertaining to Claim initiation and substantiation including, without limitation, the issues of entitlement to, and calculation of, adjustments of the Contract Sum, Contract Times, or both;

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

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

8.9.1.6 a concluding opinion regarding CM entitlement to, and the appropriateness and reasonableness of all, or any part of, the Claim; and

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

8.9.2 The A/E shall submit the written analysis to the Project Manager no more than 30 days after receiving the CM's substantiated and certified Claim.

8.10 Claim Decision

8.10.1 The Project Manager shall examine the CM's Claim and A/E's analysis.

8.10.2 The Project Manager shall approve or deny all, or any part, of the CM's Claim and forward a written decision to the CM, A/E, Owner, and Contracting Authority within 14 days after receiving the A/E's analysis.

8.10.2.1 The Project Manager may employ independent resources to assist in its review, or refer evaluation of the Claim to a consultant.

8.10.3 If the CM and Owner agree with the Project Manager's decision, the decision shall be incorporated into a Change Order.

8.10.4 Any Claim remaining unresolved after completion of the process described under this **Section 8.10** shall be subject to Claim decision review as described under **Section 8.11**.

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8.11 Claim Decision Review

8.11.1 The CM may request review of the Project Manager's decision by written notice delivered by certified mail within 14 days of the Project Manager's decision.

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

8.11.1.2 If the Project is locally administered by an Institution of Higher Education under ORC Section 3345.50 or ORC Section 3345.51, the written notice shall be delivered to the Institutional Designee who will review the Project Manager's decision instead of the Commission.

8.11.2 The Commission or Institutional Designee, if applicable, shall schedule and conduct a meeting within 30 days after receiving the CM's request for review.

8.11.2.1 The Commission or Institutional Designee may employ independent resources to assist in the meeting and review.

8.11.3 The Commission or Institutional Designee, if applicable, shall determine the final disposition of the CM's request for review and provide a written decision to the CM and Owner within 14 days after the meeting.

8.11.4 The decision of the Commission or Institutional Designee is the final administrative decision of the Contracting Authority as described under ORC Section 153.12(B).

8.11.5 If the CM and Owner agree with the Commission's or the Institutional Designee's decision, the decision shall be incorporated into a Change Order.

8.11.6 Any Claim remaining unresolved after completion of the process described under this **Section 8.11** shall be subject to litigation, which may be preceded by Alternative Dispute Resolution ("ADR") as described under **Section 8.13**.

8.12 Delegation

8.12.1 No provision of this **Article 8** shall prevent the Executive Director from delegating the duties or authorities of the Commission to any other person selected at the Executive Director's sole discretion.

8.13 Alternative Dispute Resolution

8.13.1 The intent of the ADR process is to resolve disputes quickly and equitably in a manner agreed upon by all parties to the dispute.

8.13.2 The ADR procedure shall be accepted by all of the Project's key stakeholders.

8.13.3 The accepted ADR methods shall not include binding arbitration; alter any of the requirements for Claim initiation, certification, and substantiation; or alter the administrative process described under this **Article 8**.

8.13.4 The following forms of non-binding ADR may be considered:

8.13.4.1 Negotiation: If negotiation is warranted, the parties to the dispute may agree to a progressive level of negotiators, invested with the authority to agree to a determination of an adjustment in the Contract Sum, Contract Times, or both.

8.13.4.2 Dispute Review Board: If a dispute review board is the accepted ADR procedure, or the process to follow when negotiations are unsuccessful, the parties to the dispute shall jointly select 3 neutral third parties to monitor the progress of construction and provide recommended resolutions to disputes that are brought before them. The costs of the dispute review board shall be shared equally among the parties to the dispute.

8.13.4.3 Mediation: If mediation is the accepted ADR procedure, or the process to follow when negotiations are unsuccessful, the parties to the dispute shall accept a neutral third party to mediate the dispute. The costs of mediation shall be shared equally among the parties to the dispute.

8.13.4.4 Another ADR procedure accepted by all of the Project's key stakeholders.

8.14 Audit of the Claim

8.14.1 All Claims shall be subject to audit at any time following filing of the Claim, whether or not the Claim is part of a lawsuit.

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8.14.2 The audit may be performed by employees of the Contracting Authority or by a consultant engaged by the Contracting Authority.

8.14.3 The audit may begin upon 10-days' notice to the CM or affected Subcontractor.

8.14.4 The CM shall cooperate with the request.

8.14.5 Failure of the CM or a Subcontractor to produce sufficient records to allow the Contracting Authority to audit and verify a Claim shall constitute an irrevocable waiver of the Claim or portion of the Claim that could not be completely audited.

8.14.6 The CM shall make available to the Contracting Authority all CM and Subcontractor documents related to the Claim including, without limitation, the following documents:

8.14.6.1 daily time sheets and superintendent's daily reports;

8.14.6.2 union agreements, if any, and employer agreements;

8.14.6.3 insurance, welfare, fringes, and benefits records;

8.14.6.4 payroll register;

8.14.6.5 earnings records;

8.14.6.6 payroll tax returns;

8.14.6.7 material invoices, purchase orders, Subcontracts, and all material and supply acquisition contracts;

8.14.6.8 material cost distribution worksheets;

8.14.6.9 equipment records (list of CM equipment, rates, etc.);

8.14.6.10 vendor rental agreements and Subcontractor invoices;

8.14.6.11 Subcontractor payment certificates;

8.14.6.12 canceled checks (payroll and vendors);

8.14.6.13 complete and detailed job-cost report;

8.14.6.14 job payroll ledger;

8.14.6.15 general ledger, general journal, (if used) and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals;

8.14.6.16 cash disbursements journal;

8.14.6.17 financial statements for all years reflecting operations on the Project;

8.14.6.18 income tax returns for all years reflecting operations on the Project;

8.14.6.19 depreciation records on all equipment utilized whether the records are maintained by the CM, its accountant, or others;

8.14.6.20 if a source other than depreciation records is used to develop costs for the CM's internal purposes in establishing the actual cost of owning and operating equipment, all other source documents;

8.14.6.21 all documents that reflect the CM's actual profit and Overhead during the years the Project was being performed;

8.14.6.22 all documents related to the preparation of the CM's GMP Proposal, including the final calculations on which the Contract Sum was based;

8.14.6.23 all documents that relate to the Claim together with all documents that support the amount of damages as to the Claim;

8.14.6.24 worksheets used to prepare the Claim establishing the cost components for items of the Claim including, but not limited to, labor, fringes, benefits and insurance, materials, equipment, Subcontractors, and all documents that establish the periods of time, individuals involved, the hours and rate of pay for the individuals; and

8.14.6.25 all other documents required by the Contracting Authority to reasonably review the Claim.

8.15 False Certification of the Claim

8.15.1 If the CM falsely certifies all or any part of a Claim, the portion of the Claim falsely certified shall be denied, and may be sufficient cause for the State to debar the CM from future State contracting opportunities as permitted by law.

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8.16 Performance and Payment

8.16.1 The CM shall proceed with the Work during any dispute resolution process, unless otherwise agreed by the CM and Contracting Authority in writing.

8.16.2 The Contracting Authority shall continue to make payment of any undisputed amounts in accordance with the Contract Documents pending final resolution of a Claim, unless otherwise agreed by the CM and Contracting Authority in writing.

ARTICLE 9 - COMPENSATION AND PAYMENT

9.1 Preconstruction Stage Compensation

9.1.1 Preconstruction Stage Compensation—General Provisions.

9.1.1.1 The Preconstruction Stage Compensation is the sum of **(1)** the Preconstruction Fee, **(2)** Preconstruction Stage Personnel Costs, and **(3)** Preconstruction Stage Reimbursable Expenses. The Owner shall pay the Preconstruction Stage Compensation to the CM in exchange for the CM's proper, timely, and complete performance of the Preconstruction Stage Services.

9.1.1.2 If the CM engages a Consultant to perform a portion of the Preconstruction Stage Services, the Consultant's compensation is included in the CM's Preconstruction Stage Compensation as described in the Contract. Unless the Owner and Contracting Authority agree otherwise in writing, the Consultant's Preconstruction Stage compensation will be administered on the same basis as the CM's Preconstruction Stage Compensation.

9.1.2 Preconstruction Fee.

9.1.2.1 The Owner will pay the Preconstruction Fee on a progress basis but **(1)** for each Preconstruction Stage, not in excess of the portion of the Preconstruction Fee allocated to that Preconstruction Stage in the Agreement and **(2)** not in excess of the total Preconstruction Fee stated in the Agreement.

9.1.3 Preconstruction Stage Personnel Costs.

9.1.3.1 The Owner shall pay the CM's Preconstruction Stage Personnel Costs on an hourly basis according to the rates set forth in the Personnel Costs Rate Schedule attached to the Agreement, but not in excess of the cap on Preconstruction Stage Personnel Costs stated in the Agreement.

9.1.3.2 For the purpose of invoicing, the CM may group employees within the same category of labor to determine a blended rate.

9.1.4 Preconstruction Stage Reimbursable Expenses.

9.1.4.1 The Owner shall pay the CM on account of the Preconstruction Stage Reimbursable Expenses the CM incurs during the performance of the Preconstruction Services, but not in excess of the cap on Preconstruction Stage Reimbursable Expenses stated in the Agreement. The CM is not entitled to any mark-up on Preconstruction Stage Reimbursable Expenses.

9.1.4.2 Notwithstanding the Preconstruction Stage Reimbursable Expenses Schedule attached to the Agreement, the CM shall obtain the Contracting Authority's written approval before purchasing any tangible property where the CM intends to seek reimbursement of the purchase price from the Owner as a Reimbursable Expense. The CM shall maintain a detailed inventory of all such tangible property.

9.1.5 Allocation of Preconstruction Stage Personnel Costs and Preconstruction Stage Reimbursable Expenses.

9.1.5.1 The Owner, Contracting Authority, and CM will agree upon the allocation of Preconstruction Stage Personnel Costs and Preconstruction Stage Reimbursable Expenses through the Preconstruction Stages, and the CM shall prepare and maintain the Staffing Plan to reflect those agreed-upon allocations.

9.1.5.2 At the CM's request, the Contracting Authority and the Owner may agree in writing to reallocate costs between the Preconstruction Stage Personnel Costs cap and Preconstruction Stage Reimbursable Expenses cap provided that the sum of the Preconstruction Stage Personnel Costs cap and Preconstruction Stage Reimbursable Expenses cap does not change.

9.1.6 Preconstruction Compensation Increases.

9.1.6.1 Extension of Project Time. If the CM notifies the Owner and Contracting Authority not less than 30 days before the date set for completion of the Preconstruction Services established in the agreed-upon initial Project Schedule described in **Section 5.2.3.1**, that the Preconstruction Services are reasonably expected to be completed

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more than 30 days after that date through no fault of the CM, the CM's compensation caps for Preconstruction Stage Personnel Costs and Preconstruction Stage Reimbursable Expenses to be incurred during that extended period will be negotiated to the mutual satisfaction of the Owner, Contracting Authority, and CM. If as a result of that negotiation, the Owner agrees to pay the CM additional compensation, the Contract shall be amended though a Preconstruction Services Amendment to reflect that agreement before the CM renders any services made necessary because of the extension unless the Owner and Contracting Authority agree otherwise in writing.

9.1.6.2 Change in Project Scope or Budget. The Owner, Contracting Authority, and CM will negotiate a mutually satisfactory adjustment of the CM's compensation caps for Preconstruction Stage Personnel Costs and Preconstruction Stage Reimbursable Expenses if, through no fault of the CM, the Owner or Contracting Authority materially change the Approved Program of Requirements after completion of the Schematic Design Stage or the Construction Budget after the execution of the Agreement. If as a result of that negotiation, the Owner agrees to pay the CM additional compensation, the Contract shall be amended though a Preconstruction Services Amendment to reflect that agreement before the CM renders any services made necessary because the change in the Approved Program of Requirements or Construction Budget.

9.1.7 CM Preconstruction Invoices.

9.1.7.1 All of the CM's invoices for Preconstruction Services shall:

- **.1** describe all Preconstruction Services rendered in sufficient detail to enable the Owner to identify the Preconstruction Services;
- **.2** separately identify the portion of the Preconstruction Fee, Preconstruction Stage Personnel Costs, and Preconstruction Stage Reimbursable Expenses included in the total invoiced amount;
- **.3** identify the CM's or its Consultants' staff (as appropriate) who performed the Preconstruction Services, the time spent performing the Preconstruction Services, and the related hourly rate(s);
- **.4** summarize all Preconstruction Stage Reimbursable Expenses in sufficient detail to enable the Owner to identify the category and amount of the individual Preconstruction Stage Reimbursable Expenses; and
- **.5** cover only one calendar month ending on the last day of the month.

9.1.7.2 The CM shall submit its invoices for Preconstruction Services to the Contracting Authority, which will review and forward them to the Owner.

9.1.7.3 Payments for Preconstruction Services shall not be subject to retainage.

9.1.8 Preconstruction Payment Timing.

9.1.8.1 The Owner shall pay the CM on a monthly basis within 30 days after the Contracting Authority's receipt of the CM's invoice unless the Contracting Authority disputes the invoice amount or exercises its rights under **Section 9.1.9**.

- **.1** If the Contracting Authority disputes the invoice amount or chooses to exercise its rights under **Section 9.1.9**, **(1)** the Contracting Authority shall give the CM written notice within 14 days after the Contracting Authority's receipt of the CM's invoice, and **(2)** the Owner shall timely pay all undisputed amounts or amounts not subject to **Section 9.1.9** (as appropriate).
- **.2** If the CM takes exception to the withholding of payment under **Section 9.1.9** the CM shall initiate and prosecute a Claim under **Article 8** and continue to perform the Contract.

9.1.9 Right to Withhold Payment.

9.1.9.1 The Contracting Authority may decline to approve any CM invoice or part thereof, or nullify any previous CM invoice, in whole or in part, to the extent necessary in the Contracting Authority's sole opinion to protect the Owner from loss because of:

- **.1** damage caused by the CM;
- **.2** failure to comply with Applicable Law;
- **.3** failure to timely make any submittal in the Preconstruction Stage;
- **.4** failure to carry out the Work in accordance with the Contract Documents; or
- **.5** that which is permitted under other provisions of the Contract Documents.

9.1.9.2 If the CM remedies the basis for withholding payment under **Section 9.1.9.1** to the Contracting Authority's reasonable satisfaction, the Owner shall pay the amounts withheld.

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9.2 Construction Stage Compensation

9.2.1 Establishing the Contract Sum—General Provisions.

9.2.1.1 In exchange for the CM's proper, timely, and complete performance of the Work in the Construction Stage, the Owner shall pay the Contract Sum to the CM except as described under **Sections 9.2.5.6** and **9.2.5.7**.

9.2.1.2 The purpose of **Section 9.2.2** is to establish the parties' understanding of the items described in order to facilitate estimating, evaluating, analyzing, discussing, and establishing the Contract Sum before the parties enter into the GMP Amendment.

9.2.1.3 Since the general financial arrangement for the Contract is lump-sum/fixed-cost and not cost-reimbursable (e.g., cost-plus, cost-plus with a guaranteed maximum price, line-item guaranteed maximum price, target price, etc.), once the parties establish the Contract Sum, **Section 9.2.2** is not relevant to the payment of the Contract Sum.

9.2.1.4 After the parties enter into the GMP Amendment, adjustments of the Contract Sum on account of Modifications and Claims will be governed by **Article 7**, **Article 8**, and other applicable provisions of the Contract.

9.2.2 Establishing the Contract Sum—Elements.

9.2.2.1 For the purposes of the establishing the Contract Sum through the GMP Amendment, the Contract Sum is the sum of the CM's Fee, plus the estimated Cost of the Work (including Allowances and Unit Price Work), plus the CM's Contingency.

9.2.2.2 The CM shall propose the amount of the Cost of the Work as a part of the proposed GMP Amendment.

.1 The portion of the Cost of the Work attributable to the CM's Construction Stage Personnel Costs shall not exceed but may be less than the cap on CM's Construction Stage Personnel Costs identified in the Agreement.

.2 The portion of the Cost of the Work attributable to the General Conditions Costs~~, as a percentage of the Cost of the Work identified by the CM in the proposed GMP Amendment,~~ shall not exceed but may be less than the General Conditions Costs cap identified in the Agreement.

9.2.2.3 The CM shall propose the amount of the CM's Contingency as a part of the proposed GMP Amendment; provided, however, that the CM's Contingency, as a percentage of the Cost of the Work identified by the CM in the proposed GMP Amendment, shall not exceed but may be less than the percentage for the CM's Contingency identified in the Agreement.

9.2.2.4 The CM shall propose the amount of the CM's Fee as a part of the proposed GMP Amendment; provided, however, that the CM's Fee, as a percentage of the sum of the Cost of the Work plus the CM's Contingency identified by the CM in the proposed GMP Amendment, shall not exceed the percentage for the CM's Fee identified in the Agreement.

9.2.3 CM's Fee.

9.2.3.1 After the parties enter into the GMP Amendment, the CM's Fee is subject to adjustment as provided elsewhere in the Contract.

9.2.3.2 After the parties enter into the GMP Amendment and after the Date of Commencement (except as provided under **Section 9.2.9.1.1**), the CM may request payment of the CM's Fee on a percent-complete progress basis.

9.2.3.3 The CM shall account for the CM's Fee as a separate line item of the Contract Sum in all financial reports and like documents presented to the Owner, Contracting Authority, and A/E during the Project.

9.2.4 General Conditions Costs.

9.2.4.1 After the parties enter into the GMP Amendment, the General Conditions Costs are subject to adjustment as provided elsewhere in the Contract.

9.2.4.2 After the parties enter into the GMP Amendment and after the Date of Commencement, the CM may request payment of the General Conditions Costs on a percent-complete progress basis.

9.2.4.3 The CM shall account for the General Conditions Costs as a separate line item of the Contract Sum in all financial reports and like documents presented to the Owner, Contracting Authority, and A/E during the Project.

9.2.4.4 Notwithstanding the General Conditions Costs Description attached to the Agreement, the CM shall obtain the Contracting Authority's written approval before purchasing any tangible property where the CM intends to pay for that tangible property with General Conditions Costs paid to the CM. The CM shall maintain a detailed inventory of all such tangible property.

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9.2.5 CM's Contingency.

9.2.5.1 After the parties enter into the GMP Amendment and thereby establish the original balance of the CM's Contingency, the CM's Contingency will be further funded by the "buy-out savings," if any, realized as result of a CM's estimate of the cost of a particular Subcontract or CM self-performed scope of Work that is higher than the actual cost of that scope of Work at the time the Contracting Authority approved of **(1)** the award of the related Subcontract or **(2)** the performance of that scope of Work by the CM or a CM Affiliated Entity.

9.2.5.2 After the parties enter into the GMP Amendment and after the Date of Commencement:

.1 the CM may use the CM's Contingency in its discretion (subject to the concurrence of the Owner and the Contracting Authority) to pay for unexpected events such as: **(1)** a CM's GMP Amendment estimate of the subcontract sum of a particular Subcontract that is lower than the actual subcontract sum of that Subcontract (provided, however, that the foregoing use does not include the scope of any Work performed by the CM or a CM Affiliated Entity); **(2)** a Subcontractor's breach of its Subcontract; **(3)** remediation of Defective Work; and **(4)** additional costs required to complete the Work within the Contract Times where the CM would not be entitled to a Modification; and

.2 the Owner will pay the CM's Contingency to the CM on a cost-reimbursable basis on account of the CM's appropriate use of the CM's Contingency as described under **Section 9.2.5.2.1**.

.3 As between the Owner, Contracting Authority, and CM, the entire risk of the occurrence of the events described under **Section 9.2.5.2.1** is allocated to the CM. All costs described under **Section 9.2.5.2.1** shall be funded solely from the CM's Contingency or by the CM, and the CM shall have no Claim against the Owner or Contracting Authority for those costs if the CM's Contingency is depleted.

9.2.5.3 The CM's use of the CM's Contingency on account of a Subcontractor's breach of its Subcontract is subject to the CM's obligation to promptly and diligently pursue recovery of those funds from **(1)** the Subcontractor and its Surety, if any, and **(2)** the insurer under an applicable subcontractor default insurance policy, if any. The CM shall return any recovered CM Contingency funds to the Owner.

9.2.5.4 The CM shall account for the CM's Contingency as a separate line item of the Contract Sum in all financial reports and like documents presented to the Owner, Contracting Authority, and A/E during the Project.

9.2.5.5 Neither the CM nor Owner will be entitled to adjustment of the CM's Contingency on account of a Modification or Claim except as described under **Sections 9.2.5.6** and **9.2.5.7**.

9.2.5.6 Unless otherwise agreed in the GMP Amendment, the dates on which 25 percent, 50 percent, and 75 percent of the Contract Time for achievement of Substantial Completion of all Work has expired will be Contingency Review Dates. On each Contingency Review Date or the next following normal business day, the Owner, the Contracting Authority, and the CM will meet to review the balance in the CM's Contingency and to sign a deduct Change Order to reduce the Contract Sum by an amount equal to the sum of **(1)** the amount that the balance in CM's Contingency exceeds the original balance of the CM's Contingency as established through the GMP Amendment, plus **(2)** the amount of the CM's Contingency that the CM decides to release to the Owner at that time, plus **(3)** an associated reduction of the CM's Fee.

Example: Assume that **(1)** the original balance of the CM's Contingency established through the GMP Amendment is $100,000, **(2)** the CM's Fee is established in the Agreement at 3 percent of the sum of the Cost of the Work plus the CM's Contingency, **(3)** the balance of the CM's Contingency as of the Contingency Review Date is $125,000, and **(4)** the CM has decided to reduce the CM's Contingency by an additional $15,000. **Step 1.** The amount that the balance in CM's Contingency exceeds the original balance of the CM's Contingency as established through the GMP Amendment is $25,000 [$125,000 - $100,000 = $25,000]. **Step 2.** The additional amount of the CM's Contingency that the CM decides to release to the Owner at that time is $15,000. **Step 3.** The associated reduction of the CM's Fee is $1,200 [($25,000 + $15,000) x 3% = $1,200]. **Step 4.** The amount of the deduct Change Order (i.e., the amount by which the Contract Sum is reduced) is $41,200 [$25,000 + $15,000 + $1,200 = $41,200].

9.2.5.7 Except as provided in **Article 11**, no more than 30 days before final payment to the CM, the parties shall execute the Shared-Savings Change Order described at **Agreement Article 3**.

.1 The Shared-Savings Change Order shall be based upon only the balance of the funds remaining in the CM's Contingency as of the date on which the Shared-Savings Change Order is entered into and shall not be based upon any CM's Contingency previously released to the Owner as described under **Section 9.2.5.6**.

.2 Notwithstanding **Sections 9.2.5.2.2** and **9.2.9.1**, in the CM's final Payment Request, the CM may request payment by lump sum of any portion of the CM's Contingency remaining in the Contract Sum after execution of that Shared-Savings Change Order.

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9.2.6 Allowances.

9.2.6.1 The Contract Sum includes the Allowances (if any) identified in the GMP Amendment.

9.2.6.2 All Allowances include the cost to the CM (less any applicable trade discounts) of materials and equipment required by the Allowances to be delivered at the Site, and all applicable taxes.

9.2.6.3 The CM's Fee and costs for unloading and handling on the Site, labor, installation costs, and other expenses contemplated for the Allowances are not in the stated Allowance amounts but are otherwise included in the Contract Sum.

9.2.6.4 Before final payment, an appropriate Change Order will be issued to reconcile the Contract Sum so that it reflects actual amounts due to the CM on account of Work covered by Allowances including an associated adjustment on account of the CM's Fee.

9.2.7 Unit Prices.

9.2.7.1 The Contract Sum includes the Unit Price Work (if any) identified in the GMP Amendment.

9.2.7.2 Where the Contract provides that all or part of the Work is to be Unit Price Work, initially the Contract Sum will include for all Unit Price Work **(1)** an amount equal to the sum of the established Unit Prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Contract plus **(2)** the CM's Fee on that Unit Price Work.

9.2.7.3 The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of determining an initial Contract Sum. The Contracting Authority will determine the actual quantities and classifications of Unit Price Work performed by CM.

9.2.7.4 Before final payment, an appropriate Change Order will be issued as described under **Section 7.1.6** to reconcile the Contract Sum so that it reflects actual amounts due to the CM on account of Unit Price Work actually performed including an associated adjustment on account of the CM's Fee.

9.2.8 Schedule of Values.

9.2.8.1 Within 10 days after receipt of the Notice to Proceed, or other period as mutually agreed by the CM and Contracting Authority, the CM shall prepare and submit to the A/E a Schedule of Values on a form published by the Commission, with separate amounts shown for labor and materials for each branch of Work, following the numbers and titles of the Construction Specifications Institute's *MasterFormat* for individual work results, or *UniFormat* for assemblies in place.

- **.1** The CM shall clearly indicate on the Schedule of Values, the amount(s) allocated for each EDGE-certified Business used in the performance of the Work. The amount(s) shall indicate labor and materials, as appropriate.
- **.2** If the Project involves the issuance of more than one Notice to Proceed, the initial Schedule of Values shall cover all Work included in any then-existing GMP Amendment. Within 10 days after receipt of any subsequent Notice to Proceed, or other period as mutually agreed by the CM and Contracting Authority, the CM shall **(1)** revise the Schedule of Values if necessary to cover all Work included in any then-existing GMP Amendment and **(2)** submit the revised Schedule of Values to the A/E.

9.2.8.2 The grand total shown on the Schedule of Values shall equal the total Contract Sum. The Contracting Authority may use the approved Schedule of Values to determine the cost or credit to the Owner resulting from any change in the Work.

- **.1** The first items shall be a breakdown of General Conditions Costs.
- **.2** The amounts for labor and materials shall accurately reflect the cost for each item.
- **.3** If the material allocation exceeds 55 percent of the Contract Sum, the CM shall provide, upon request, sufficient information to support the higher percentage.
- **.4** Subcontract Work shall show amounts for labor and materials. Fringe benefits shall be shown as a part of labor costs.
- **.5** When more than one major structure is included in the Work, the CM shall subdivide the Schedule of Values accordingly, with cost details for each structure shown separately.
- **.6** The line items shall be coordinated with line items in the Project Schedule, which may require division of items of Work by area of the Project by floor, phase, or other appropriate area.
- **.7** Mechanical and electrical Work shall include separate line items for all major pieces of equipment, and group smaller equipment items by type.

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.8 Line items shall be included for each Allowance, CM's Contingency, CM's Fee, Construction Stage Personnel Costs, Punch List Work, Record Document Submittals, delivery of attic stock, and specified demonstration and training.

9.2.8.3 The A/E may return the Schedule of Values to the CM for re-submittal if it does not meet the requirements or contains insufficient items or details of the Work, or approve the Schedule of Values if the A/E determines that it conforms to this **Section 9.2.8**.

9.2.8.4 No payment shall be made until the A/E has approved the CM's Schedule of Values.

9.2.8.5 If the Project is administered using the State's web-based project management software, the CM shall submit its Schedule of Values, using the "Contract Schedule of Values" business process.

9.2.9 CM Payment Request.

9.2.9.1 After the parties enter into the GMP Amendment and after the Date of Commencement, the CM may request payment of the Contract Sum. The Owner will pay the Contract Sum (not including the CM's Contingency) to the CM on a percent-complete progress basis. The Owner will pay the CM's Contingency portion of the Contract Sum to the CM on a cost-reimbursable basis as described under **Section 9.2.5.2.2**.

.1 Notwithstanding **Section 9.2.9.1**, the CM may request payment of a portion of the Contract Sum on account of the CM's procurement of long-lead-time items before the Date of Commencement.

.2 The Contracting Authority and Owner may audit CM Payment Requests as described under **Section 7.9**.

9.2.9.2 The CM may submit a CM Payment Request to the A/E each month or upon another interval approved by the Contracting Authority. When the rate of Work and amount involved is sufficient that it is considered appropriate by the Contracting Authority, the CM may submit CM Payment Requests twice a month. The CM shall base each CM Payment Request on the Schedule of Values current as of the date that the CM submits the CM Payment Request.

.1 The CM shall support each CM Payment Request with documentation substantiating the CM's right to payment. The CM shall supply additional documentation as the A/E may request in connection with each payment to the CM.

.2 The CM shall support each use of the CM's Contingency in sufficient detail to enable the Contracting Authority and Owner to identify the associated scope of Work and expenditures.

.3 The Contracting Authority may require proof of the renewal of required insurance as a condition precedent to payment.

.4 The CM shall attach certified payroll reports for the relevant period to 1 copy of each CM Payment Request, see **Document 00 73 43 - Prevailing Wage Requirements**.

.5 The CM may list on the CM Payment Request any Change Orders approved and performed prior to submission of the CM Payment Request.

.6 The CM shall submit its CM Payment Request using the CM Payment Request form or forms current at the time of each application and as provided by the Contracting Authority in the manner prescribed by the Contracting Authority.

.7 If the Project is not administered using the State's web-based project management software, the CM shall submit 1 draft copy of its CM Payment Request ("Pencil Copy") to the A/E not less than 1 week prior to submitting multiple copies of its CM Payment Request. The A/E shall review the Pencil Copy and provide comments to the CM within 3 days of receiving it. The CM shall incorporate the A/E's comments into its CM Payment Request prior to submitting multiple copies for payment.

.8 The CM shall clearly indicate on the CM Payment Request, the amount(s) requested for each EDGE-certified Business used in the performance of the Contract. The amount(s) shall indicate labor and materials, as appropriate.

.9 The CM shall submit an electronic copy of the CM Payment Request to the A/E with its paper copies of the CM Payment Request for collection and reporting of information used for contract compliance evaluation and statistical purposes. The CM may issue the copy in any electronic media acceptable to the Contracting Authority.

9.2.9.3 Payments, except for lump sum items, in Unit Price Contracts shall be made to the CM only for the authorized actual quantities of Work performed or materials furnished in accordance with the Contract Documents.

9.2.9.4 Subject to **Section 9.2.13**, the Owner shall pay an approved CM Payment Request within 30 days from the date the A/E recommends acceptance of the CM Payment Request.

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.1 Payments due and not paid to the CM, through no fault of the CM, within the 30 day period shall, from the date payment is due, bear simple interest at the applicable statutory rate.

9.2.9.5 If the Project is administered using the State's web-based project management software, the CM shall submit its CM Payment Request, using the "Contractor Pay Request" (Agency/Higher Education) or "Applications for Payment" (School Facilities) business process.

9.2.10 Labor Payments.

9.2.10.1 Partial payments to the CM for labor performed under either a Unit Price or lump sum Contract shall be made at the rate of 92 percent of the amount invoiced through the CM Payment Request that shows the Work is 50 percent complete.

9.2.10.2 After the Work is 50 percent complete, as evidenced by payments of at least 50 percent of the Contract Sum including approved Change Orders to date, no additional funds shall be retained from payments for labor.

9.2.11 Material Payments.

9.2.11.1 The Owner shall pay the CM at the rate of 100 percent of the scheduled value for materials incorporated into the Project.

9.2.11.2 The Owner shall pay the CM at the rate of 92 percent of the invoice cost, not to exceed the scheduled value, for materials delivered to the Site, or other off-site storage location approved by the A/E, provided the CM provides the following information with the CM Payment Request:

.1 a list of the fabricated materials consigned to the Project, giving the place of storage, together with copies of invoices, in order to verify quantity and cost; and

.2 a certification of materials stored off-site, prepared by the CM and signed by the A/E to evidence that the materials are in conformity with the Specifications and have been tagged with the Project name and number for delivery to the Project. The CM shall directly reimburse the A/E for all costs incurred to visit a storage site, other than the areas adjacent to the Project.

.3 The Owner shall pay the balance of the scheduled value when the materials are incorporated into and become a part of the Project.

9.2.11.3 When payment is allowed for materials delivered to the Site or other approved off-site storage location but not yet incorporated into the Project, the materials are the property of the Owner.

.1 The Owner may, at its sole discretion, retain any material not ultimately incorporated into the Project or return it to the CM for credit of an amount proportionate to the value of the extra materials.

9.2.12 Retainage.

9.2.12.1 Payments for Construction Stage Personnel Costs and CM's Fee shall not be subject to retainage.

~~**9.2.12.1**~~**9.2.12.2** If the total Contract Sum is $15,000 or more, when the Contract is 50 percent complete, all funds retained for faithful performance of the Work, in accordance with **Section 9.2.10.1**, shall be deposited in an escrow account with a bank in the state in accordance with the terms and conditions provided in an escrow agreement executed by the CM, Contracting Authority, and applicable bank.

~~**9.2.12.2**~~**9.2.12.3** When the CM has achieved Substantial Completion of all Work, and there is no other reason to retain funds; upon request of the CM, the funds retained in connection with that Work shall be released from escrow and paid to the CM, withholding only that amount necessary to assure faithful completion in the sole discretion of the Contracting Authority, including but not limited to compliance with **Section 6.25.2**.

~~**9.2.12.3**~~**9.2.12.4** Upon consent by the CM's Surety, the Contracting Authority may reduce the amount of funds retained for the faithful performance of Work by 50 percent of the amount of funds required to be retained, provided the CM's Surety remains responsible for all damages that may be caused due to default by the CM, including, but not limited to, the following:

.1 completion of the Work;

.2 all interference, disruption, hindrance and delay claims;

.3 all Liquidated Damages; and

.4 all additional expenses incurred by the State.

9.2.13 Payments Withheld.

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

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9.2.13.2 The Contracting Authority may decline to approve any CM Payment Request or part thereof, or nullify any previous CM Payment Request, in whole or in part, to the extent necessary in the Contracting Authority's sole opinion to protect the Owner from loss because of:

- **.1** Defective Work not remedied;
- **.2** damage caused by the CM;
- **.3** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- **.4** reasonable evidence that the Work will not be completed within the Contract Times, and that the unpaid balance would not be adequate to cover damages under the Contract Documents for the anticipated delay;
- **.5** failure to comply with Applicable Law including, but not limited to, the requirements of ORC Chapter 4115;
- **.6** failure to timely submit EDGE Participation Reports in accordance with **Section 1.8.2**;
- **.7** failure to timely identify the CM's proposed lower-tier Subcontractors in accordance with **Section 4.6.2**;
- **.8** failure to timely approve a Construction Progress Schedule in accordance with **Section 6.5**;
- **.9** failure to carry out the Work in accordance with the Contract Documents; or
- **.10** that which is permitted under other provisions of the Contract Documents.

9.2.13.3 If the CM remedies the basis for withholding payment under **Section 9.2.13.2** to the Contracting Authority's satisfaction, the Owner shall pay the amounts withheld.

9.2.14 Final CM Payment Request.

9.2.14.1 The CM, as a condition precedent to Contract Completion and final payment, shall complete all requirements of the Contract Documents.

- **.1** The CM and each of its Subcontractors, regardless of tier, shall execute a Payment Release Affidavit to certify that the CM and each of its Subcontractors, regardless of tier, have complied with all requirements of ORC Chapter 4115, and to certify that all of its Subcontractors have been paid in full for all Work performed or materials furnished for the Project.
- **.2** If the Owner reimbursed to the CM (either as a Preconstruction Stage Reimbursable Expense or as a General Conditions Cost) the CM's cost to purchase tangible property, and that tangible property has any remaining useful life after Substantial Completion, the CM shall deliver that tangible property to the Owner before the Owner makes final payment to the CM.

9.2.14.2 The Owner shall pay the final CM Payment Request within 30 days from the date the A/E recommends acceptance of the final CM Payment Request.

- **.1** Payments due and not paid to the CM within the 30 day period shall bear interest from the date payment is due under the Contract Documents at the applicable statutory rate.

9.2.14.3 Acceptance of final payment by the CM or a Subcontractor constitutes the payee's waiver of all Claims against the State except those previously made in writing under **Article 8** and identified by that payee as unsettled at the time of the final CM Payment Request.

9.2.14.4 If the Project is administered using the State's web-based project management software, the CM shall submit its final CM Payment Request, using the "Contractor Pay Request" (Agency/Higher Education) or "Applications for Payment" (School Facilities) business process.

ARTICLE 10 - BONDS, INSURANCE, AND INDEMNIFICATION

10.1 Performance and Payment Bonds

10.1.1 Before signing the Agreement, the CM shall provide the Performance Bond and Payment Bond required under OAC Section 153:1-4-02 and below:

10.1.1.1 The Performance Bond shall be in the form of **Document 00 61 13.13 - Performance Bond Form**.

10.1.1.2 The Payment Bond shall be in the form of **Document 00 61 13.16 - Payment Bond Form**.

10.1.1.3 Each Surety under the Bonds shall be licensed to do business in Ohio and satisfactory to the Contracting Authority.

10.1.1.4 If there is more than one Surety under a Bond, each of them shall be jointly and severally liable as surety under that Bond.

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10.1.1.5 The penal sum of each of the Bonds, when initially submitted, shall be equal to 100 percent of the Preconstruction Stage Compensation.

10.1.2 The CM shall submit with each executed Bond **(1)** a certified copy of the authority to act (power of attorney) of the agent signing the Bond on behalf of the Surety and **(2)** a current and signed Certificate of Compliance under ORC Section 9.311 issued by the Ohio Department of Insurance showing the Surety is licensed to do business in Ohio.

10.1.3 If the Preconstruction Stage Compensation increases at any time after the CM provides the Bonds under **Section 10.1.1**, the CM shall cause the penal sums of the Bonds to be increased such that the penal sums equal 100 percent of the increased Preconstruction Stage Compensation.

10.1.4 As a condition precedent to the effectiveness of the GMP Amendment, the CM shall cause the penal sums of the Bonds to be increased such that the penal sums equal 100 percent of the sum of the Preconstruction Stage Compensation plus the Contract Sum established in the GMP Amendment. If the Contract Sum increases at any time after the GMP Amendment, the CM shall cause the penal sums of the Bonds to be increased such that the penal sums equal 100 percent of the increased Contract Sum.

10.1.5 Any time the CM increases the penal sums of the Bonds under **Section 10.1.3** or **Section 10.1.4**, the CM shall deliver to the Contracting Authority written consent of the affected Surety or Sureties confirming the increased penal sums. The Contracting Authority's receipt of that written consent is a condition precedent to the Owner's obligation to pay the CM for any portion of the Work associated with the increase.

10.1.6 If notice of any change affecting the Contract is required by any Surety or by the provision of any Bond, the CM shall provide that notice.

10.2 CM's General Insurance Requirements

10.2.1 Throughout the performance of the Work or longer as may be described below, the CM shall obtain, pay for, and keep in force, the minimum insurance coverage described in this **Article 10**.

10.2.1.1 Each requirement of this **Article 10** applies to Subcontractors just as it applies to the CM.

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

10.2.1.3 On a case-by-case basis, the Contracting Authority and CM may agree to adjust the below requirements for any particular Subcontractor.

10.2.2 Before starting the Work on the Site, upon renewal of any policy, and upon a change of any insurance carrier, the CM shall deliver to the Contracting Authority certificates evidencing that the required insurance is in force.

10.2.3 With the exception of government-controlled workers compensation coverage:

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

10.2.3.2 the policies shall be endorsed to require the CM's insurance carrier to **(1)** provide at least 30-days' written notice to the Contracting Authority (as certificate holder) of the cancellation or non-renewal of the insurance and **(2)** provide at least 10-days' written notice to the Contracting Authority (as certificate holder) of the cancellation of the insurance for non-payment of premium; and

10.2.3.3 within 30 days of the Contracting Authority's request, the CM shall submit insurance-company certified copies of the policies, the policy endorsements, loss-run reports, or all three.

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

10.2.5 The CM shall pay a proportionate share of the deductibles, or self-insured retentions, or both contained in any insurance policy the Contracting Authority purchases for the Project. The CM's proportionate share will derive from the percentage of the associated Claim or loss attributable to the alleged or actual negligence of the CM, a Subcontractor, or a Consultant.

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10.2.6 The Contracting Authority and Owner do not represent that required coverage or limits are adequate to protect the CM.

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

10.2.8 The Contracting Authority may terminate the Contract for cause on account of the CM's failure to maintain required insurance.

10.3 CM's Minimum Coverage Requirements

10.3.1 Workers Compensation. The CM shall maintain workers compensation coverage meeting the requirements of Applicable Law.

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

10.3.3 Commercial General Liability. The CM shall maintain commercial general liability ("CGL") coverage that provides **(1)** an each-occurrence limit of not less than $1,000,000, **(2)** a general-aggregate limit of not less than $2,000,000, and **(3)** a products and completed-operations aggregate limit of not less than $2,000,000.

10.3.3.1 The CGL insurance shall be written on ISO occurrence form CG 00 01 10 01 or a substitute form, providing at least equivalent coverage for liability arising from premises, operations, independent contractors, products/completed-operations, personal and advertising injury, and liability assumed under an insured contract.

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

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

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

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

10.3.3.6 The CM shall maintain the CGL insurance in effect for no less than 5 years after the earlier of the termination the Contract or Substantial Completion of all Work.

10.3.4 Business Automobile Liability. The CM shall maintain business automobile ("BA") coverage written on ISO form CA 00 01 10 01 or a substitute form, providing at least equivalent coverage with a limit of not less than $1,000,000 each accident.

10.3.4.1 The coverage shall extend to any auto.

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

10.3.5 Umbrella/Excess Liability. The CM may employ an umbrella/excess liability policy to achieve the above-required minimum coverage.

10.3.5.1 The CM shall maintain umbrella/excess liability coverage with a limit of not less than $2,000,000 (in addition to the above-required limits) if the Work (or the Work to be performed by the Subcontractor) includes any of the following:

- **.1** brick/block masonry;
- **.2** exterior caulking/sealant;
- **.3** cast-in-place or precast concrete;
- **.4** curtain wall;
- **.5** dampproofing/waterproofing;
- **.6** electrical;
- **.7** elevator;
- **.8** exterior glass and/or glazing;

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.9 exterior marble, granite, and/or other stonework;
.10 miscellaneous metals;
.11 plaster/stucco;
.12 plumbing;
.13 HVAC;
.14 roofing and/or sheet metal;
.15 scaffolding;
.16 spray-on fireproofing;
.17 sprinkler and/or fire protection; or
.18 structural steel and/or metal deck.

10.3.5.2 The CM shall maintain umbrella/excess liability coverage with a limit of not less than $5,000,000 (in addition to the above-required limits) if the Work (or the Work to performed by the Subcontractor) includes any of the following:

.1 caissons and/or piles;
.2 demolition;
.3 excavation and/or utility work;
.4 sheeting, shoring, and/or underpinning;
.5 window washing equipment; or
.6 wrecking.

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

10.3.6.1 The CPL policy shall have an effective date, which is on or before the date that the CM first started to perform any Project-related services.

10.3.6.2 Upon submission of the associated certificate of insurance and at each policy renewal, the CM shall advise the Contracting Authority in writing of any actual or alleged claims that may erode the CPL policy's limits.

10.3.6.3 The CM shall maintain the CPL insurance in effect for no less than 5 years after the earlier of the termination of the Contract or Substantial Completion of all Work.

10.3.7 Professional Liability—CM. The CM shall maintain professional liability insurance (including without limitation for sprinkler and/or fire protection and other design-build work included in the Work) without design-build exclusions with limits not less than as identified in the following table:

Contract Sum	Each Claim	Annual Aggregate
Up to $50,000,000	$1,000,000	$2,000,000
More than $50,000,000	$2,000,000	$4,000,000

10.3.7.1 The professional liability policy shall have an effective date on or before the date that the CM first started to provide any Project-related services.

10.3.7.2 Upon submission of the associated certificate of insurance and at each policy renewal, the CM shall advise the Contracting Authority in writing of any actual or alleged claims that may erode the professional liability policy's limits.

10.3.7.3 The CM shall maintain the professional liability insurance in effect for no less than 5 years after the earlier of the termination of the Contract or Substantial Completion of all Work.

10.3.7.4 If the CM is not authorized under Applicable Law to directly provide professional design services, the CM may satisfy the requirements of this **Section 10.3.7** by providing a contractor's professional liability insurance policy.

10.3.8 Professional Liability—Subcontractors. If the Work to be performed by a Subcontractor includes any professional design services (including without limitation sprinkler and/or fire protection and other design-build work) the

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Subcontractor shall maintain professional liability insurance without design-build exclusions with limits not less than as identified in the following table:

Subcontract Sum	Each Claim	Annual Aggregate
Up to $50,000,000	$1,000,000	$2,000,000
More than $50,000,000	$2,000,000	$4,000,000

10.3.8.1 The professional liability policy shall have an effective date on or before the date that the Subcontractor first started to provide any Project-related services.

10.3.8.2 Upon submission of the associated certificate of insurance and at each policy renewal, the CM shall advise the Contracting Authority in writing of any actual or alleged claims that may erode the Subcontractor's professional liability policy's limits.

10.3.8.3 The Subcontractor shall maintain the professional liability insurance in effect for no less than 5 years after the earlier of the termination of the Contract or Substantial Completion of all Work.

10.3.8.4 If the Subcontractor is not authorized under Applicable Law to directly provide professional design services, the Subcontractor may satisfy the requirements of this **Section 10.3.8** by providing a contractor's professional liability insurance policy.

10.3.9 Aviation Liability. If the CM or a Subcontractor uses aircraft, including helicopters, in performance of the Work, the CM shall maintain aircraft or aviation liability coverage in an amount of no less than $10,000,000. The Contracting Authority and Owner will not be liable for any damage to any aircraft owned, leased, rented, or borrowed by the CM or a Subcontractor.

10.3.10 Watercraft Liability. If the CM or a Subcontractor uses watercraft in performance of the Work, the CM shall maintain watercraft liability coverage including protection and indemnity insurance in an amount of no less than $5,000,000. The Contracting Authority and Owner will not be liable for any damage to any watercraft owned, leased, rented, or borrowed by the CM or Subcontractor.

10.3.11 Equipment Coverage. The Contracting Authority and Owner will not insure or be liable for damage to any CM or Subcontractor owned, leased, rented, or borrowed tools, equipment, or vehicles. The CM and Subcontractors are solely responsible for maintaining all insurance necessary to cover their tools, equipment, and vehicles.

10.3.12 Ocean Marine Insurance. If the shipment of equipment or materials for the Work will not be covered by the builder's risk insurance required under **Section 10.4**, the CM shall maintain ocean marine insurance to the Site including cost, insurance, and freight with limits of not less than an amount equal to the full replacement cost of equipment/materials shipped to final destination point. The insurance shall include the following minimum requirements:

10.3.12.1 all-risk basis including war risk and all forms of terrorism;

10.3.12.2 coverage for general average and salvage charges;

10.3.12.3 "on deck" coverage;

10.3.12.4 warehouse-to-warehouse coverage;

10.3.12.5 coverage to include losses from strikes, riots, and civil commotions ("SR&CC coverage");

10.3.12.6 coverage to include losses from free of capture and seizure warranty ("FC&S Warranty coverage");

10.3.12.7 "Inchmaree" clause;

10.3.12.8 sue and labor;

10.3.12.9 "both-to-blame" coverage;

10.3.12.10 free of particular average;

10.3.12.11 inland coverage including on-land shipment, port storage, and barge transit upon inland waterways; and

10.3.12.12 damage by saltwater and rainwater perils and cargo sweat.

10.3.13 Additional Property Insurance. For any demolition, blasting, excavating, tunneling, shoring, or similar operations, the CM shall provide and maintain Property Damage Liability insurance with a limit of liability equal to the limit as specified in the applicable sections of **Article 10**.

10.4 Builder's Risk Insurance

10.4.1 The CM shall provide and maintain, during the progress of the Work and until Contract Completion, a builder's risk insurance policy to cover all Work in the course of construction including false-work, temporary buildings and

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structures, and materials used in the construction process, stored on or off-site, or while in transit. This insurance shall be on a special cause of loss form that provides coverage on an open perils basis insuring against the direct physical loss of, or damage to, covered property including, but not limited to, theft, vandalism, malicious mischief, earthquake, tornado, lightning, explosion, breakage of glass, flood, collapse, water damage, and hot and cold testing. This insurance shall be written on a replacement cost basis and shall also include debris removal, and/or demolition occasioned by enforcement of Applicable Law.

10.4.1.1 The amount of coverage shall be not less than the total completed value of the Project, including the value of permanent fixtures and decorations, with a deductible of not more than $25,000 per occurrence. Any deductible over the amount specified shall be authorized in writing by the Owner and Contracting Authority.

10.4.1.2 Coverage shall include a provision to pay the reasonable extra costs of acceleration and expediting temporary and permanent repairs to, or permanent replacement of, damaged property. This shall include overtime wages and the extra cost of "express" or other means for rapidly transporting materials and supplies necessary to the repair or replacement.

10.4.1.3 Coverage shall include "soft cost endorsement" including, but not limited to, the reasonable extra costs of the A/E and reasonable CM extension or acceleration costs.

10.4.1.4 Coverage shall include material in transit or stored off-site and identified for the Project.

10.4.1.5 Coverage shall waive all rights between the Owner, Contracting Authority, CM, and Subcontractors at any tier, for damages caused by fire or any other perils to the extent of actual recovery of any insurance proceeds under the policy.

10.4.1.6 Coverage shall include appropriate sub-limits for installation coverage.

10.4.1.7 Coverage shall include provisions for mechanical or electrical breakdown, or boiler system testing.

10.4.1.8 Coverage shall include temporary structures and scaffolding, along with collapse coverage.

10.4.1.9 Coverage shall be primary to all other applicable insurance.

10.4.1.10 The builder's risk policy shall specifically permit and allow for Partial Occupancy by the Owner prior to Contract Completion and coverage shall remain in effect until all punch list items are completed.

10.4.1.11 The CM's tools and equipment shall not be covered under the builder's risk policy. It is the CM's sole responsibility to maintain such coverage, which shall be included in its Overhead and not included as a separate item in the CM's Schedule of Values.

10.4.2 If the CM is involved solely in the installation of material and equipment and not in new building construction, the CM shall purchase and maintain a builder's risk, builder's risk-renovations, or installation floater insurance policy. The policy shall comply with the provisions of **Section 10.4.1**.

10.5 Waivers of Subrogation

10.5.1 To the fullest extent permitted by Applicable Law, the CM waives all rights against the Owner, the Contracting Authority, and their agents and employees for damages to the extent covered by any insurance, except rights to the proceeds of that insurance. All policies shall accomplish the waiver of subrogation by endorsement or otherwise.

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

10.6 Indemnification for Injury or Damage

10.6.1 To the fullest extent permitted by Applicable Law, the CM shall indemnify, defend, and hold harmless the Indemnified Parties from and against all claims, costs, damages, losses, fines, penalties, and expenses (including but not limited to all fees and charges of attorneys and other professionals, and all court, arbitration, or other dispute-resolution costs) arising out of or in connection with the Project, provided that any such claim, cost, damage, loss, fine, penalty, or expense is attributable to:

10.6.1.1 bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property but only to the extent caused by the negligent acts, errors, or omissions of the CM or a person or entity for whom the CM may be liable;

10.6.1.2 infringement of patent rights or copyrights by the CM or a person or entity for whom the CM may be liable; or

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10.6.1.3 a violation of Applicable Law but only to the extent attributable to the CM or a person or entity for whom the CM may be liable.

10.6.2 The CM's indemnification obligation under **Section 10.6** exists regardless of whether or not and the extent to which the claim, damage, loss, fine, penalty, or expense is caused in part by a Person indemnified under **Section 10.6**. But nothing in **Section 10.6** obligates the CM to indemnify any individual or entity from and against the consequences of that Person's own negligence.

10.6.3 The CM's obligations under **Section 10.6** shall not extend to the liability of the A/E, A/E's consultants, agents, representatives, or employees for negligent preparation or approval of Drawings, Specifications, Change Orders, opinions, and any other responsibility of the A/E, except to the extent covered by the CM's insurance.

10.6.4 In claims against a Person indemnified under **Section 10.6** by any direct or indirect employee (or the survivor or personal representative of that employee) of the CM or a person or entity for whom the CM may be liable, the indemnification obligation under **Section 10.6** will not be limited by a limitation on the amount or type of damages, compensation, or benefits payable under workers' compensation acts, disability benefit acts, or other employee benefit acts.

10.6.5 The CM's indemnification obligation under **Section 10.6** will not be limited by any insurance policy provided or required in connection with the Project.

10.6.6 The CM's obligations under **Section 10.6** shall not negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to an Indemnified Party.

10.6.7 The CM's indemnification obligation under **Section 10.6** will survive termination of the Contract and Contract Completion.

10.6.8 The Contracting Authority may deduct from the Preconstruction Stage Compensation or Contract Sum or both the claims, damages, losses, fines, penalties, and expenses for which the CM is liable under **Section 10.6**. If those claims, damages, losses, fines, penalties, and expenses exceed the unpaid balance of the Preconstruction Stage Compensation or Contract Sum or both, the CM shall immediately pay the difference to the Owner.

ARTICLE 11 - SUSPENSION AND TERMINATION

11.1 Suspension of the Work

11.1.1 The Contracting Authority, without cause and without prejudice to any other right or remedy it may have, may order the CM in writing to suspend, delay, or interrupt performance of the Work in whole or in part for such period as the Contracting Authority may determine.

11.1.1.1 If the Contracting Authority suspends the Work under this **Section 11.1.1** and the CM complies with **Article 8**, the Preconstruction Stage Compensation, Contract Sum, and Contract Times shall be adjusted for increases in the cost and time caused by the suspension, delay, or interruption.

11.1.1.2 Notwithstanding the foregoing, no adjustment shall be made to the Preconstruction Stage Compensation, Contract Sum, or Contract Times to the extent that:

.1 performance was, or could have been, suspended, delayed, or interrupted by a cause for which the CM is responsible; or

.2 an equitable adjustment is made or denied under another provision of the Contract.

11.1.1.3 If the Contracting Authority suspends the Work under this **Section 11.1.1** and the CM submits a proper CM invoice or Payment Request, subject to all other provisions of the Contract Documents, the CM shall be entitled to payment of compensation due under the Contract Documents for Work performed before the suspension based upon the Schedule of Values, other appropriate reference documents, or both.

11.1.2 The Contracting Authority, without prejudice to any other right or remedy it may have, may order the CM in writing to suspend, delay, or interrupt the performance of the Work in whole or in part for such period as the Contracting Authority may determine for any of the following reasons: **(1)** Defective Work; **(2)** the CM is causing undue risk of damage to any part of the Project or adjacent area; **(3)** the CM fails to furnish or perform the Work in such a way that the complete Work will conform to the requirements of the Contract Documents; or **(4)** any other cause the Contracting Authority reasonably believes justifies suspension.

11.1.2.1 The Contracting Authority's exercise of its right to suspend the Work under this **Section 11.1.2** shall not entitle the CM to any adjustment of the Preconstruction Stage Compensation, Contract Sum, or Contract Times.

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11.1.2.2 If the Contracting Authority is adjudged to have improperly suspended the Work under this **Section 11.1.2**, the suspension shall be deemed to have been a suspension under **Section 11.1.1**.

11.1.3 Upon receipt of notice of suspension under this **Section 11.1**, the CM shall cease Work on the suspended activities and take all necessary or appropriate steps to limit disbursements and minimize respective costs. The CM shall furnish a report to the Contracting Authority, within 5 days of receiving the notice of suspension, describing the status of the Work, including, but not limited to, results accomplished, resulting conclusions, and other information as the Contracting Authority may require.

11.1.4 The Contracting Authority's right to stop the Work shall not give rise to any duty to exercise the right for the benefit of the CM or any other party, and the Contracting Authority's exercise or failure to exercise the right shall not prejudice any of the Contracting Authority's other rights.

11.2 Termination for Convenience

11.2.1 The Contracting Authority may, at any time, terminate the Contract in whole or in part for the Owner's convenience and without cause, at any time upon written notice to the CM.

11.2.2 Upon receipt of the notice of termination for convenience, the CM shall immediately proceed with performance of the following duties in accordance with instructions from the Contracting Authority:

11.2.2.1 cease operation as specified in the notice;

11.2.2.2 place no further orders and enter into no further subcontracts for materials, labor, services, or facilities, except as necessary to complete continued portions of the Project;

11.2.2.3 terminate all subcontracts and orders to the extent they relate to the Work terminated;

11.2.2.4 proceed with Work not terminated; and

11.2.2.5 take actions that may be necessary, or that the Contracting Authority may direct, for the protection and preservation of the terminated Work.

11.2.3 If the Contract is terminated before the Contract Sum is established, the Owner shall pay the CM for services rendered before the date of termination in accordance with the Personnel Rate Schedule for Work completed, including any Reimbursable Expenses incurred, but not in excess of the allocations and caps otherwise provide in the Contract.

11.2.3.1 In no event shall the CM be entitled to Preconstruction Fee associated with services the CM did not perform on account of the termination or otherwise.

11.2.4 If the Contract is terminated after the Contract Sum is established, the Owner shall pay the CM in accordance with the Schedule of Values for Work completed, including any retained funds, and the value of materials ordered and delivered, less any salvage credit the CM may receive for them.

11.2.4.1 All materials, equipment, facilities, and supplies at the Site or stored off-site, for which the CM has received payment, shall become the property of the Owner.

11.2.4.2 The CM is entitled to a fair and reasonable profit for Work performed and reasonable expenses directly attributable to termination of the Contract. In no event shall the CM be entitled to **(1)** CM's Fee on Work not performed or **(2)** compensation in excess of the total Contract Sum.

11.2.4.3 Notwithstanding any other provision of the Contract to the contrary, if the Contract is terminated before Contract Completion, the CM shall not be entitled to any portion of the CM's Contingency through the Shared-Savings Change Order described at **Agreement Article 3**.

11.2.5 If the Contracting Authority terminates the Work under this **Section 11.2**, the termination shall not affect the rights or remedies of the State against the CM then existing or which may thereafter accrue.

11.2.6 Notwithstanding **Sections 11.2.3** and **11.2.4**, if the Contracting Authority terminates the Work under this **Section 11.2**, but there exists an event of the CM's default, the CM shall be entitled to receive only such amounts as it would be entitled to receive following the occurrence of an event of default as provided in **Section 11.3**.

11.3 Termination for Cause

11.3.1 The Contracting Authority may terminate all or a portion of the Contract if the CM commits a material breach of the Contract including but not limited to:

11.3.1.1 failure to prosecute the Work with the necessary force or in a timely manner;

11.3.1.2 refusal to remedy Defective Work;

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11.3.1.3 failure to supply enough properly skilled workers or proper materials;

11.3.1.4 failure to properly make payment to Subcontractors or Consultants;

11.3.1.5 performance of any services outside of the United States;

11.3.1.6 permitting its Subcontractors or Consultants to perform any services outside of the United States; or

11.3.1.7 disregarding laws, ordinances, or rules, regulations, or orders of a public authority with jurisdiction over the Project.

11.3.2 If the Contracting Authority intends to exercise its termination rights under this **Section 11.3**, the Contracting Authority shall issue not less than 5-days' written notice to the CM and the CM's Surety in accordance with ORC Section 153.17 ("5-Day Notice").

11.3.2.1 Notwithstanding any provision of the Contract to the contrary **(1)** the issuance of a 72-Hour Notice under **Section 6.23.1** is not a condition precedent to the Contracting Authority's exercise of its rights under **Section 11.3** and **(2)** the Contracting Authority's decision to not issue a 72-Hour Notice under **Section 6.23.1** will not prejudice the Contracting Authority's rights under **Section 11.3**.

11.3.3 If the CM fails to satisfy the requirements set forth in the 5-Day Notice within 15 days of receipt of the 5-Day Notice, the Contracting Authority may declare the CM in default, terminate the Contract, and employ upon the Work the additional force or supply materials or either as appropriate, and remove Defective Work.

11.3.4 If the Contract is terminated, the CM's Surety may perform the Contract. If the CM's Surety does not commence performance of the Contract within 10 days of the date of Contract termination, the Contracting Authority may complete the Work by means the Contracting Authority determines appropriate. The Contracting Authority may take possession of and use all materials, facilities, and equipment at the Site or stored off-site, for which the Owner has paid.

11.3.5 If the Contract is terminated, the CM shall not be entitled to further payment.

11.3.5.1 If the Contract is terminated before the Contract Sum is established and the unpaid balance of the Preconstruction Stage Compensation is exceeded by the costs of finishing the Preconstruction Services, including without limitation the fees and charges of contractors, engineers, architects, attorneys, and other professionals and court costs, and other damages incurred by the Owner and not expressly waived, the CM or Surety shall immediately pay the amount of the insufficiency to the Owner. This obligation for payment shall survive termination of the Contract.

11.3.5.2 If the Contract is terminated after the Contract Sum is established and the unpaid balance of the Contract Sum is exceeded by the costs of finishing the Work, including without limitation the fees and charges of contractors, engineers, architects, attorneys, and other professionals and court costs, and other damages incurred by the Owner and not expressly waived, the CM or Surety shall immediately pay the amount of the insufficiency to the Owner. This obligation for payment shall survive termination of the Contract.

.1 Notwithstanding any other provision of the Contract to the contrary, if the Contract is terminated before Contract Completion, the CM shall not be entitled to any portion of the CM's Contingency through the Shared-Savings Change Order described at **Agreement Article 3**.

11.3.6 If the CM's Surety performs the Work, the provisions of the Contract Documents govern the Surety's performance, with the Surety in place of the CM in all provisions including, but not limited to, provisions for payment for the Work, and provisions of the right of the Contracting Authority to complete the Work.

11.3.7 If the Contracting Authority terminates the Contract under this **Section 11.3**, the termination shall not affect any rights or remedies of the State against the CM then existing or which may thereafter accrue. The Contracting Authority's retention or payment of funds due the CM shall not release the CM or CM's Surety from liability for performance of the Work in accordance with the requirements of the Contract Documents.

11.3.8 If the Contracting Authority is adjudged to have improperly terminated the Contract under this **Section 11.3**, the termination will be deemed to have been a termination under **Section 11.2**.

11.4 CM Insolvency

11.4.1 Bankruptcy of CM.

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

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failure to file and prosecute that motion within the time limits provided by this **Section 11.4** shall constitute a material breach of the Contract as time is of the essence with respect to CM's performance of all terms of this Contract. The CM agrees to the granting of relief from the automatic stay of the Bankruptcy Code, 11 U.S.C. §362(a), to permit the Contracting Authority to terminate the Contract for cause in such instance and issue and serve all notices necessary to terminate the Contract or arising out of the termination of the Contract and to take any and all other action necessary to terminate the Contract.

11.4.2 Receivership or Assignment for the Benefit of Creditors.

11.4.2.1 If the CM makes a general assignment for the benefit of creditors or if a receiver is appointed for all or a substantial part of the CM's business or property, the Contracting Authority shall serve written notice on the CM and CM's Surety stating that any failure of the CM to provide adequate assurance of continued performance shall be considered a rejection of the Contract, which shall result in termination of the Contract for cause. Such termination of the Contract need not be evidenced by an order of any court.

ARTICLE 12 - GENERAL PROVISIONS

12.1 CM's Documents and Contract Documents

12.1.1 Ownership.

12.1.1.1 The Owner alone owns the CM's Documents and the Contract Documents and every right, title, and interest therein.

.1 The CM must execute and deliver and cause its employees and agents and all Subcontractors and Consultants to execute and deliver, to the Owner any transfers, assignments, documents, or other instruments (if any) necessary to vest in the Owner complete right, title, interest in and ownership of the CM's Documents and the Contract Documents.

12.1.1.2 The CM may retain copies, including reproducible copies, of the CM's Documents and the Contract Documents for information, reference, and performance of the Work.

12.1.1.3 The submission or distribution of the CM's Documents or the Contract Documents to meet official regulatory requirements or for similar purposes in connection with the Project is not a waiver of the Owner's reserved rights in the CM's Documents and the Contract Documents. Any unauthorized use of the CM's Documents and the Contract Documents shall be at the sole risk of the entity making the unauthorized use.

12.1.1.4 The CM shall provide Electronic Files (in native format) to Separate Consultants and Separate Contractors for their use in connection with the Project. The CM shall provide the Electronic Files **(1)** at no additional cost to the Separate Consultants, Separate Contractors, and Owner and **(2)** without requiring the Separate Consultants, Separate Contractors, or Owner to agree to any terms or conditions concerning the provision, receipt, or use of the Electronic Files that differ in any material respect from the Contract.

12.1.2 Intent.

12.1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the CM.

12.1.2.2 The Contract Documents are complementary, and what is required by one is binding as if required by all.

12.1.2.3 The CM shall provide all services, labor, and materials necessary for the entire completion of the Work described in the Contract Documents and reasonably inferable to produce the intended results.

12.1.2.4 The Drawings govern dimensions, details, and locations of the Work. The Specifications govern quality of materials and workmanship.

12.1.2.5 The organization of the Specifications in divisions, sections, and articles, and the arrangement of Drawings shall not restrict the CM in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

12.1.2.6 In the event of inconsistency or conflict within the Contract Documents, the CM shall provide the better quality or greater quantity of Work, and comply with the stricter requirement.

12.1.2.7 Unless otherwise defined in the Contract Documents, words that have well-known technical or construction industry meanings are used in accordance with those recognized meanings.

12.1.2.8 The Sections of Division 01 - "General Requirements" govern the performance of the Work of all Sections of the Specifications.

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12.1.3 Use of Electronic Files.

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

12.1.3.2 The Owner, Contracting Authority, A/E, and CM acknowledge that the use of Electronic Files involves risks not generally associated with the use of paper documents. Those risks include, for example and without limitation, alteration (inadvertent or intentional) and deterioration, both of which may not be readily apparent through casual observation.

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

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

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

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

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

12.1.3.8 This **Section 12.1.3** does not relieve the CM of its responsibility for the preparation, completeness, or accuracy of the CM's Documents.

12.2 Public Relations

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

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

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

12.2.4 Craft Awards and Other Recognition. If the CM submits the Project for craft awards or other similar venues for recognition of the Project, the CM shall properly identify the Owner and the Contracting Authority, and their participation in the Project. In addition, if the Project receives any craft award or other recognition, the CM shall provide duplicate copies of the award plaque or other memento of the award to the Owner and the Contracting Authority.

12.3 Application and Governing Law

12.3.1 The Contract and the rights of the parties thereunder shall be governed by the laws of the state of Ohio and only Ohio courts shall have jurisdiction over any action or proceeding concerning the Contract and/or performance thereunder. The CM irrevocably consents to such jurisdiction.

12.3.2 The parties to the Contract shall comply with Applicable Law.

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

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12.4 Conditions of the Contract

12.4.1 These General Conditions govern, take precedence over, and shall not be superseded or amended by Drawings and Specifications, unless so provided in Supplementary Conditions prepared by the Contracting Authority and approved by the Ohio Facilities Construction Commission.

12.5 Notice of Commencement

12.5.1 The Contracting Authority shall prepare a Notice of Commencement and make it available as required under ORC Section 1311.252.

12.5.2 Upon request, the Contracting Authority or CM shall furnish the Notice of Commencement to Subcontractors or any other member of the public.

12.6 Written Notice

12.6.1 Notice under the Contract Documents shall be validly given if:

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

12.6.1.2 delivered, or sent by registered or certified mail, to the last known business address of the organization; or

12.6.1.3 sent by facsimile, email, or web-based project management software, provided the original, signed document is delivered within 3 business days after the date of the electronic transmission.

12.6.2 When the Owner, Contracting Authority, A/E, or CM gives notice to one of the other 3, it shall also simultaneously send a copy of that notice to the others.

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

12.6.4 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 CM shall immediately notify the A/E, Contracting Authority, and Owner by telephone.

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

12.7 Taxes

12.7.1 Only those materials that ultimately become a part of the completed structure or improvement that constitutes the Project shall be exempt from state sales tax and state use tax.

12.7.2 The purchase, lease, or rental of material, equipment, parts, or expendable items such as concrete form lumber, tools, oils, greases, and fuels, which are used in connection with the Work, are subject to the application of state sales tax and state use tax.

12.8 Computing Time

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

12.8.2 Except as excluded under **Section 12.8.1**, the Contract Times and all other periods referred to in the Contract Documents includes Saturdays, Sundays, and all days defined as legal holidays by **Section 12.8.4**.

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

12.8.4 Legal holidays are as follows:

12.8.4.1 New Year's Day – First Day in January;

12.8.4.2 Martin Luther King Jr. Day – Third Monday in January;

12.8.4.3 Washington-Lincoln (President's) Day – Third Monday in February;

12.8.4.4 Memorial Day – Last Monday in May;

12.8.4.5 Independence Day – Fourth day of July;

12.8.4.6 Labor Day – First Monday in September;

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12.8.4.7 Columbus Day – Second Monday in October;

12.8.4.8 Veterans' Day – Eleventh Day of November;

12.8.4.9 Thanksgiving Day – Fourth Thursday of November; and

12.8.4.10 Christmas Day – Twenty-fifth day of December.

12.8.5 If a legal holiday falls on a Saturday, it is observed on the preceding Friday. If a legal holiday falls on a Sunday, it is observed on the following Monday.

12.9 Time of the Essence

12.9.1 Time limits stated in the Contract Documents are of the essence of the Contract and all obligations under the Contract. By signing the GMP Amendment, the CM acknowledges that the Contract Times are reasonable, taking into consideration the usual weather and other conditions prevailing in the locality of the Project. By signing the Construction Progress Schedule, the CM acknowledges that the specified Milestone dates are reasonable, taking into consideration the usual weather and other conditions prevailing in the locality of the Project.

12.9.1.1 The CM acknowledges that the Owner has entered into, or may enter into, agreements for use of all or part of the premises where the Work is to be completed based upon the CM achieving Substantial Completion within the associated Contract Time.

12.9.1.2 The CM shall perform the Work in a reasonable, efficient, and economical sequence, and in the order and time as provided in the Construction Progress Schedule.

12.9.1.3 The CM acknowledges that it may be subject to interference, disruption, hindrance, or delay in the progress of the Work from any cause. The sole remedy for such interference, disruption, hindrance, or delay shall be an extension of the Contract Times under **Article 8**, unless otherwise required by ORC Section 4113.62.

12.10 Successors and Assigns

12.10.1 The Contracting Authority and CM each bind themselves, their successors, assigns, and legal representatives, to the other party to this Contract and to the successors, assigns, and legal representatives of the other party with respect to all terms of this Contract.

12.10.2 The Contracting Authority and CM each acknowledge that the Owner is an intended third-party beneficiary of this Contract.

12.10.3 The CM shall not assign, or transfer any right, title, or interest in this Contract without the Contracting Authority's prior written consent.

12.11 Extent of Contract

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

12.11.2 Multiple Counterparts. This Contract 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.

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

12.11.4 Precedence. If there are any inconsistencies between the provisions of the Contract Documents and provisions of the Request for Qualifications or Request for Proposals or this Contract, the provisions of this Contract shall prevail.

12.12 Severability

12.12.1 If any term or provision of this Contract 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 Contract 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 Contract shall be valid and enforced to the fullest extent permitted by Applicable Law.

12.13 Facsimile Signatures

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

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12.14 No Third-Party Interest

12.14.1 Except as expressly provided under **Sections 6.2.2** through **6.2.4** and **Section 12.10.2**, **(1)** no person or entity, other than the Contracting Authority and CM, will have any right or interest under the Contract, and **(2)** the Contract does not create a contractual relationship of any kind between any people or entities other than the Contracting Authority and CM.

12.15 Ohio Retirement System

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

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

~~12.15~~12.16 No Waiver

~~**12.15.1**~~**12.16.1** The failure of the Contracting Authority or CM to insist in any one or more instances upon the strict performance of any one or more of the provisions of the Contract or to exercise any rights under the Contract or provided by law will not be construed as a waiver or relinquishment of that provision or right or of the right to subsequently demand strict performance or exercise the right and the rights will continue unchanged and remain in full force and effect.

~~12.16~~12.17 Rights and Remedies

~~**12.16.1**~~**12.17.1** The duties, obligations, rights, and remedies under the Contract are in addition to and not a limitation of the duties, obligations, rights, and remedies otherwise imposed by or available under Applicable Law.

~~12.17~~12.18 Survival of Obligations

~~**12.17.1**~~**12.18.1** All representations, indemnity obligations, warranties, guarantees, and necessarily continuing obligations under the Contract, will survive final payment, completion and acceptance of the Work, and termination or completion of the Contract.

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END OF DOCUMENT

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Document 00 73 00 - Supplementary Conditions (Sample)
State of Ohio Standard Requirements for Public Facility Construction

Edit this sample document to include conditions specific to the ~~agency's~~agency or institution's projects.

Certifications

These Supplementary Conditions amend and supplement the General Conditions and other provisions of the Contract Documents as indicated below. All provisions not amended remain in full force and effect. The terms in these Supplementary Conditions defined in the Contracting Definitions or the General Conditions shall have the meanings assigned to them in those documents.

These Supplementary Conditions are authorized, by the Ohio Facilities Construction Commission, for use on projects constructed by ~~and~~«insert Contracting Authority's name» for «insert ~~Contracting Authority~~Owner's name».

Insert the name and relevant general contact information for the agency or institution below.

Contracting Authority

«insert Contracting ~~Authority~~Authority's name»
«insert street address»
«insert city, state~~-~~ zip code»
«insert phone number»
«insert website»

Insert the name and title of the Person (Institutional Designee) acting in place of the Executive Director of the Commission – for an agency or non-certified Institution of Higher Education, the Commission remains the authority ~~to~~with whom appeals may be ~~made~~filed and this item should be deleted.

Institutional Designee

«Institutional Designee»
«Title»

Insert modifications to the General Conditions ~~that are~~ applicable ~~for~~to projects specific to the agency or institution below. Prior to use on any project, modifications must be authorized by the Commission in consultation with the Attorney General's Office. The Commission will post authorized Supplementary Conditions on its website, which must be downloaded from that location. A link to that location may be included on the ~~agency's~~agency or institution's website.

MODIFICATIONS TO GENERAL CONDITIONS

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

X.X «Paragraph»

X.X.X «Subparagraph»

X.X.X.X «Clause»

.X «Sub-clause»

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

Replace Section X.X.X with the following:

Delete Section X.X.X in its entirety.

Insert Supplementary Conditions that are applicable to projects by the agency or institution below.

Insert Article 13 with associated Sections as follows in its entirety:

ARTICLE 13 - MISCELLANEOUS SUPPLEMENTARY CONDITIONS

13.1 «Paragraph»

13.1.1 «Subparagraph»

13.1.1.1 «Clause»

.1 «Sub-clause»

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END OF DOCUMENT

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Document 00 73 43 - Wage Rate Requirements (CM at Risk ~~Contract~~Project)

State of Ohio Standard Requirements for Public Facility Construction

PREVAILING WAGE RATES

1.1 Payment of Prevailing Wage Rates

1.1.1 The CM shall pay the prevailing wage rates of the Project locality, as issued by the Ohio Department of Commerce, Wage and Hour Bureau to laborers and mechanics performing Work on the Project.

1.1.2 The CM shall comply with the provisions, duties, obligations, and is subject to the remedies and penalties of ORC Chapter 4115.

1.1.3 If the CM or its Subcontractors fail to comply with ORC Chapter 4115, the Contracting Authority may withhold payment pursuant to **Section 9.~~6~~2.13.2.5** of the **General Conditions**. The CM is liable for violations committed by the CM or its Subcontractors to the extent provided in ORC Chapter 4115.

1.1.4 The CM shall submit all payroll reports in compliance with the requirements of **Section 1.~~4~~2** for all of the employees of the CM and of the CM's Subcontractors.

1.1.5 By executing a Contract, the CM certifies that it based its Bid upon the prevailing rates of wages as ascertained by the Ohio Department of Commerce, Wage and Hour Bureau for the Project as provided in ORC Sections 4115.03 through 4115.14, which are inserted at the end of this Document.

1.2 Prevailing Wage Rate Revisions

1.2.1 The Contracting Authority shall, within 7 business days after receipt of a notice of a change in the prevailing wage rates, notify the CM of the change. The prevailing wage rates are available at the Ohio Department of Commerce's web site: http://com.state.oh.us/.

1.2.2 The CM shall pay any revised wage rates issued during the term of the Contract.

1.3 Payroll Schedule

1.3.1 Within 10 days of the date of the Notice to Proceed, the CM shall provide the Contracting Authority's Prevailing Wage Coordinator a schedule of dates during the term of the Contract on which wages shall be paid to employees for the Project.

1.4 Payroll Reports

1.4.1 The CM shall submit payroll reports with each CM Payment Request, which reports shall be certified by the CM that the payroll is correct and complete and the wage rates shown are not less than those required by the Contract. The CM is responsible for submitting all payroll reports of its Subcontractors.

1.4.1.1 Each payroll report shall indicate the period covered and include a list containing the name, address and social security number of each employee of the CM and its Subcontractors paid for the Work.

1.4.1.2 Each payroll report shall list the number of hours each employee worked each day on the Project during the reporting period, the total hours each week on the Project, the employee's hourly rate of pay, job classification, hourly rate of fringe benefits, and all deductions from wages and net pay.

1.4.1.3 Each payroll report shall list each fringe benefit and state if it is paid as cash to the employee or to a named plan.

1.4.1.4 The CM and its Subcontractors shall submit apprenticeship agreements for all apprentices utilized on the Project.

END OF DOCUMENT

Version Control Document