State of Ohio Standard Requirements for Public Facility Construction
(Design-Build Project)

2014 Edition

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

OHIO FACILITIES CONSTRUCTION COMMISSION
30 West Spring Street, 4th Floor
Columbus, Ohio 43215
614.466.6290
info@ofcc.ohio.gov
http://ofcc.ohio.gov

Capital Improvements

614.644.2211
oaksci@ofcc.ohio.gov

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Document 00 52 53 - Agreement Form (Design-Build ~~Contract~~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 Design-Builder 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»
Design-Builder ("DB"):	**«insert name»**
DB's Principal Contact:	«insert name»
Address:	«insert street address» «insert city, state zip code»

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

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

1.1.1 The portion of the Work to be performed by the AOR is described in the **AOR Scope of Services Description** attached as **Exhibit A**.

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

1.3 The **Preliminary Project Schedule** is attached as **Exhibit B**.

Two-Year Colleges may delete Section 1.4 below. Otherwise, enter the percentage.

1.4 The DB shall contract with EDGE-certified Business Enterprise(s) for the portion of the Contract described below:

1.4.1 during the Preconstruction Stage, no less than «insert DB's Preconstruction Stage Design-Services EDGE commitment» percent of the total Preconstruction Stage Design-Services Fee;

~~1.4.1~~1.4.2 during the Preconstruction Stage, no less than «insert DB's Preconstruction Stage EDGE commitment» percent of Preconstruction Stage Compensation; and

~~1.4.2~~1.4.3 during the Construction Stage, no less than «insert DB's Construction Stage EDGE commitment» percent of the Contract Sum established in the GMP Amendment.

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 Design-Services Fee, **(3)** Preconstruction Stage Personnel Costs, and **(4)** Preconstruction Stage Reimbursable Expenses. The Owner shall pay the Preconstruction Stage Compensation to the DB in exchange for the DB's proper, timely, and complete performance of the Preconstruction Services.

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

~~Phase~~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	$«insert fee amount»	«insert percentage»%
~~GMP Proposal and Amendment~~	~~$«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 Design-Services Fee. The DB's Preconstruction Stage Design-Services Fee shall not exceed $«insert fee amount», and shall be paid on an hourly basis according to the rates set forth in the **AOR's Fee Schedule for Personnel** attached as **Exhibit C**, subject to the following allocation:

~~Phase~~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	$«insert fee amount»	«insert percentage»%
~~GMP Proposal and Amendment~~	~~$«insert fee amount»~~	~~«insert percentage»%~~
Construction Documents Stage	$«insert fee amount»	«insert percentage»%
GMP Proposal and Amendment	$«insert fee amount»	«insert percentage»%
Total Preconstruction Design Services Fee	$«insert fee amount»	100%

2.4 Preconstruction Stage Personnel Costs. The DB'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 D**.

2.5 Preconstruction Stage Reimbursable Expenses. The DB'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 E**.

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 ~~a~~at least one **GMP Amendment**, the form of which is attached as **Exhibit G**.

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

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

3.3 The DB 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 ~~an amount equal to «$~~«insert General Conditions Costs ~~percentage» percent of the Cost of the Work identified by the DB in the proposed GMP Amendment.~~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 F**.

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

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

3.4.1 Shared-Savings Change Order. ~~No~~Unless otherwise provided in the GMP Amendment, no more than 30 days before final payment to the DB, the parties shall execute a Change Order to reduce the Contract Sum by an amount equal to **(1)** ~~«insert Owner's percentage share of savings – if no sharing should be 100%»~~100 percent of the funds then remaining in the DB's Contingency plus **(2)** an associated reduction of the DB's Fee in an amount equal to «insert DB 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 DB's Contingency.

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

3.6 The DB shall propose the amount of the DB's Fee as a part of the proposed GMP Amendment; provided, however, that the DB's Fee shall not exceed an amount equal to «insert DB Fee percentage» percent of the sum of the Cost of the Work plus ~~the~~ DB's Contingency plus ~~the~~ Construction Stage Design-Services Fee, all as identified by the DB in the proposed GMP Amendment.

ARTICLE 4 - KEY PERSONNEL

4.1 The DB'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~~Project.

ARTICLE 5 - CONSULTANTS

5.1 The DB's Consultants for the Project are:

5.1.1 Architect/Engineer of Record:
«insert firm name»
«insert firm address»
«insert firm address»

«insert consultant contact name, title»

5.1.2 «insert discipline»:
«insert firm name»
«insert firm address»
«insert firm address»

«insert consultant contact name, title»

Edit the above list as appropriate for the ~~project~~Project.

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

5.2.1 If the DB engages a ~~"design-assist firm" as described under Ohio Revised Code ("ORC") Section 153.50~~Design-Assist Firm, that entity **(1)** will be considered a Consultant under the Contract during the Preconstruction Stage and

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(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 DB.

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

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

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

5.3.3 The Contracting Authority's receipt and approval of a copy of the agreement between the DB and a Consultant is a condition precedent to the Owner's obligation to pay the DB 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 DB shall obtain the Contracting Authority's written approval before engaging any Consultant not named above. The DB 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 DB of the DB's full responsibility for the performance of the Work.

5.6 The DB 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 DB 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 DB 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 DB or directly with the Consultant, but the Contracting Authority may not modify the contract between the DB and any Consultant.

5.8 The DB 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 DB in writing. The Contracting Authority may re-assign accepted agreements.

ARTICLE 6 - GENERAL PROVISIONS

6.1 Escalation of Personnel Rates.

6.1.1 The DB may adjust the rates set forth in **(1)** the **AOR's Fee Schedule for Personnel** attached as **Exhibit B** in accordance with the AOR's normal salary-review practices and **(2)** the **Personnel Costs Rate Schedule** attached as **Exhibit D** in accordance with the DB's normal salary-review practices, but for both:

- **.1** not before the date 1 year after the date of the Agreement,
- **.2** not more than once in any 1-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 ~~the~~ Contracting Authority receive written notice of the increase from the DB, or **(2)** result in an increase in a previously established fixed or not-to-exceed fee such as under **(a) Sections 2.3**, **2.4**, **3.2**, and ~~3.5~~**3.5** 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 DB 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.

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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 DB.

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 DB 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 DB shall immediately repay to the Owner any funds paid under this Contract.

6.3.2 The DB hereby certifies that neither the DB nor any of the DB'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.

6.3.3 The DB, 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 DB 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 DB 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, ~~the~~ final Drawings, ~~the~~ final Specifications, Addenda if any, **Contracting Definitions**, **General Conditions**, ~~supplementary conditions if any~~**Wage Rate Requirements**, Project Manual, and Modifications if any.

7.2 This Agreement includes the following documents:

7.2.1 ~~AOR~~**Supplementary Scope** ~~of Services Description~~**Statement (AOR)** attached as **Exhibit A**;

7.2.2 Preliminary Project Schedule attached as **Exhibit B**;

7.2.3 AOR's Fee Schedule for Personnel attached as **Exhibit C**;

7.2.4 Personnel Costs Rate Schedule attached as **Exhibit D**;

7.2.5 Preconstruction Stage Reimbursable Expenses Schedule attached as **Exhibit E**;

7.2.6 General Conditions Costs Description attached as **Exhibit F**; and

7.2.7 GMP Amendment form attached as **Exhibit G**~~.~~; and

~~**7.3** The GMP Documents include the GMP Amendment (including all of its exhibits) signed by the Owner, Contracting Authority, and DB.~~

7.2.8 ~~*Delete*~~**Supplementary Conditions** attached as **Exhibit H** *(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*** ~~*if the Project is completely funded by State appropriations*~~*.*

TREASURER'S CERTIFICATION

~~IT IS HEREBY CERTIFIED that~~This signature certifies the ~~moneys~~amount required to meet the ~~obligations of the Board of Trustees of the **«INSERT OWNER'S NAME»** under the foregoing Contract have~~obligation in the fiscal year in which this Agreement is made has been lawfully appropriated for such ~~purposes~~purpose and ~~are~~is in the treasury ~~of the **«INSERT**~~

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~~**OWNER'S NAME»**~~ or ~~are~~ in ~~the~~ process of collection to the credit of an appropriate fund~~,~~ free from any previous ~~encumbrance~~encumbrances.

Signature

Printed Name
~~Treasurer~~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 DB'S NAME»

Signature

Printed Name

Title

STATE OF OHIO

Signature

Printed Name

Title

Date

~~OWNER'S CONCURRENCE~~

«INSERT OWNER'S NAME»
Owner's Concurrence

Signature

Printed Name

Title

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Exhibit G

The State of Ohio, acting by and through the Contracting Authority, and the DB enter into this Amendment as of the date set forth below to amend the Contract they entered into as of ~~the~~«insert date ~~set forth below~~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»**
Design-Builder ("DB"):	**«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 DB's Contingency, plus the Construction Stage Design-Services Fee, plus the DB'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 DB's Construction Stage Personnel Costs in the amount of **$«insert amount»**, which amount shall not exceed $«insert DB'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 ~~percentage from the Agreement» percent of the Cost of the Work;~~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 DB proposes to provide through Subcontractors in the amount of **$«insert amount»**;

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

1.1.2 The DB's Contingency in the amount of **$«insert amount»**, which shall not exceed «insert DB 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 DB 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 Construction Stage Design-Services Fee in the amount of **$«insert amount»**, which shall not exceed «insert Construction Stage Design-Services Fee percentage from the Agreement» percent of the sum of the above-identified Cost of the Work plus the above-identified DB's Contingency.

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1.1.4 The DB's Fee in the amount of **$«insert amount»**, which shall not exceed «insert DB Fee percentage from the Agreement» percent of the sum of the Cost of the Work plus the DB's Contingency plus the Construction Stage Design-Services Fee, all as identified above.

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
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 DB's Contingency	$«insert amount»	$«insert amount»	$«insert amount»
1.1.3 Design-Services Fee	$«insert amount»	$«insert amount»	$«insert amount»
1.1.4 DB's Fee	$«insert amount»	$«insert amount»	$«insert amount»

ARTICLE 2 - CONTRACT TIMES

2.1 The Contract Times are the periods ~~of time~~ 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 ~~of~~if none»	«insert number of calendar days» days	«insert date»
~~Final Acceptance~~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 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 ~~at~~as **GMP Exhibit A**;
(This exhibit includes the AOR-prepared Design Intent Statement and a ~~complete list of~~list, which identifies by number, title, and date, all of the Drawings, Specifications, and other documents, upon which the DB relied to prepare this Amendment.)

3.1.2 Assumptions and Clarifications attached ~~at~~as **GMP Exhibit B**;
(This exhibit includes a complete list of the assumptions and clarifications made by the DB 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 ~~at~~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 DB's Fee and the DB's Contingency. This exhibit is informational only. It is

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included to provide a tool to evaluate, analyze, and discuss the proposed Contract Sum.)

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

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

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

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

3.1.8 Scope of DB's Self-Performed Work attached ~~at~~as **GMP Exhibit H**;
(This exhibit includes a detailed scope-of-Work description for all trade Work the DB proposes to perform itself or through a DB 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 ~~at~~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 ~~at~~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 ~~at~~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 ~~at~~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.)

~~Delete~~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 ~~if the Project is completely funded by State appropriations~~.

TREASURER'S CERTIFICATION

~~IT IS HEREBY CERTIFIED that~~This signature certifies the ~~moneys~~amount required to meet the ~~obligations of the Board of Trustees of the **«INSERT OWNER'S NAME»** under the foregoing Contract have~~obligation in the fiscal year in which this Amendment is made has been lawfully appropriated for such ~~purposes~~purpose and ~~are~~is in the treasury ~~of the **«INSERT OWNER'S NAME»** or are in the~~ process of collection to the credit of an appropriate fund~~,~~ free from any previous ~~encumbrance~~encumbrances.

Signature

Printed Name
~~Treasurer~~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.

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SIGNATURES

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

«INSERT DB'S NAME»

Signature

Printed Name

Title

~~OWNER'S CONCURRENCE~~

«INSERT OWNER'S NAME»
Owner's Concurrence

Signature

Printed Name

Title

STATE OF OHIO

Signature

Printed Name

Title

Date

END OF DOCUMENT

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Exhibit A

ARTICLE 1 - ARCHITECT/ENGINEER OF RECORD'S SCOPE OF SERVICES

1.1 General

1.1.1 Services to be provided by the Architect/Engineer of Record ("AOR") shall at a minimum consist of the activities and stages set forth in **Article 2** and **Article 3**, and any services necessary to comply with the ORC Section 3379.10 Percent for Arts Program.

ARTICLE 2 - MINIMUM PRECONSTRUCTION STAGE SERVICES

2.1 Program Verification Stage

2.1.1 AOR's Program Verification Stage Submission.

2.1.1.1 The AOR shall prepare the following documents to be included in the DB's Program Verification Stage Submission:

- **.1** an identification of any unresolved issues related to compliance with Applicable Law; and
- **.2** a written description of all modifications of the Owner-provided program information.

2.2 Schematic Design Stage

2.2.1 During the Schematic Design Stage, the AOR shall:

2.2.1.1 identify and analyze requirements of Applicable Law;

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

2.2.1.3 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.

2.2.2 AOR's Schematic Design Stage Submission.

2.2.2.1 The AOR shall prepare the following documents to be included in the DB's Schematic Design Stage Submission:

- **.1** a conceptual site plan and preliminary building plans, sections, and elevations;
- **.2** if not noted on the drawings, a written description of preliminary selections of major building systems and construction materials; and
- **.3** a written description of all modifications of the Approved Program of Requirements.

2.3 Design Development Stage

2.3.1 During the Design Development Stage, the AOR shall:

2.3.1.1 resolve all issues related to compliance with Applicable Law; and

2.3.1.2 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.

2.3.2 AOR's Design Development Stage Submission.

2.3.2.1 The AOR shall prepare the following documents to be included in the DB's Design Development Stage Submission:

- **.1** plans, sections, elevations, typical construction details, and equipment layouts that illustrate and describe the refinement of the Project's design and the size and character of the Project in terms of architectural,

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structural, mechanical, plumbing, and electrical systems, materials, and other elements as may be appropriate;

.2 specifications sufficient to identify the quality and other characteristics of the proposed or selected materials, equipment, finishes, fixtures, and systems;

.3 the AOR-prepared Design Intent Statement; and

.4 a written description of all modifications of the Approved Program of Requirements.

~~2.41.1 GMP Proposal and Amendment~~

~~2.4.11.1.1 The AOR shall prepare conformed drawings, specifications, and other design-related documents to be included in the GMP Amendment.~~

~~2.5~~2.4 Construction Documents Stage

~~2.5.1~~2.4.1 As the AOR develops the Construction Documents, the AOR shall promptly notify the Contracting Authority and the DB in writing of any revision of the Project that would cause a change in the Contract Sum or Contract Times.

~~2.5.2~~2.4.2 AOR's Construction Documents Stage Submission.

~~2.5.2.1~~2.4.2.1 The AOR shall prepare the following documents to be included in the DB's Construction Documents Stage Submission:

.1 as appropriate for a design-build project delivery system, Drawings setting forth in detail the requirements for the construction of the Project; and

.2 as appropriate for a design-build project delivery system, Specifications prepared in accordance with the most-current CSI *MasterFormat* and that establish in detail the quality levels of all materials and systems required for the Project and include all stipulations pertaining to the furnishing and installation of the Work as required for completion of the Project.

2.5 GMP Proposal and Amendment

2.5.1 The AOR shall prepare conformed drawings, specifications, and other design-related documents to be included in the GMP Amendment.

ARTICLE 3 - MINIMUM CONSTRUCTION STAGE SERVICES

3.1 Site Visits and Observation

3.1.1 During the Construction Stage, the AOR shall:

3.1.1.1 maintain familiarity with the progress and quality of the Work on the Project, to observe and check the progress and quality of the Work, and to take action as necessary or appropriate to achieve conformity with the Contract Documents; and

3.1.1.2 visit the Project at such intervals as the DB requires, to review the Work of Subcontractors for Defective Work, to become familiar with the progress and quality of the Work on the Project, and to determine if the Work is proceeding in conformity with the Contract Documents.

.1 Such visits shall specifically include, but are not limited to, observation of large excavations, observation of footings during placement of concrete and observation of masonry work, structural steel erection, roofing work and interior finishes.

3.1.2 If the AOR becomes aware, either through such visits or otherwise, of any Defective Work on the Project, then the AOR shall immediately report all Defective Work to the DB.

3.2 Interpretations

3.2.1 The AOR shall render interpretations of the Contract Documents necessary for the proper execution or progress of the Work on the Project.

3.2.2 The AOR shall keep a log of all RFIs and their respective responses.

3.3 Submittal Review

3.3.1 The AOR shall review Submittals such as Shop Drawings, Product Data, and Samples for conformity with design intent and conformity with the Contract Documents.

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3.3.2 The AOR shall also review drawings, calculations, and designs required of Subcontractors and provided with such Submittals (except calculations and designs of manufacturers of original equipment and systems to be installed in the Project and except calculations and designs which the Contract Documents expressly make the sole responsibility of one or more Subcontractors, Material Suppliers, or other persons).

3.4 Contract Modifications

3.4.1 The AOR shall revise the Drawings, Specifications, and other design-related documents as necessary on account of Modifications of the DB's Contract with the Contracting Authority.

3.5 Record Documents

3.5.1 The AOR shall revise the Contract Documents and related electronic files with the information contained on the As-Built Documents submitted by the DB and its Subcontractors.

3.5.2 The AOR shall label the revised Contract Documents and related electronic files as "Record Documents" and reflect the date of the AOR's incorporation of the As-Built Documents.

3.5.3 The Record Documents, to the best of the AOR's knowledge based upon the As-Built Documents delivered to the AOR by the DB and its Subcontractors and the AOR's observations during the progress of the Project, shall detail the actual construction of the Project and contain such annotations by the AOR as may be necessary for someone unfamiliar with the Project to understand the changes that were made to the Contract Documents.

END OF DOCUMENT

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Document 00 71 00 - Contracting Definitions (Design-Build ~~Contract~~Project)

State of Ohio Standard Requirements for Public Facility Construction

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

Agreement — The form furnished by the Contracting Authority (including all of its exhibits) that, when completed and signed by the ~~Design-Builder ("~~DB~~")~~ and ~~the~~ 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 DB'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.

AOR — See "Architect/Engineer of Record~~".~~."

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

Approved Program of Requirements — A written document approved by the Owner and ~~the~~ 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 of Record — The Person responsible for providing professional design services for the Project as provided in the Contract Documents, who serves as the final design professional signatory on the Drawings and Specifications. The Architect/Engineer of Record ("AOR") shall be a **(1)** ~~a~~ registered architect holding a license and certificate of authorization issued by the Ohio Architects Board pursuant to ~~Ohio Revised Code ("~~ORC~~")~~ Chapter 4703, **(2)** ~~a~~ landscape architect holding a license and certificate of authorization issued by the Ohio Landscape Architects Board pursuant to ORC Chapter 4703, or **(3)** ~~a~~ professional engineer or professional surveyor holding a license and certificate of authorization issued by the Ohio Engineers and Surveyors Board pursuant to ORC Chapter 4733.

As-Built Documents — Documents, including~~,~~ but not limited to~~,~~ Drawings, Addenda, Specifications, executed Change Orders, and other elements of the Contract Documents which the DB 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 DB 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.

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

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

Bidder A Person that submitted a Bid.

BIM See "Building Information Model~~"~~."

Bond The Performance Bond, ~~the~~ 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.

~~Certification~~Certificate of Contract Completion A form used to document ~~that the DB's Work is complete, and the DB has complied with all conditions precedent to final payment and release~~the DB's achievement of ~~retainage.~~Contract Completion. This form may also be used to document partial ~~completion~~Contract Completion.

Certificate of Substantial Completion A form used to document **(1)** that the DB 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 and executed by the Contracting Authority that directs a change in the Work.

Change Order A written instrument prepared by the Contracting Authority and executed by the Contracting Authority and the DB 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 DB, in favor of a Person supplying labor, materials, or services for the value of labor, materials, or services supplied.

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.

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

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

Construction Stage Design-Services Fee The amount stipulated as such in the GMP Amendment. The Construction Stage Design-Services Fee is the DB's compensation for the AOR's proper, timely, and complete performance of the AOR's portion of the Construction Stage services as described in the AOR Scope of Services Description attached to the Agreement.

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

Consultant A Person engaged by the DB 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" as described under ORC Section 153.50~~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 ~~the~~ DB, 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 DB 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 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, ~~the~~ GMP Documents, ~~the~~ final Drawings, ~~the~~ final Specifications, ~~the~~ 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 DB's entire compensation for the DB'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 ~~and ending~~ on the ~~dates~~date established by the Notice to Proceed, including adjustments as provided in the Contract.

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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 DB 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.~~

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

Correction Period A period of 1 year commencing on the date of ~~Final Acceptance~~Substantial Completion of the Work or a designated portion of the Work which the Contracting Authority and Owner ~~has~~have agreed to ~~accept separately~~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 DB of performing (either directly with its own employees or through a DB Affiliated entity) Work the DB 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 DB's Fee, DB's Contingency, Design-Services Fee, or Preconstruction Stage Compensation.

Criteria A/E The architect or engineer retained by the Owner to prepare conceptual plans and specifications, to assist the Owner in connection with the establishment of the design criteria for the Project, and, if requested by the Owner, to serve as the representative of the Owner and to provide other design and construction administration services on behalf of the Owner, including but not limited to~~,~~ confirming that the design prepared by the DB reflects the original design intent established in the design criteria package.

CxA See "Commissioning Agent~~"~~."

Date of Commencement The date established in a Notice to Proceed issued by the Contracting Authority to the DB 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.

DB See "Design-Builder~~"~~."

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

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

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

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

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

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

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 Contracting Authority'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 DB engages to provide design-assist services.

Design Intent Statement An AOR-prepared document intended to clarify the DB's stage submission (e.g., the DB'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 other characteristics of those elements that the AOR intends to describe in subsequent Drawings and Specifications for the Work.

Design-Builder The party identified as such in the Agreement.

Design-Services Fee The sum of the Preconstruction Stage Design-Services Fee plus the Construction Stage Design-Services Fee, which together are the DB's compensation for all services provided by the AOR.

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 DB 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 DB, 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.

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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 Acceptance** The Contracting Authority's acceptance of the Work performed by the DB.~~

Final Inspection The final review of the Work by the Contracting Authority to determine whether issuance of the ~~Certification~~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 DB'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 **(~~2)~~ 3)** premiums for builder's risk insurance ~~premiums~~ if the DB 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 DB.

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.).

Hazardous Materials Any material, substance, pollutant, or contaminant that is defined, regulated, referenced, or classified in the Comprehensive Environmental Response, Compensation and Liability Act, ~~the~~ Federal Water Pollution Control Act, ~~the~~ Resource Conservation and Recovery Act, ~~the~~ Clean Air Act, ~~the~~ Hazardous Materials Transportation Uniform Safety Act, ~~the~~ 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, ~~the~~ Contracting Authority, ~~the~~ Owner, ~~the~~ Criteria 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.

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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 DB's failure to complete the Work within the Contract Time for achievement of ~~Final Acceptance~~Substantial Completion, or any applicable portion of the ~~work~~Work on or prior to any associated Milestone.

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

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 ~~Final Acceptance~~Substantial Completion of all ~~of the~~ Work.

Modification A **(1)** written amendment to the Contract signed by both parties, **(2)** ~~Change Order, (~~Preconstruction Services Amendment, **(3)** Change Order, **(4)** Change Directive, or **(~~4~~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, ~~the~~ DB, Separate Contractors, and their respective Sureties; and the name of the Contracting Authority's representative upon whom a Claim Affidavit may be served.

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

~~**OAKS**~~ ~~See "~~**OAC**~~"~~ Ohio Administrative ~~Knowledge System"~~Code

~~**OAKS Capital Improvements**~~ ~~The State's Web-based capital program and project management information system, based on Unifier software licensed to the State by Skire, Inc., hosted on State servers.~~

~~**OAKS CI**~~ ~~See "OAKS Capital Improvements"~~

~~**Ohio Administrative Knowledge System**~~ ~~The State's Enterprise Resource Planning system, known as the Ohio Administrative Knowledge System, and OAKS CI is one of several modules of the total system.~~

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 or Design-Services Fee): payroll costs and all other compensation (including without limitation

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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 DB'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 DB in the DB's principal or a branch office (not including the DB'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 DB'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 DB's capital expenses, including without limitation interest on the DB's capital employed for the Work and charges against the DB for delinquent payments; **(4)** except where specifically allowed as a use of the DB's Contingency, all costs due to the negligence or breach of contract of the DB, 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 DB, whether required under the Contract or not, except ~~Builder's Risk~~**(a)** premiums for subcontractor default insurance ~~premiums~~ in the Construction Stage if those ~~Builder's Risk~~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, Design-Services Fee, or a Reimbursable Expense in the Preconstruction Stage, or **(b)** as a Cost of the Work or Design-Services Fee 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 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.

Payment Bond A written guaranty from a Surety to the Owner providing financial assurance that the DB 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 DB 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.

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Personnel ~~Cost(s)~~Costs The rates and fees to be paid by the Owner to the DB on account of the proper, timely, and complete performance of certain Work by the DB's employees, which rates and fees are fully loaded and include without limitation: **(1)** the portion of direct salaries and wages of the DB's personnel (whether stationed at the DB'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. The term "Personnel Cost(s)," does not include the Design-Services Fee.

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

Preconstruction Services The DB'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 DB engages on the Project.

Preconstruction Services Amendment A written instrument executed by the Contracting Authority and DB 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 DB's entire compensation for the DB's proper, timely, and complete performance of the Preconstruction Services ~~and~~, which includes Preconstruction Services performed by any Design-Assist Firms the DB engages on the Project and **(2)** is subject to adjustment as provided in the Contract.

Preconstruction Stage Design-Services Fee The amount stipulated as such in the Agreement. The Preconstruction Stage Design-Services Fee is the DB's compensation for the AOR's proper, timely, and complete performance of the AOR's portion of the Preconstruction Services as described in the AOR Scope of Services Description attached to the Agreement.

Preconstruction Stage Personnel Costs The Personnel Costs the DB earns and the Owner pays to the DB during the Preconstruction Stage. Preconstruction Stage Personnel Costs do not include the Preconstruction Stage Design-Services Fee or the Preconstruction Fee.

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~~~~Project~~ Status Report A monthly progress report to be prepared by the DB 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 DB, may potentially become Claims and any potential Change Orders that have been submitted to the Owner by the DB; **(10)** status of Construction 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 document prepared by the DB 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 DB 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 DB, 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 DB as a condition precedent to Contract Completion.

Record Documents Electronic files and printed documents of all nature prepared by the AOR, which incorporate the information shown on the DB's As-Built Documents. They consist of the "Record Drawings" and "Record Project Manual," ~~the~~ Record Model, ~~the Certification~~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 AOR to show the changes made during the construction process, conformed to represent the Work as executed by the DB.

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

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

Reimbursable Expenses See "Preconstruction Stage Reimbursable Expenses~~"~~."

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

Request for Interpretation A written request to the Contracting Authority 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 DB 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 DB 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 the Contracting Authority and a Separate Consultant or a Separate Contractor.

Separate Contractor A Person under contract with the Owner or the 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 DB 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 DB'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.

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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 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 ~~or~~, 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 DB 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 Design-Build method of project delivery.

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

Subcontracting Plan The DB-developed written plan which describes in detail the DB'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 DB 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 DB by the Owner and accepted by the DB.

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 Contracting Authority. 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 DB and approved by the Contracting Authority 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 DB and Subcontractors and requiring the DB 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.

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~~**Supplementary Instructions**~~ ~~Amendments to the Instructions to Proposers, issued as a separate document, which describe instructions unique to a particular Owner or Project. The Instructions to Proposers shall not be superseded or amended by Drawings and Specifications, unless so provided in Supplementary Instructions prepared by the Contracting Authority and approved by the Commission.~~

Surety A Person who provides financial assurances under a Performance Bond or a 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 it begins to use the facility.

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 DB'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 DB for the Project. The furnishing of all design services, 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 design and construction and other services required by the Contract Documents, whether provided or to be provided by the DB or a Subcontractor, or any other entity for whom the DB is responsible, and whether or not performed or located on or off of the Site.

END OF DOCUMENT

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ARTICLE 1 - ~~DESIGN-BUILDER'S~~DB'S RESPONSIBILITIES

1.1 Nondiscrimination

1.1.1 The DB shall comply with Applicable Law regarding equal employment opportunity, including ~~Ohio Revised Code ("~~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 DB 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 DB shall cooperate fully with the State's Equal Opportunity Coordinator ("EOC"), with any other official or agency of the state or federal government ~~which~~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 DB fails to comply with these nondiscrimination clauses, the Contracting Authority shall deduct from the amount payable to the DB 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**.

1.1.1.4 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**.

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 DB to hire, if available, only employees referred to the DB by a labor organization shall be void as against public policy and unenforceable with respect to employment under any public works contract unless at the date of execution of the hiring hall contract or agreement, or within 30 days thereafter, the labor organization has in effect procedures 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 DB and Subcontractors shall comply with the State's Equal Employment Opportunity requirements described under ~~Ohio Administrative Code Sections ("OAC")~~OAC 123:2-3 through 123:2-9 that include, without limitation, the requirements described under this **Section 1.1.~~2.1~~3**.

1.1.3.2 The DB 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 DB 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 DB 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 DB 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 DB 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.

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1.3 Royalties and Patents

1.3.1 The DB 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 DB has reason to believe that use of the specified item is subject to patent or copyright protection, the DB shall immediately notify the Contracting Authority.

1.4 Assignment of Antitrust Claims

1.4.1 By signing the Agreement, the DB 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 DB 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 DB 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 DB 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").

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 DB 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 Contracting Authority.

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1.6.4 In addition to OBWC-approved DFSP Basic requirements, the DB~~ and~~, 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 DB, Subcontractors, and ~~Subcontractor~~Separate Contractors. Basic random drug testing shall otherwise comply with the same testing guidelines and criteria as required for OBWC-approved advanced testing. The DB and ~~Subcontractors~~each Subcontractor shall provide evidence of required testing to the Contracting Authority upon request.

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

1.7.1 If the Contracting Authority decides, ~~at any time and~~ in its sole discretion, to utilize the State's web-based project management software~~, known as the OAKS Capital Improvements ("OAKS CI") module,~~ for the Project, the DB shall use ~~OAKS CI~~such software for all compatible services required under this Contract.

1.7.2 All costs for the DB's use of ~~OAKS CI~~the State's web-based project management software for the Project shall be included in ~~the~~ its Preconstruction Stage Compensation and Contract Sum~~, and additional compensation shall not be provided.~~, as applicable. If the ~~Contractor is~~DB's staff or its Consultants are unfamiliar with the proper use of ~~OAKS CI~~such software, the DB shall provide its ~~employees~~staff and Consultants for training without additional compensation.

1.8 EDGE Participation and Reporting

1.8.1 The DB 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" or "certified EDGE business~~Business") by the EOC.

1.8.1.1 If the DB is an EDGE~~ certified business~~ certified Business, the DB 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 DB's Preconstruction Stage Compensation plus the Contract Sum.

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

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

- **.1** the name of each EDGE-certified ~~business~~Business;
- **.2** the federal tax identification number of each EDGE-certified ~~business~~Business;
- **.3** the date of the EDGE-certified ~~business~~Business contract, ~~subcontract,~~Subcontract, or purchase order;
- **.4** the projected and actual start and end dates of the EDGE-certified ~~business~~Business contract, ~~subcontract,~~Subcontract, or purchase order;
- **.5** the original amount of the EDGE-certified ~~business~~Business contract, Subcontract, or purchase order with the DB;
- **.6** the current amount of the EDGE-certified ~~business~~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~~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 DB shall provide reports for each EDGE-certified ~~business~~Business; however, the reports may be consolidated and submitted as one document.

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

1.8.3.1 The DB and each ~~certified~~ EDGE-certified Business~~ Enterprise~~ 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~~-certified Business.

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

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

1.8.5 If the Project is administered using ~~OAKS CI~~the State's web-based project management software, the DB 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 DB shall cooperate fully with requests for additional EDGE information and documentation from the EOC or ~~the~~ Contracting Authority.

1.9 Owner Work Rules

1.9.1 The DB 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 DB, without special instruction or authorization, shall act to prevent the threatened damage, injury, or loss.

1.10.2 If the DB believes that it is entitled to an adjustment of the Preconstruction ~~Fee~~Stage Compensation, Contract Sum, or Contract Times on account of its actions in response to an emergency, the DB may request ~~an adjustment to the Contract~~a Modification by giving written notice under **Section** ~~7.3.1.6~~**7.1.1** or ~~9.1.7 (~~**Section 7.3.2**, as applicable~~)~~.

1.11 Testing and Inspection Services

1.11.1 Unless otherwise specified in the Contract Documents, the DB 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.

1.12 DB's Standard of Care

1.12.1 The DB shall perform the professional design services portion of the Work consistent with the professional skill and care ordinarily provided by registered architects, landscape architects, professional engineers, and professional surveyors regularly providing comparable services in the same or similar locality under the same or similar circumstances.

1.12.1.1 The DB shall also perform the professional design services portion of the Work in accordance with the applicable rules established by the applicable state boards of registration, including, but not limited to, OAC Section 4703-3-07 for registered architects, OAC Section 4703-3-07 for landscape architects, and OAC Section 4733-35 for professional engineers and professional surveyors.

1.12.2 The DB shall perform the portion of the Work, which does not involve professional design services, 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.

1.12.3 The DB shall perform the Work as expeditiously as is consistent with the skill and care required under **Sections 1.12.1** and **1.12.2** and the orderly progress of the Project.

1.13 AOR's Agreement and Standard of Care

1.13.1 The agreement between the DB and AOR shall include the **Supplementary Scope Statement (AOR)**, which is attached as **Exhibit A** of the DB's Agreement.

~~**1.13.1**~~**1.13.2** The AOR shall perform the professional design services portion of the Work consistent with the professional skill and care ordinarily provided by registered architects, landscape architects, professional engineers, and professional surveyors regularly providing comparable services in the same or similar locality under the same or similar circumstances.

~~**1.13.2**~~**1.13.3** The AOR shall also perform the professional design services portion of the Work in accordance with the applicable rules established by the applicable state boards of registration, including, but not limited to, OAC Section

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4703-3-07 for registered architects, OAC Section 4703-3-07 for landscape architects, and OAC Section 4733-35 for professional engineers and professional surveyors.

1.14 Limit of DB's Responsibility

1.14.1 The DB is not responsible for the Criteria A/E's negligence or the Criteria A/E's failure to properly perform the Criteria A/E's contract.

1.15 Sustainability Requirements

1.15.1 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, ~~policy~~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~~123:4-1~~.

1.15.2 The DB shall incorporate cost-effective, energy-efficient, green building practices to the maximum extent possible into the Project.

1.15.3 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 DB 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 ~~the~~ use of its forms where ~~noted~~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 DB shall not modify any form provided by the Commission or ~~the~~ Contracting Authority.

2.1.4.2 If the Project is administered using ~~OAKS CI~~the State's web-based project management software, the DB shall utilize the web-based forms and reports within the applicable business process. ~~OAKS CI~~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 DB'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 ~~the~~ 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 DB in a condition to permit the DB to perform the Work.

2.2.5 The Owner may request a change in the Work subject to the Contracting Authority's approval.

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

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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 DB's failure to carry out the Work in conformity with the Contract Documents.

~~2.3 Owner's Right to Partial Occupancy~~ *{moved from Section 2.3 to Section 6.27}*

~~**2.3.1** The Owner may occupy or use a portion of the Project prior to Contract Completion if:~~

~~**2.3.1.1** the building authority with jurisdiction over the Project issues a temporary or partial certificate of occupancy permit for the portion of the Project the Owner intends to occupy;~~

~~**2.3.1.2** the DB with the Owner's assistance has provided written notice of the Partial Occupancy to the insurers providing property insurance for the Project; and~~

~~**2.3.1.3** the Contracting Authority has received notice of the Partial Occupancy from the DB and has consented to it.~~

~~**2.3.2** Before the Owner commences Partial Occupancy, the Owner, Contracting Authority, DB, and AOR shall proceed as described under Sections 6.25 and 6.27.3 for the area designated for Partial Occupancy.~~

~~**2.3.3** From the date of execution of the Partial Certification of Contract Completion by the Contracting Authority, the DB shall be relieved of the obligation to maintain the occupied portion of the Work, 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.~~

~~**2.3.4** The Owner's Partial Occupancy does not constitute acceptance of any Defective Work, nor does it relieve the DB of liability for any express or implied warranties or responsibility for Defective Work.~~

~~2.4~~2.3 Approval of Owner, Contracting Authority, and State

~~**2.4.1**~~**2.3.1** The Owner~~'s~~, Contracting Authority~~'s~~, or State's review and approval of the Work and any information the DB 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 DB of its sole responsibility for the performance, preparation, completeness, and accuracy of the Work and information.

2.4 Neutral Facilitation *{new Section}*

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.

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 DB 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 DB of any of their respective rights or obligations under the Contract.

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2.5 DB Performance Evaluation

2.5.1 The Contracting Authority ~~shall~~ may evaluate the DB'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 DB may request a copy of the completed evaluation(s). If the DB wishes to comment or take exception to any rating or remark, the DB ~~shall~~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 DB for award of future contracts.

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

2.5.1.4 If a breach of the Contract is committed by the DB or is attributable to a Subcontractor, that breach ~~shall~~will be used in the responsibility analysis of the DB and ~~the~~ 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 ~~OAKS CI~~the State's web-based project management software, the DB shall receive and review the Contracting Authority's evaluation of the DB's performance and respond with its comments, using the "Contractor Evaluation" business process.

ARTICLE 3 - CRITERIA A/E'S RESPONSIBILITIES

3.1 Criteria A/E's Site Visits and Observations

3.1.1 The Criteria A/E may notify, advise, and consult with the Contracting Authority and ~~the~~ Owner throughout ~~the~~ completion of the Project, which includes the Correction Period.

3.1.1.1 The Criteria A/E may designate a field representative, subject to the Contracting Authority's approval, to attend to the Project ~~as required by the Criteria A/E's Agreement~~.

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

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

3.2 Approval of Criteria A/E

3.2.1 The Criteria A/E's review and approval of the Work and any information the DB submits to the Criteria 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 DB of its sole responsibility for the performance, preparation, completeness, and accuracy of the Work and information.

3.3 Delegation to the Criteria A/E

3.3.1 Except as otherwise prohibited by Applicable Law, the Contracting Authority may delegate to the Criteria A/E any of the Contracting Authority's rights and responsibilities under the Contract. No such delegation will be subject to the DB's consent or approval.

3.4 Limitation of Criteria A/E's Authority

3.4.1 Under no circumstances is the Criteria A/E authorized to:

3.4.1.1 bind the Owner or Contracting Authority to any authorizations under, modifications of, or amendments to any contract;

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

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

3.4.1.4 assume any responsibilities of the DB, Consultants, or Subcontractors.

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ARTICLE 4 - SUBCONTRACTORS

4.1 Applicability of Requirements

4.1.1 Sections ~~4.2~~**4.3**, **4.3**~~**4**, and 4.4~~, and **4.5** apply to all Work during the Construction Stage (including the DB's procurement of long-lead-time items before the Date of Commencement) except:

4.1.1.1 the DB's management and administration of the entire Work, including ~~the~~ 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 ~~the below threshold~~$200,000 if the DB obtains the Contracting Authority's written approval before the commencement of that Work;

~~Contract Sum~~	~~Bid threshold for non-specialty Work~~
~~Less than $5,000,000~~	~~$50,000~~
~~From $5,000,000.01 to $10,000,000~~	~~$100,000~~
~~From $10,000,000.01 to $50,000,000~~	~~$150,000~~
~~More than $50,000,000~~	~~$200,000~~

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

~~**4.1.1.4**~~**4.1.1.5** Work performed under a design-assist contract authorized by the Contracting Authority and entered into by the DB as described under **Section 4.8**; and

~~**4.1.1.5**~~**4.1.1.6** Construction Stage Design Services.

~~**4.1.2** If the DB engages a "design-assist firm" as described under ORC Section 153.50, subject to the Contracting Authority's approval, that entity (1) will be considered a Consultant under the Contract while performing Preconstruction Stage Services and (2) before that entity performs any Construction Stage Work, it shall be subject to all Applicable Law and Contract provisions concerning the prequalification, bidding, selection, and engagement of Subcontractors. Subject to the foregoing requirements, the DB may engage a design-assist firm at any point in the Project that it determines is appropriate or necessary.~~ ***{deleted Section – refer to Section 4.8}***

~~**4.1.2.1** Example. The DB may engage a design-assist firm as a Consultant immediately after the DB enters into the Agreement. That design-assist firm may thereafter (1) participate in the development of one or more Bid packages, (2) proceed through the Bidder prequalification process described in this Article 4, and (3) if prequalified, submit a Bid for that Work along with other Bidders. Under this example, the DB would not be obligated to engage the design-assist firm to provide the associated Work as a Subcontractor, but could under Applicable Law award the Subcontract to the design-assist firm even if the design-assist firm does not submit the lowest Bid.~~

~~**4.1.2.2** Example. Immediately after the DB enters into the Agreement, the DB may prepare a Bid package which includes both design-assist services and construction services. Under this example, design-assist firms would be prequalified and submit Bids for that Bid package as described in this Article 4.~~

~~**4.1.2.3** The above examples are intended to illustrate sequences that may be followed when engaging a design-assist firm but are not intended (1) to illustrate all permitted sequences or (2) to indicate that the DB would be required to engage a design-assist firm.~~

~~**4.1.2.4** Under both of the above examples and all other cases, in order to facilitate compensation of the design-assist firm and the establishment of the Contract Sum through the GMP Amendment, the selected design-assist firm shall be a Consultant under the Contract while performing Preconstruction Stage Services and a Subcontractor while performing Construction Stage Work.~~

4.2 Subcontracting Plan *{new Section}*

4.2.1 The DB 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.

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~~4.2~~4.3 Prequalification Criteria

~~4.2.1~~4.3.1 The DB shall establish criteria for ~~the~~ prequalification of prospective Bidders on Subcontracts that shall:

~~4.2.1.1~~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;

~~4.2.1.2~~4.3.1.2 further any goals set as part of the EDGE program or ~~a~~other diversity and inclusion program required by Applicable Law;

~~4.2.1.3~~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

~~4.2.1.4~~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.

~~4.2.2~~4.3.2 The DB 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.

~~4.2.3~~4.3.3 The DB shall submit its proposed prequalification criteria for each Subcontract to the Contracting Authority and place ~~the~~ establishment of prequalification criteria on the Project Schedule.

~~4.2.4~~4.3.4 The Contracting Authority shall approve or reject, in whole or in part, the prequalification criteria submitted by the DB. 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.

~~4.3~~4.4 Prequalification Process

~~4.3.1~~4.4.1 The DB shall complete the Prequalification Process for each Subcontract no later than 10 days before the DB intends to solicit Bids for that Subcontract unless the Contracting Authority agrees otherwise in writing.

~~4.3.2~~4.4.2 During the Prequalification Process, the DB 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 DB to invite and evaluate more than 3 prospective Bidders, including specifically those prospective Bidders (if any) the Owner or ~~the~~ Contracting Authority asks the DB to contact.

~~4.3.2.1~~4.4.2.1 To reach prospective Bidders, the DB may place a notice on **(1)** the State's public notice website created under ORC 125.182 (with ~~the~~ assistance of the Contracting Authority or ~~the~~ 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.

~~4.3.3~~4.4.3 ~~Unless the Contracting Authority agrees in writing, the~~The DB shall evaluate the qualifications of each ~~solicited~~ prospective Bidder that timely submits its qualifications and notify each of them whether they are qualified. The DB's determination that a Bidder that timely submits its qualifications does not meet the prequalification criteria shall be final.

~~4.3.4~~4.4.4 The DB shall submit the names and qualifications of at least 3 qualified prospective Bidders to the Contracting Authority. The DB may submit the names of fewer than 3 qualified prospective Bidders if the DB submits to the Contracting Authority satisfactory documentation that fewer than 3 qualified prospective Bidders are available. The Contracting Authority, ~~the~~ Owner, and ~~the~~ DB may meet to review the qualifications of the prospective Bidders on the list the DB submits to the Contracting Authority.

~~4.3.4.1~~4.4.4.1 Notwithstanding **Section 4.~~3~~4.4**, the Contracting Authority may require the DB to submit the names and qualifications of more than 3 qualified prospective Bidders for all or any particular Bid package. In that case, the DB may submit the names of fewer than the required number of qualified prospective Bidders if the DB submits to the Contracting Authority satisfactory documentation that fewer than the required number of qualified prospective Bidders are available.

~~4.3.5~~4.4.5 The Contracting Authority shall review the list the DB submits, and may rely on the DB's representations to verify that ~~the~~ prospective Bidders meet the prequalification criteria. The Contracting Authority shall complete its review within the period agreed between the Contracting Authority and DB or otherwise with reasonable promptness. The Contracting Authority may eliminate any prospective Bidder it determines is not qualified and notify the DB~~.~~ of the

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Contracting Authority's determination and the basis for it. The DB 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.

~~**4.3.6** If the DB receives a written objection from the eliminated prospective Bidder within 5 days after the eliminated prospective Bidder receives notice of the Contracting Authority's decision, the DB shall promptly deliver the eliminated prospective Bidder's written objection to the Contracting Authority. The Contracting Authority may respond to the objection in writing through the DB.~~

~~4.4~~4.5 Subcontract Bidding Process

4.5.1 The DB shall create a Bid package for each Subcontract and solicit Bids from ~~the~~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 DB is soliciting Bids is not a condition precedent to commencement or completion of the Subcontract Bidding Process.

~~**4.4.1**~~ 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 DB and Contracting Authority will meet to review Bids of qualified prospective Bidders identified under **Section 4.~~3~~4** for that ~~Bid package in accordance with the Construction Progress Schedule.~~

~~**4.4.2**~~**4.5.2** ~~At the 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 DB and the Contracting Authority will meet to review the Bids of the qualified prospective Bidders identified under Section 4.3 for that Subcontract and to~~ determine to which prospective Bidder the DB will award the Subcontract. During the review meeting, the DB shall identify the prospective Bidder to whom the DB proposes to award the Subcontract.

~~**4.4.2.1**~~**4.5.2.1** Each Bidder to whom the DB proposes to award ~~the~~a Subcontract shall to the DB's reasonable satisfaction **(1)** be qualified to perform the subcontracted portion of the Work and **(2)** have submitted a Bid~~, which~~ that conforms to the requirements of the Contract Documents.

.1 For the purpose of evaluating and reconciling the Bids, the DB 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.

~~**.1**~~**.2** The DB is not required to propose to award the Subcontract to the Bidder ~~which~~that submitted the lowest Bid. Subject to **Section** ~~4.6~~**4.7**, the DB may also propose to self-perform the Work in a Bid package even if the DB did not submit the lowest Bid for that Work.

~~**4.4.2.2**~~**4.5.2.2** If the Contracting Authority does not reject the DB-proposed Bidder, the DB shall enter into the Subcontract with the selected Bidder.

.1 All Subcontracts shall be on the **State of Ohio Subcontract** ~~form~~**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 DB and ~~the~~ Contracting Authority, the DB shall submit to the Contracting Authority a **Subcontractor and Material Supplier Declaration** form through which the DB identifies the Subcontractor~~.~~ along with a complete copy of the executed Subcontract between the CM and Subcontractor. After receiving the form and Subcontract, the Contracting Authority shall verify that ~~it is~~they are complete and deliver ~~it~~them to the Owner. If the Contracting Authority finds the form and Subcontract are incomplete, the Contracting Authority shall return ~~it~~them to the DB 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 DB entering into the Subcontract with that Subcontractor.

~~**.3**~~**.4** If the Project is administered using ~~OAKS CI~~the State's web-based project management software, the DB shall identify~~submit~~ its Subcontractors through the "Subcontractor Supplier Declaration" business process.

~~**4.4.2.3**~~**4.5.2.3** If the Contracting Authority rejects any DB-proposed Bidder, the DB shall propose ~~another Bidder with no adjustment of the Contract Sum. The proposed~~ a replacement Bidder ~~will~~, which shall be evaluated as described above.

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.1 If the majority of the Work included in the Bid package that the DB proposed to award to the rejected Bidder is covered by a GMP Amendment before the Contracting Authority rejects the DB-proposed Bidder, and the rejected Bidder was reasonably capable of performing the Work included in that Bid package, the DB 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 DB presented those Bids as described under **Section 4.5.2**.

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

.3 Notwithstanding **Section 4.5.2.3.1**, the DB 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 DB proposed to award to the rejected Bidder is not covered by a GMP Amendment before the Contracting Authority rejects the DB-proposed Bidder.

~~4.5~~4.6 Evaluation of Lower-Tier Subcontractors

~~4.5.1~~4.6.1 As used in this **Section** ~~4.5~~**4.6**, a "lower-tier Subcontractor" is any Subcontractor not in privity with the DB.

~~4.5.2~~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 DB and ~~the~~ Contracting Authority, the DB shall submit to the Contracting Authority a **Subcontractor and Material Supplier Declaration** form through which the DB identifies ~~the~~ lower-tier Subcontractors.

~~4.5.3~~4.6.3 The DB's failure to timely submit the information regarding a proposed lower-tier Subcontractor may result in withholding payment in accordance with **Section 9.2.14**.

~~4.5.4~~4.6.4 After receiving the **Subcontractor and Material Supplier Declaration** form, the Contracting Authority shall verify that it is complete and deliver it to the Owner. If the Contracting Authority finds the form incomplete, the Contracting Authority shall return it to the DB and identify the incomplete information.

~~4.5.5~~4.6.5 If the Contracting Authority rejects any proposed lower-tier Subcontractor, the DB 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.

~~4.5.6~~4.6.6 If the Project is administered using ~~OAKS CI~~the State's web-based project management software, the DB shall identify~~submit~~ its proposed lower-tier Subcontractors through the "Subcontractor Supplier Declaration" business process.

~~4.6~~4.7 Self-Performed Work

~~4.6.1~~4.7.1 Neither the DB nor a DB Affiliated Entity shall directly perform with its own employees or other resources any Work on the Project during the Construction Stage except:

~~4.6.1.1~~4.7.1.1 Work not subject to Bidding as described under **Section 4.1**; and

~~4.6.1.2~~4.7.1.2 as otherwise provided in this **Section 4.~~6~~7**.

~~4.6.2~~4.7.2 If the DB or a DB Affiliated Entity intends to Bid on any Work subject to Bidding as described under **Section 4.1**:

~~4.6.2.1~~4.7.2.1 During ~~the~~ preparation of the Subcontracting Plan, the DB shall notify the Contracting Authority that the DB or DB Affiliated Entity may Bid on a portion of the Work. The Contracting Authority and ~~the~~ DB shall review that Work in detail and agree on its scope before the DB finalizes the Subcontracting Plan.

~~4.6.2.2~~4.7.2.2 At least 14 days before issuing Bidding Documents for the scope of Work the DB or a DB Affiliated Entity intends to Bid on, the DB shall, in writing, seek the Contracting Authority's permission for the DB or ~~a~~ DB Affiliated Entity to Bid on that particular Work.

~~4.6.3~~4.7.3 If the Contracting Authority permits the DB or ~~a~~ DB Affiliated Entity to submit a Bid for a particular scope of Work:

~~4.6.3.1~~4.7.3.1 The DB or DB Affiliated Entity (as applicable) shall meet in all respects the Bidder prequalification criteria approved by the Contracting Authority under **Section 4.~~2~~3.**

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~~4.6.3.2~~4.7.3.2 The Bidding Documents shall specifically state that the DB or a DB Affiliated Entity may submit a Bid for that Work.

~~4.6.3.3~~4.7.3.3 The DB shall ensure strict separation of the personnel of the DB or DB Affiliated Entity involved with Bidding on the Work from the personnel of the DB or DB 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.

~~4.6.3.4~~4.7.3.4 The DB or DB Affiliated Entity (as applicable) will be subject to all requirements applicable to the other Bidders for that Work.

~~4.6.3.5~~4.7.3.5 The DB or DB Affiliated Entity (as applicable) shall submit its sealed Bid to the Contracting Authority no less than 4 hours before the deadline for ~~Bidders'~~ submission of Bids to the DB for that scope of Work.

~~4.6.4~~4.7.4 If the DB or a DB Affiliated Entity submits a Bid as described under **Section 4.~~6~~7.3** and less than two other Bidders submit Bids for the same Work, the Contracting Authority may require that Work to be rebid.

~~4.6.5~~4.7.5 If the Contracting Authority awards to the DB or ~~a~~ DB Affiliated Entity the right to self-perform a particular scope of Work by operation of **Sections 4.~~6~~7.2** and **4.~~6~~7.3**, the DB may not use DB Contingency for that Work. The foregoing prohibition applies specifically but not exclusively to using DB Contingency to make up for the DB's underestimation of that scope of Work in the DB's detailed estimate of the Cost of the Work described under **Section 5.7.6.~~3.4~~5**.

~~4.6.6~~4.7.6 If the Contracting Authority awards to a DB Affiliated Entity the right to self-perform a particular scope of Work by operation of **Sections 4.~~6~~7.2** and **4.~~6~~7.3**, the DB Affiliated Entity will be a Subcontractor under the Contract and the DB's Subcontract with the DB Affiliated Entity shall be on the **State of Ohio Subcontract** ~~form~~**Form** prescribed in OAC 153:1-03-02.

4.8 Design-Assist Firms *{new Section – refer to Section 4.1.2}*

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

4.8.1.1 The DB 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 DB may not provide design-assist services directly or through a DB Affiliated Entity.

4.8.1.2 The DB shall include in its request **(1)** a detailed description of the scope of the design-assist services and associated Work, which the DB proposes to be performed by a Design-Assist Firm; **(2)** the date that the DB 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 DB to engage a Design-Assist Firm, the DB shall **(1)** follow the procedures described in the 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 DB fails to comply with this **Section 4.8**, the Contracting Authority may revoke the DB'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 DB 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 DB.

4.8.2 Design-Assist Firm Selection. The DB shall award authorized design-assist contracts on the basis of the DB's evaluation of a submission to the DB from each potential Design-Assist Firm that establishes **(1)** 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 DB'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 DB may also **(1)** request from the potential Design-Assist Firms bids or cost estimates for performance of the associated scope of Work during the

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Construction Stage and **(2)** include consideration of that information in the DB'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 DB may terminate the design-assist contract without cause if the DB and Design-Assist Firm fail to reach agreement on the compensation to be paid by the DB 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 DB 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 DB 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.

4.8.4 Additional Design-Assist Requirements. Unless the Contracting Authority agrees otherwise in writing the DB shall not be entitled to any adjustment of the Preconstruction Stage Compensation, Contract Sum, or Contract Times on account of the DB'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 DB engages shall be considered a Consultant under the Contract during the Preconstruction Stage and a Subcontractor during the Construction Stage.

.1 If the DB and Design-Assist Firm agree that the DB will compensate the Design-Assist Firm for design-assist services the Design-Assist Firm performs during the Preconstruction Stage, **(1)** the DB 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 DB will not be entitled to an increase in the Preconstruction Stage Compensation on account of the DB's engagement of the Design-Assist Firm.

.2 The compensation to be paid by the DB 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 DB and Contracting Authority, the DB shall submit to the Contracting Authority a **Subcontractor and Material Supplier Declaration** form through which the DB identifies the Design-Assist Firm as a Subcontractor. After receiving the form, the Contracting Authority shall verify that it is complete and deliver it to the Owner. If the Contracting Authority finds the form incomplete, the Contracting Authority shall return it to the DB and identify the incomplete information.

.1 If the Project is administered using the State's web-based project management software, the DB 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 DB and Contracting Authority, the DB shall submit to the Contracting Authority a detailed estimate of the Work to be performed by the Design-Assist Firm and a complete copy of the executed Subcontract between the DB and Design-Assist Firm. After receiving the estimate and Subcontract, the Contracting Authority shall verify that they are complete. If the Contracting Authority finds the estimate and Subcontract incomplete, the Contracting Authority shall return them to the DB 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 DB 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.

~~4.7~~4.9 Replacement of Subcontractors and Design-Assist Firms

~~4.7.1~~**4.9.1** The DB shall not replace any Subcontractor after execution of the Subcontract without the prior written approval of the Contracting Authority.

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

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~~4.8~~4.10 DB's Responsibility

~~4.8.1~~4.10.1 The DB is fully responsible for all acts and omissions of its Subcontractors and is responsible for scheduling and coordinating the Work of its Subcontractors.

~~4.8.1.1~~4.10.1.1 The DB is fully responsible for any delay, interference, disruption, or hindrance attributable to ~~the DB's~~its Subcontractors.

~~4.8.1.2~~4.10.1.2 The DB shall require that each of its Subcontractors have a competent supervisor at the Site whenever the Subcontractor is performing Work.

~~4.8.1.3~~4.10.1.3 The DB 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.

~~4.8.2~~4.10.2 The DB will not be relieved of its full responsibility for Subcontractors and their performance of the Work by **(1)** the participation of the Owner and ~~the~~ Contracting Authority 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.~~3.6~~4.5**.

~~4.9~~4.11 Contingent Assignment of Subcontracts

~~4.9.1~~4.11.1 The DB 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 ~~which~~that the Contracting Authority accepts by notifying the DB and applicable Subcontractor in writing. The Contracting Authority may re-assign accepted agreements.

~~4.10~~4.12 Prompt Payment

~~4.10.1~~4.12.1 The DB 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.~~10~~12**.

~~4.10.1.1~~4.12.1.1 If a Subcontractor requests payment in time to allow the DB to include the request in its DB Payment Request, the DB 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 DB Payment Request that represents the materials furnished by the Material Supplier.

~~4.10.2~~4.12.2 The DB may reduce the amount to be paid to a Subcontractor pursuant to **Section 4.~~10~~12.1** at a rate equal to the percentage retained from the DB and may withhold amounts necessary to **(1)** resolve disputed liens or ~~Claims~~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 DB.

~~4.10.2.1~~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~~, as evidenced by payments in the amount of at least 50 percent of the original amount due under the Subcontract~~.

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

~~4.10.2.2~~4.12.2.2 Material Payments.

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

.2 The DB 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 Contracting Authority~~A/E~~, provided the Subcontractor provides the information required by **Sections 9.2.12.2.1** and **9.2.12.2.2** with its request for payment.

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~~4.10.3~~4.12.3 If the DB fails to comply with this **Section 4.~~10~~12**, the DB 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.

~~4.10.4~~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.

~~4.10.5~~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.

~~4.10.6~~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 DB's Preconstruction Services will begin on the date set forth in a notice that the Contracting Authority will issue to the DB ("Notice to Commence Services").

5.1.2 Scope of Preconstruction Services.

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

5.1.3 Consultation.

5.1.3.1 The DB and ~~the~~ AOR shall jointly schedule and attend regular meetings with the Contracting Authority and ~~the~~ Owner. The DB shall consult with the Contracting Authority and ~~the~~ Owner regarding Site use and improvements and the selection of materials, building systems, and equipment. The DB shall provide recommendations to the Contracting Authority and ~~the~~ Owner 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 DB shall contact, meet, consult, and otherwise coordinate with the Contracting Authority~~, the~~ Owner, 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 DB shall provide and maintain a ~~bar chart~~ Project Schedule with a logical sequence of events coordinated with the DB's Design Schedule; reasonable periods of time for the Contracting Authority, Owner, and Criteria A/E to review the DB's deliverables and for the DB 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 DB shall recommend to the Contracting Authority and ~~the~~ Owner a schedule for procurement of long-lead-time items ~~which~~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 DB, who shall accept responsibility for those items as if procured by the DB. The DB shall expedite the delivery of long-lead-time items.

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5.2 Organizational Meeting

5.2.1 ~~Commencement.~~

~~**5.2.1.1** The DB's Preconstruction Services will begin on the date set forth in a notice that the Contracting Authority will issue to the DB.~~

~~**5.2.1.2**~~**5.2.2** Unless the Contracting Authority agrees otherwise in writing, the DB's Preconstruction Services will begin with an organizational meeting between the Contracting Authority, ~~the~~ Owner~~, the~~, Criteria A/E, ~~the~~ DB, and ~~the~~ AOR. All of the ~~DB's~~DB and AOR's key personnel involved in the Project shall attend the organizational meeting.

~~**5.2.2**~~**5.2.3** During the organizational meeting, the attendees will:

~~**5.2.2.1**~~**5.2.3.1** review the responsibilities of each of the Contracting Authority~~'s and the Owner's~~ and Owner's key personnel involved in the Project;

~~**5.2.2.2**~~**5.2.3.2** review the scope of the Criteria A/E's services and the responsibilities of each of the Criteria A/E's key personnel involved in the Project;

~~**5.2.2.3**~~**5.2.3.3** review the scope of the DB's services and the responsibilities of each of the DB's key personnel involved in the Project;

~~**5.2.2.4**~~**5.2.3.4** review the scope of the AOR's services and the responsibilities of each of the AOR's key personnel involved in the Project;

~~**5.2.2.5**~~**5.2.3.5** review and establish lines of communication between the Contracting Authority, ~~the~~ Owner, ~~the~~ Criteria A/E, ~~the~~ DB, and ~~the~~ AOR; ~~and~~

~~**5.2.2.6**~~**5.2.3.6** review ~~the~~ then-available programming and other documents which reflect the current status of the Project's design~~.~~;

5.2.3.7 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 Criteria A/E if applicable, to review the DB's deliverables and for the DB to revise and resubmit those deliverables;

.1 If the parties agree to adjust the periods as described under **Section 5.2.2.7**, they will promptly enter into an associated Modification.

5.2.3.8 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; and

.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.

.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 5.2.2.8.1**, 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.

5.2.3.9 review and reach agreement on timing and sequencing requirements for the DB's deliverables and related review and revision periods.

~~**5.2.3**~~**5.2.4** If the DB has not submitted a proposed Project Schedule to the Contracting Authority ~~and the Owner~~ and Owner 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 DB shall submit a proposed or revised Project Schedule to the Contracting Authority and ~~the~~ Owner.

~~**5.2.3.1**~~**5.2.4.1** ~~During or promptly after the organizational meeting, the~~The Contracting Authority, ~~the~~ Owner, and ~~the~~ DB 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.

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~~5.2.4~~5.2.5 Within 5 days after the organizational meeting is adjourned, the DB shall prepare and distribute the meeting's minutes.

~~5.2.4.1~~5.2.5.1 If the Project is administered using ~~OAKS CI~~the State's web-based project management software, the DB shall distribute the minutes of the organizational meeting through the "Meeting Minutes" business process.

5.3 Program Verification Stage

~~5.3.1~~ Commencement.

~~5.3.2~~5.3.1 Unless the Contracting Authority directs otherwise in writing, the Program Verification Stage will begin upon ~~the~~ completion of the activities described under **Section 5.2**.

~~5.3.3~~5.3.2 In addition to performing those services required to comply with **Section 5.3.3**, during the Program Verification Stage, the DB shall:

~~5.3.3.1~~5.3.2.1 advise the Contracting Authority and ~~the~~ Owner 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 and Owner 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 the Owner approve of any such revision, the parties shall promptly enter into an associated Modification.

~~5.3.3.2~~5.3.2.3 meet with the Contracting Authority~~ and the Owner~~ and Owner at intervals acceptable to the Contracting Authority and ~~the~~ Owner, to review drawings and other documents ~~which~~that depict the current status of the Program Verification Stage of the Project;

~~5.3.3.3~~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 and ~~the~~ Owner;

~~5.3.3.4~~5.3.2.5 investigate existing conditions and verify of the accuracy of Owner-provided information about existing conditions, as appropriate;

~~5.3.3.5~~5.3.2.6 evaluate the Project's impact on adjacent properties and rights-of-way; and

~~5.3.3.6~~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.

~~5.3.4~~5.3.3 DB's Program Verification ~~Stage~~ Submission.

5.3.3.1 ~~At the completion~~Based upon a mutual understanding of the ~~Program Verification Stage~~Project's preliminary requirements, the DB and ~~on the basis of DB-gathered and Contracting Authority-provided information, the DB shall~~ AOR shall jointly prepare the ~~following documents and~~ Program Documents.

~~5.3.4.1~~.1 The DB shall submit ~~them~~the provisional Program Documents to the Contracting Authority~~ and the~~, Owner~~.~~, and Criteria A/E on or before the date identified in the Project Schedule for that submission.

5.3.3.2 ~~cost evaluations~~The provisional Program Documents shall be in the form of ~~alternative~~ a written report, which may include graphics, but shall include:

.1 an executive summary of the Program Documents;

.2 a narrative description of the Project and the design goals;

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

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

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

~~.1~~.6 preliminary recommendations regarding selection of materials, building systems, and equipment;

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

~~.2~~.8 an identification of any unresolved issues related to compliance with Applicable Law;

~~.3~~.9 a written description of all modifications of the Owner-provided program information;

~~.4 a preliminary estimate of Construction Cost ("Program Estimate") using area, volume or similar conceptual estimating techniques;~~

~~.1 If the Program Estimate exceeds the Construction Budget by more than 5 percent of the Budget, the Contracting Authority may require the DB to immediately develop viable proposals to reconcile the estimate with the Construction Budget. The DB will present those proposals as an addendum to its Program Verification Stage Submission.~~

~~.5~~.10 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~~the Program Verification Stage;

~~.6~~.11 an updated Staffing Plan~~.~~;

~~.7~~.12 at the DB's option but without additional compensation unless otherwise agreed in writing by the Owner and Contracting Authority, study models, perspective sketches, electronic modeling, or combinations of those media~~.~~; and

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

~~5.3.3.3~~ If not all of the Work is subject to an executed GMP Amendment at the time the DB submits its provisional Program Documents, the DB shall also 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 that time, the DB shall include associated line items for the DB's Fee, Construction Stage Design Services Fee, and DB's Contingency.

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

.3 If the Program Estimate exceeds the Construction Budget by more than 5 percent of the Budget, the Contracting Authority may require the DB to immediately develop viable proposals to reconcile the estimate with the Construction Budget. The DB will present those proposals as an addendum to its provisional Program Documents.

~~5.3.4.2~~5.3.3.4 If the Project is administered using ~~OAKS CI, the DB shall~~ the State's web-based project management software, the DB and AOR shall create, approve, and submit the ~~DB's~~provisional Program ~~Verification Stage Submission~~Documents to the ~~Contracting Authority and the~~Contracting Authority, Owner, and Criteria A/E through the "Program of Requirements" business process.

~~5.3.5~~5.3.4 Program Documents Review.

~~5.3.5.1~~5.3.4.1 ~~The~~After the Contracting Authority~~, the Owner,~~, Owner, and Criteria A/E have had a reasonable period to review the provisional Program Documents, the Contracting Authority, Owner, Criteria A/E, and ~~the~~ DB shall meet to ~~review the DB's Program Verification Stage Submission and to~~discuss the provisional Program Documents and reach agreement on any Contracting Authority-authorized adjustments to the ~~Program Documents,~~ Project Schedule, Construction Budget, or Project Budget and any necessary clarifications of the provisional Program Documents ~~and the DB's Program Verification Stage Submission~~.

~~5.3.4.2~~ Unless the Contracting Authority agrees otherwise in writing, within 5 business days after the review meeting, the DB shall revise its provisional Program ~~Verification Stage Submission~~Documents to reflect the adjustments and clarifications agreed upon in the review meeting, and resubmit those documents to the Contracting Authority and ~~the~~ Owner.

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~~5.3.5.2~~5.3.4.3 When the Contracting Authority and ~~the~~ Owner approve ~~of~~ the revised Program ~~Verification Stage Submission~~Documents and sign the related Design Review Acceptance form, the revised Program ~~Verification Stage Submission~~Documents shall become the Approved Program of Requirements.

5.4 Schematic Design Stage

~~5.4.1~~ Commencement.

~~5.4.2~~5.4.1 Unless the Contracting Authority agrees otherwise in writing, the Schematic Design Stage will begin upon ~~the~~ completion of the activities described in **Section 5.3**~~.4~~.

~~5.4.3~~5.4.2 In addition to performing those services required to comply with **Sections 5.4.3** and **5.4.4**, during the Schematic Design Stage, the DB shall:

~~5.4.3.1~~5.4.2.1 advise the Contracting Authority and ~~the~~ Owner 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 and Owner 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.

~~5.4.3.2~~5.4.2.3 meet with the Contracting Authority~~ and the Owner~~ and Owner at intervals acceptable to the Contracting Authority and ~~the~~ Owner, to review drawings and other documents ~~which~~that depict the current status of the Schematic Design Stage of the Project;

~~5.4.3.3~~5.4.2.4 identify and analyze requirements of Applicable Law;

~~5.4.3.4~~5.4.2.5 investigate existing conditions and verify the accuracy of Owner-provided information about existing conditions, as appropriate;

~~5.4.3.5~~5.4.2.6 coordinate the location of new grading, drainage, and Site utilities;

~~5.4.3.6~~5.4.2.7 update and re-issue the Project Schedule as necessary to keep the Contracting Authority and ~~the~~ Owner apprised of the schedule's current status;

~~5.4.3.7~~5.4.2.8 prepare a preliminary analysis of the types and quantities of labor required for the Project;

~~5.4.3.8~~5.4.2.9 make recommendations to the Contracting Authority and ~~the~~ Owner for actions designed to minimize adverse effects of labor shortages;

~~5.4.3.9~~5.4.2.10 review and provide recommendations concerning Site use and improvements, and alternative approaches to selection of materials, building systems, and equipment; and

~~5.4.3.10~~5.4.2.11 provide recommendations on value engineering, constructability, logistics, site use and improvements, availability and suitability of materials, equipment, and labor and systems, long-lead items, safety and security plans, quality control, time requirements for construction, and factors related to Project cost, including costs of alternative designs or materials, preliminary budgets, and possible economies of scale.

~~5.4.4~~5.4.3 Preliminary Life Cycle Cost Analysis.

~~5.4.4.1~~5.4.3.1 At the time set forth in the Project Schedule, the DB shall prepare and submit 3 design concepts for a preliminary Life Cycle Cost Analysis ("LCCA") and the preliminary LCCA for each concept to the Owner and ~~the~~ Contracting Authority.

~~5.4.4.2~~5.4.3.2 The DB shall base the ~~provisional~~ Schematic Design Documents on the Owner's selected preliminary design concept.

~~5.4.5~~5.4.4 DB's Schematic Design Submission.

~~5.4.4.1~~ ~~Upon completion of the Schematic Design Stage and on~~On the basis of the Approved Program of Requirements and of DB-gathered and Contracting Authority-provided information, the DB ~~shall~~and AOR shall jointly prepare the Schematic Design Documents.

~~5.4.5.1~~.1 The DB shall submit the provisional Schematic Design Documents ~~and submit them~~ to the Contracting Authority~~ and the~~, Owner~~.~~, and Criteria A/E on or before the date identified in the Project Schedule for that submission.

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~~.1~~.2 The DB shall also submit 1 copy of the provisional Schematic Design Documents to the State Security Coordinator (Department of Public Safety, 1970 West Broad Street, Columbus, Ohio 43223) for review and written comment.

~~5.4.5.2~~5.4.4.2 The provisional Schematic Design Documents shall include:

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

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

.3 a written description of all modifications of the Approved Program of Requirements;

~~**.4** an estimate of the Construction Cost ("Schematic Design Estimate") using area, volume or similar conceptual estimating techniques;~~

~~**.1** If the Schematic Design Estimate exceeds the Construction Budget by more than 5 percent of the Budget, the Contracting Authority may require the DB to immediately develop viable proposals to reconcile the estimate with the Construction Budget. The DB will present those proposals as an addendum to its Schematic Design Stage Submission.~~

~~**.5**~~**.4** a preliminary Construction Progress Schedule ("Schematic Design Schedule") for the Project, to the extent appropriate during schematic design, that shall identify preliminary workforce requirements by critical trade;

~~**.6**~~**.5** cost evaluations of alternative materials and systems;

.6 an identification of any unresolved issues related to compliance with Applicable Law;

.7 if agreed in writing by the Contracting Authority, the DB will develop study models, perspective sketches, electronic modeling, or combinations of those media;

~~**.7**~~**.8** a schedule analysis of alternative phasing and sequencing;

~~**.8** a preliminary Subcontracting Plan;~~

~~**.9** preliminary Subcontractor prequalification criteria as described under Article 4;~~

~~**.10**~~**.9** a preliminary Site Logistics Plan indicating how the DB 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~~

~~**.11**~~**.10** an updated Staffing Plan~~.~~; and

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

5.4.4.3 If not all of the Work is subject to an executed GMP Amendment at the time the DB submits its provisional Schematic Design Documents, the DB shall also 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 that time, the DB shall include associated line items for the DB's Fee, Construction Stage Design Services Fee, and DB's Contingency.

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

.3 If the Schematic Design Estimate exceeds the Construction Budget by more than 5 percent of the Budget, the Contracting Authority may require the DB to immediately develop viable proposals to reconcile the estimate with the Construction Budget. The DB will present those proposals as an addendum to its provisional Schematic Design Documents.

~~5.4.5.3~~5.4.4.4 If the Project is administered using ~~OAKS CI~~the State's web-based project management software, the DB shall create, approve, and submit the ~~DB's~~provisional Schematic Design ~~Stage Submission~~Documents to the ~~Contracting Authority and the~~Contracting Authority, Owner, and Criteria A/E through the "Design Review" business process.

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~~5.4.6~~5.4.5 Schematic Design Documents Review.

~~5.4.6.1~~5.4.5.1 After the Contracting Authority~~ and the Owner~~, Owner, and Criteria A/E have had a reasonable ~~opportunity~~period to review the ~~DB's~~provisional Schematic Design ~~Stage Submission~~Documents, the Contracting Authority, ~~the~~ Owner, Criteria A/E, and ~~the~~ DB shall meet to ~~review~~discuss the ~~DB's~~provisional Schematic Design ~~Stage Submission and to~~Documents and reach agreement on any Contracting Authority-authorized adjustments to the Approved Program of Requirements, Project Schedule, or Construction Budget and any necessary clarifications of the ~~DB's~~provisional Schematic Design ~~Stage Submission~~Documents.

5.4.5.2 Unless the Contracting Authority agrees otherwise in writing, within 5 business days after the review meeting, the DB shall revise its provisional Schematic Design ~~Stage Submission~~Documents to reflect the adjustments and clarifications agreed upon in the review meeting (including any comments from the State Security Coordinator, which have been reviewed and approved by the Owner), and resubmit those documents to the Owner~~,~~ and ~~the~~ Contracting Authority.

~~5.4.6.2~~5.4.5.3 When the Contracting Authority and ~~the~~ Owner approve ~~of~~ the revised Schematic Design ~~Stage Submission~~Documents and sign the related Design Review Acceptance form, the revised Schematic Design ~~Stage Submission~~Documents 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**.

~~**5.5.1.1** Unless the Contracting Authority agrees otherwise in writing, the Design Development Stage will begin upon the completion of the activities described in Section 5.4.5.~~

5.5.2 In addition to performing those services required to comply with **Sections 5.5.3** and **5.5.4**, during the Design Development Stage, the DB shall:

5.5.2.1 advise the Contracting Authority and ~~the~~ Owner 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 and Owner 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.

~~**5.5.2.2**~~**5.5.2.3** meet with the Contracting Authority~~ and the~~ and Owner at intervals acceptable to the Contracting Authority and ~~the~~ Owner, to review drawings and other documents ~~which~~that depict the current status of the Design Development Stage of the Project;

5.5.2.4 further evaluate and refine the Approved Program of Requirements;

~~**5.5.2.3**~~**5.5.2.5** resolve all issues related to compliance with Applicable Law;

~~**5.5.2.4**~~**5.5.2.6** coordinate the location of new grading, drainage, and Site utilities;

~~**5.5.2.5** begin to develop Subcontractor prequalification criteria as described under Article 4;~~

~~**5.5.2.6** begin to develop the Subcontracting Plan;~~

~~**5.5.2.7** develop estimates of the Construction Cost in increasing detail;~~

~~**5.5.2.8**~~**5.5.2.7** develop the Construction Progress Schedule in increasing detail taking into account Owner-provided information and the Owner's occupancy requirements;

~~**5.5.2.9**~~**5.5.2.8** update and re-issue the Project Schedule as necessary to keep the Contracting Authority and the Owner apprised of the schedule's current status;

~~**5.5.2.10**~~**5.5.2.9** analyze 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;

~~**5.5.2.11**~~**5.5.2.10** make recommendations to the Contracting Authority and ~~the~~ Owner for actions designed to minimize adverse effects of labor shortages; and

~~**5.5.2.12**~~**5.5.2.11** 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

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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 DB shall prepare and submit 3 copies of the revised LCCA for the selected design concept to the Owner and Contracting Authority.

.1 If the Project creates or renovates an area greater than 5,000 square feet, the DB shall also submit the revised LCCA to the Ohio Facilities Construction Commission.

5.5.4 DB's Design Development Submission.

5.5.4.1 ~~Upon completion of the Design Development Stage and on~~On the basis of the Approved Program of Requirements and of DB-gathered and Contracting Authority-provided information, the DB ~~shall~~and AOR shall jointly prepare the ~~following documents and~~ Design Development Documents.

~~**5.5.4.1**~~**.1** The DB shall submit ~~them~~the provisional Design Development Documents to the Contracting Authority~~ and the~~ , Owner~~:~~, and Criteria A/E on or before the date identified in the Project Schedule for that submission.

5.5.4.2 The provisional Design Development Documents shall include:

.1 plans, sections, elevations, typical construction details, and equipment layouts that illustrate and describe the refinement of the Project's design and the size and character of the Project in terms of architectural, structural, mechanical, plumbing, and electrical systems, materials, and other elements as may be appropriate;

.2 specifications sufficient to identify the quality and other characteristics of the proposed or selected materials, equipment, finishes, fixtures, and systems;

~~**.3** the AOR-prepared Design Intent Statement;~~

~~**.4**~~**.3** a written description of all modifications of the Approved Program of Requirements;

~~**.5**~~**.4** an updated Project Schedule;

~~**.6** a detailed, unit-cost estimate of the Construction Cost ("Design Development Estimate") which shall include reasonable contingencies for design, bidding, and price escalation;~~

~~**.1** If the Design Development Estimate exceeds the Construction Budget by more than 5 percent of the Budget, the Contracting Authority may require the DB to immediately develop viable proposals to reconcile the estimate with the Construction Budget. The DB will present those proposals as an addendum to its Design Development Stage Submission.~~

~~**.7**~~**.5** a written description of all proposed or previously agreed upon Alternates (if any~~);~~), which description may be included in the specifications rather than as a separate document;

~~**.8**~~**.6** a written description of all proposed or previously agreed upon Allowances (if any);

.7 an identification of any unresolved issues related to compliance with Applicable Law;

~~**.9**~~**.8** a developed Construction Progress Schedule ("Design Development Schedule") for the entire Project;

~~**.10** a refined Subcontracting Plan including a (1) proposed list of prequalified prospective Bidders for each Bid package and (2) a proposed Bidding schedule;~~

~~**.11** the fully developed Subcontractor prequalification criteria as described under Article 4;~~

~~**.12**~~**.9** a cash-flow forecast for the Project;

~~**.13**~~**.10** a Site Logistics Plan indicating how the DB 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~~

~~**.14**~~**.11** an updated Staffing Plan~~.~~; and

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

5.5.4.3 If not all of the Work is subject to an executed GMP Amendment at the time the DB submits its provisional Design Development Documents, the DB shall include a detailed, unit cost estimate of the Construction Cost ("Design Development Estimate").

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.1 For any Work that is subject to an executed GMP Amendment at that time, the DB shall include associated line items for the DB's Fee, Construction Stage Design Services Fee, and DB's Contingency.

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

.3 If the Design Development Estimate exceeds the Construction Budget by more than 5 percent of the Budget, the Contracting Authority may require the DB to immediately develop viable proposals to reconcile the estimate with the Construction Budget. The DB will present those proposals as an addendum to its provisional Design Development Documents.

5.5.4.25.5.4.4 If the Project is administered using OAKS CIthe State's web-based project management software, the DB shall create, approve, and submit the DB'sprovisional Design Development Stage SubmissionDocuments to the Contracting Authority and theContracting Authority, Owner, and Criteria A/E through the "Design Review" business process.

5.5.5 Design Development Documents Review.

5.5.5.1 After the Contracting Authority and the Owner, Owner, and Criteria A/E have had a reasonable opportunityperiod to review the DB'sprovisional Design Development Stage SubmissionDocuments, the Contracting Authority, the Owner, Criteria A/E, and the DB shall meet to reviewdiscuss the DB'sprovisional Design Development Stage SubmissionDocuments and to reach agreement on any Contracting Authority-authorized adjustments to the Approved Program of Requirements, Project Schedule, or Construction Budget and any necessary clarifications of the DB'sprovisional Design Development Stage SubmissionDocuments.

5.5.5.2 Unless the Contracting Authority agrees otherwise in writing, within 5 business days after the review meeting, the DB shall revise its provisional Design Development Stage SubmissionDocuments to reflect the adjustments and clarifications agreed upon in the review meeting, and resubmit those documents to the Owner and the Contracting Authority.

5.5.5.25.5.5.3 When the Contracting Authority and the Owner approve of the revised Design Development Stage Submission Documents and sign the related Design Review Acceptance form, the revised Design Development Stage SubmissionDocuments shall become the final Design Development Documents.

5.6 GMP Proposal and AmendmentConstruction Documents Stage *{moved from Section 5.7 to Section 5.6}*

5.6.1 Commencement.

5.6.1.15.6.1 Unless the Contracting Authority agrees otherwise in writing, the GMP Proposal and Amendment processConstruction Documents Stage will begin upon the completion of the activities described in **Section** 5.5.55.5.

.15.6.1.1 This Section 5.6 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 Stage, 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).

5.6.2 Within 7 days after the start of the GMP Proposal and Amendment process, the DB shall prepare and submit the GMP Proposal to the Contracting Authority and the Owner.

5.6.2.15.6.2 The purpose of the GMP Amendment is to establish the commercial terms of the Contract rather than to modify its substantive terms.

5.6.2.2 The DB shall provide in the GMP Proposal for the further development of the Construction Documents consistent with and reasonably inferable from the final Design Development Documents.

5.6.3 The DB shall include the following documents and information in the GMP Proposal:

5.6.3.1 a completed and signed proposed GMP Amendment, through which the DB proposes the Contract Sum, the Cost of the Work, the DB's Contingency, the DB's Fee, the Construction Stage Design Services Fee, and the Contract Times (the required form of the GMP Amendment is attached to the Agreement);

5.6.3.2 a complete list of the final Design Development Documents (including the AOR-prepared Design Intent Statement) upon which the GMP Proposal is based;

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~~**5.6.3.3**~~**5.6.2.1** ~~a complete list of the assumptions and clarifications made by the DB in the preparation of the GMP Proposal;~~

~~**5.6.3.4** a detailed estimate of the Construction Cost which (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 DB proposes that the Work will be performed by the DB, a DB Affiliated Entity, or a Subcontractor; (2) provides a detailed breakdown of the DB's Construction Stage Personnel Costs, General Conditions Costs, and Construction Stage Design Services Fee; and (3) does not contain a lump-sum estimate for any item other than the DB's Fee and the DB's Contingency;~~

~~**5.6.3.5** the current Project Schedule;~~

~~**5.6.3.6** the current Construction Progress Schedule;~~

~~**5.6.3.7**~~**5.6.2.2** ~~an updated Staffing Plan including an outline of the qualifications and experience of the DB's proposed project manager and proposed superintendent, including references, unless the DB previously submitted that information and the DB's project manager and superintendent were approved;~~

~~**5.6.3.8** a detailed scope-of-Work description for each anticipated Subcontract;~~

~~**5.6.3.9** a detailed scope-of-Work description for all Work the DB proposes to perform itself or through a DB Affiliated Entity if the requirements of Section 4.5.6 are met (otherwise this scope of Work will be performed by a Subcontractor);~~

~~**5.6.3.10**~~**5.6.2.3** ~~a complete list of all Allowances (if any) including a detailed description with related measurement and payment terms;~~

~~**5.6.3.11**~~**5.6.2.4** ~~a complete list of all Unit Price Work (if any) including a detailed description with related measurement and payment terms;~~

~~**5.6.3.12**~~**5.6.2.5** ~~a complete list of all Alternates (if any) including a detailed description with related measurement and payment terms; and~~

~~**5.6.3.13** a complete list of all performance incentives/bonuses (if any) applicable to the Work including a detailed description of the incentives/bonuses and related measurement/entitlement and payment terms.~~

~~**5.6.4** By submitting a GMP Proposal or a revised GMP Proposal (as applicable), the DB represents and affirms that:~~

~~**5.6.4.1**~~**5.6.2.6** ~~the GMP Documents are sufficient to provide for the 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~~

~~**5.6.4.2**~~**5.6.2.7** ~~the DB 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.~~

~~**5.6.5** The Contracting Authority, the Owner, and the DB shall meet to review the GMP Proposal and to agree on necessary clarifications or adjustments of the GMP Proposal. Unless the Contracting Authority agrees otherwise in writing, within 5 business days after the review meeting, the DB shall revise the GMP Proposal to reflect the clarifications and adjustments, and resubmit it to the Contracting Authority and the Owner. Thereafter, the Contracting Authority, the Owner, and the DB shall meet to review the revised GMP Proposal and to agree on necessary clarifications or adjustments of the GMP Proposal.~~

~~**5.6.6** If the DB's proposed Contract Sum exceeds the Design Development Estimate (as adjusted on account of DB 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 DB to re-perform previously completed Preconstruction Services as necessary to reconcile the Contract Sum with the Design Development Estimate; or (2) terminate the Agreement.~~

~~**5.6.6.1** If the Contracting Authority chooses to proceed under Section 5.6.6 clause (1), the Contracting Authority may require the DB to re-perform previously completed Preconstruction Services as many times as necessary to reconcile the proposed Contract Sum with the Design Development Estimate (as adjusted on account of DB proposals intended to reconcile that estimate with the Construction Budget that the Contracting Authority has accepted).~~

~~**5.6.7**~~**5.6.3** ~~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 5.6.5 or the date 10 days after the date of any subsequent review meeting under Section 5.6.5. After expiration of the acceptance period, the GMP Proposal will not be effective without written acceptance by the DB.~~

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~~**5.6.8** Subject to Section 5.6.8.1, the GMP Amendment shall become binding and effective upon execution by the Contracting Authority, the Owner, and the DB. Thereafter, the GMP Amendment, and the Work will be subject to additions and deductions as provided in the Contract Documents.~~

~~**5.6.8.1** It is expressly understood by the DB 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.~~

~~**5.6.8.2** If the Project is administered using OAKS CI, the Contracting Authority, the Owner, and the DB shall execute the GMP Amendment using the "Change Order" business process with the "GMP Amendment" workflow.~~

~~**5.6.9** The DB shall revise the Design Development Documents to the extent necessary to reflect the agreed upon assumptions and clarifications contained in the GMP Amendment.~~

~~**5.6.10** Before the Contracting Authority accepts the GMP Proposal and issues a Notice to Proceed, the DB shall not incur any cost under the Contract Sum without the Contracting Authority's prior written authorization.~~

~~5.7 Construction Documents Stage~~

~~**5.7.1** Commencement.~~

~~**5.7.1.1** Unless the Contracting Authority agrees otherwise in writing, the Construction Documents Stage will begin upon the completion of the activities described in Section 5.6.~~

~~**5.7.2**~~**5.6.4** In addition to performing those services required to comply with **Sections** ~~5.7.3~~**5.6.3** and ~~5.7.4~~**5.6.4**, during the Construction Documents Stage, the DB shall:

~~**5.7.2.1**~~**5.6.4.1** advise the Contracting Authority and ~~the~~ Owner in writing if at any time it appears that the Project Schedule or Construction Budget may be exceeded and make recommendations for corrective action;

5.6.4.2 if a GMP Amendment has been entered into, notify the Contracting Authority and Owner 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.

~~**5.7.2.2**~~**5.6.4.3** meet with the Contracting Authority and ~~the~~ Owner at intervals acceptable to the Contracting Authority and ~~the~~ Owner, to review Drawings and other documents ~~which~~that depict the current status of the Construction Documents Stage of the Project;

~~**5.7.2.3** notify the Contracting Authority and the Owner in writing of any revision of the Project that would cause a change in the Contract Sum or Contract Times.~~

~~**.1** If the Contracting Authority and the Owner approve of any such revision, the parties shall prepare and execute a related Change Order.~~

~~**5.7.2.4**~~**5.6.4.4** update and re-issue the Project Schedule and Construction Progress Schedule as necessary to keep the Contracting Authority and ~~the~~ Owner apprised of the schedules' current status;

~~**5.7.2.5** prepare a Schedule of Values as described under Section 9.2.9;~~

~~**.1** The DB shall submit the Schedule of Values to the Contracting Authority and secure the Contracting Authority's approval of it before the completion of the Construction Documents Stage.~~

~~**5.7.2.6**~~**5.6.4.5** 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;

5.6.4.6 prepare Division 01 of the Specifications (the DB shall not amend the General Conditions except by Supplementary Conditions approved as provided under **Section 12.4.1**);

~~**5.7.2.7**~~**5.6.4.7** 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);

~~**5.7.2.8**~~**5.6.4.8** 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;

~~**5.7.2.9**~~**5.6.4.9** make recommendations to the Contracting Authority and ~~the~~ Owner, for actions designed to minimize adverse effects of labor shortages;

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5.7.2.105.6.4.10 file documents required for the approvals of governmental authorities with jurisdiction over the Project; and

5.7.2.115.6.4.11 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.

5.7.35.6.5 During the DB's completion of the Construction Documents:

5.7.3.15.6.5.1 The DB shall verify that the Drawings and SpecificationsConstruction Documents include requirements and assignment of responsibilities for safety precautions and programs and for temporary facilities for common use of the DB and Subcontractors.

5.7.3.25.6.5.2 The DB shall prepare the Drawings and SpecificationsConstruction Documents for each Bid package to minimize areas of conflict, gaps, and overlaps in the Work to be performed by the various Subcontractors.

5.7.3.35.6.5.3 The DB shall prepare the Drawings and Specifications to encourage competition except where otherwise required to comply with the Approved Program of Requirements.

5.7.3.45.6.5.4 The DB shall identify areas that the DB recognizes as having incomplete documentation and uncoordinated multi-discipline Work.

5.7.3.55.6.5.5 With the prior written consent of the Owner, which may have been given in thea GMP Amendment, the DB shall develop and include Alternates in the Construction Documents.

5.7.45.6.6 DB's Construction Documents Submission.

5.6.6.1 Upon completionOn the basis of the Construction Documents StageApproved Program of Requirements and of DB-gathered and Contracting Authority-provided information, the DB shall prepare the following documents and provisional Construction Documents.

.1 The DB shall submit themthe provisional Construction Documents to the Contracting Authority and the Owner on or before the date identified in the Project Schedule for that submission.

5.7.4.15.6.6.2 The provisional Construction Documents shall include:

.1 as appropriate for a design-build project delivery system, Drawings setting forth in detail the requirements for the construction of the Project;

.2 as appropriate for a design-build project delivery system, Specifications prepared in accordance with the most-current CSI *MasterFormat* and that establish in detail the quality levels of all materials and systems required for the Project and include all stipulations pertaining to the furnishing and installation of the Work as required for completion of the Project;

.3 an updated Staffing Plan;

.4 an updated Project Schedule;

.5 a fully developed Construction Progress Schedule;

.6 a fully developed Schedule of Values;

.7 a revised cash-flow forecast for the Project;

.8.6 a fully developed Subcontracting Plan including (1) a detailed list of prequalified prospective Bidders for each Bid package and (2) a refined Bidding schedule; and

.9.7 a fully developed Site Logistics Plan.

5.6.6.3 If not all of the Work is subject to an executed GMP Amendment at the time the DB submits its provisional Construction Documents, the DB 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 DB shall include associated line items for the DB's Fee, Construction Stage Design Services Fee, and DB's Contingency.

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

.3 If the Construction Documents Estimate exceeds the Construction Budget by more than 5 percent of the Budget, the Contracting Authority may require the DB to immediately develop viable proposals to

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reconcile the estimates with the Construction Budget. The DB will present those proposals as an addendum to its provisional Construction Documents.

~~5.7.4.2~~5.6.6.4 If the Project is administered using ~~OAKS CI~~the State's web-based project management software, the DB shall create, approve, and submit the ~~DB's~~provisional Construction Documents ~~Stage Submission~~ to the Contracting Authority and ~~the~~ Owner through the "Design Review" business process.

~~5.7.5~~5.6.7 Construction Documents Review.

~~5.7.5.1~~5.6.7.1 ~~The~~After the Contracting Authority~~, the~~ , Owner, and ~~the DB shall meet to~~ Criteria A/E have had a reasonable period to review the ~~DB's~~provisional Construction Documents ~~Stage Submission~~, the Contracting Authority, Owner, and ~~to~~DB shall meet to discuss the provisional Construction Documents and reach agreement on any Contracting Authority-authorized adjustments to the Approved Program of Requirements, Project Schedule, or Construction Budget and any necessary clarifications of the ~~DB's~~provisional Construction Documents ~~Stage Submission~~.

5.6.7.2 Unless the Contracting Authority agrees otherwise in writing, within 5 business days after the review meeting, the DB shall revise its provisional Construction Documents ~~Stage Submission~~ to reflect the adjustments and clarifications agreed upon in the review meeting, and resubmit those documents to the Owner~~,~~ and ~~the~~ Contracting Authority.

~~5.7.5.2~~5.6.7.3 When the Contracting Authority and ~~the~~ Owner approve ~~of~~ the revised Construction Documents ~~Stage Submission~~ and sign the related Design Review Acceptance form, the revised Construction Documents ~~Stage Submission~~ shall become the final Construction Documents, subject to **(1)** execution of an appropriate Modification to incorporate ~~the~~ adjustments into the Contract and **(2)** further revisions as provided in the General Conditions.

5.7 GMP Proposal and Amendment *{moved from Section 5.6 to Section 5.7}*

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 the date that marks expiration of 50 percent of the time allotted in the Project Schedule for the Construction Documents Stage.

~~.1~~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).

~~5.7.5.3~~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, Criteria A/E, and DB 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 AOR shall prepare and submit the Design Intent Statement to the Contracting Authority and Owner, through the DB;

5.7.4.2 within 14 days after receiving the Design Intent Statement, the DB shall prepare and submit the GMP Proposal to the Contracting Authority and Owner; and

5.7.4.3 the DB shall provide in the GMP Proposal for the 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 DB shall prepare and submit the GMP Proposal to the Contracting Authority and Owner.

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5.7.6 Unless the Contracting Authority agrees otherwise in writing as described under **Section 5.2.2.7**, the DB 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 DB proposes the Contract Sum, the Cost of the Work, the DB's Fee, the Construction Stage Design Services Fee, the DB'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;

~~5.7.5.4~~5.7.6.4 a complete list of the assumptions and clarifications made by the DB 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 DB proposes that the Work will be performed by the DB, a DB Affiliated Entity, or a Subcontractor; **(2)** provides a detailed breakdown of the DB's Construction Stage Personnel Costs, General Conditions Costs, and Construction Stage Design Services Fee; and **(3)** does not contain a lump-sum estimate for any item other than the DB's Fee and the DB'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;

~~5.7.5.5~~5.7.6.8 an updated Staffing Plan including an outline of the qualifications and experience of the DB's proposed project manager and proposed superintendent, including references, unless the DB previously submitted that information and the DB'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;

5.7.6.10 a detailed scope-of-Work description for all Work that is the subject of the GMP Proposal and that the DB proposes to perform itself or through a DB Affiliated Entity if the requirements of **Section 4.7** are met (otherwise this scope of Work will be performed by a Subcontractor);

~~5.7.5.6~~5.7.6.11 a complete list of all Allowances (if any) including a detailed description with related measurement and payment terms;

~~5.7.5.7~~5.7.6.12 a complete list of all Unit Price Work (if any) including a detailed description with related measurement and payment terms;

~~5.7.5.8~~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 DB represents and affirms as to the scope of Work which is the subject of the GMP Proposal that:

~~5.7.5.9~~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

~~5.7.5.10~~5.7.7.2 the DB 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 Criteria A/E have had a reasonable period to review the GMP Proposal, the Contracting Authority, Owner, Criteria A/E, and DB 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 DB shall revise the GMP Proposal to reflect the clarifications and adjustments, and resubmit it to the Contracting Authority, Owner, and Criteria A/E. After the

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Contracting Authority, Owner, and Criteria A/E have had a reasonable period to review the revised GMP Proposal, the Contracting Authority, Owner, Criteria A/E, and DB shall meet to discuss the revised GMP Proposal and agree on necessary clarifications or adjustments of the GMP Proposal.

5.7.9 If the DB's proposed Contract Sum exceeds the DB'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 DB 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 DB 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 DB to re-perform previously completed Preconstruction Services as necessary to reconcile the proposed Contract Sum with the DB'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 DB proposals intended to reconcile that estimate with the Construction Budget that the Contracting Authority has accepted).

~~**5.7.6**~~**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 DB.

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 DB, 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 DB 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 DB 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.

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 AOR shall inform the DB, 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 DB shall revise the detailed estimate of Construction Cost and Project Schedule, as applicable, incorporating such changes or adjustments.

5.7.13 The DB shall revise the GMP Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Amendment. The DB will deliver the revised GMP Documents to the Contracting Authority and Owner for review. When the Contracting Authority, Owner, and DB approve of the revised GMP Documents, the revised 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 DB 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 DB shall secure the required structural, plumbing, HVAC, and electrical plan approvals ~~from the Ohio Department of Commerce, Division of Industrial Compliance~~.

~~**.1** If the Project is not on State property, the DB shall secure the plan approvals from the local certified building department with jurisdiction, if applicable.~~

5.8.1.2 The DB shall schedule and attend all intermediate and final inspections required for any permit applicable to the Work. The DB shall schedule the State Fire Marshal or local fire authority for the life safety inspection for

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occupancy permits. The DB shall give the Contracting Authority and ~~the~~ Owner reasonable notice of the dates and times arranged for inspections.

.1 The DB shall pay for any reinspections required as a result of the DB's failure to receive approval of its Work.

5.8.2 Trade Permits and Licenses.

5.8.2.1 The DB shall obtain, maintain, and pay for any permit, inspection, or license applicable to the DB's particular trade.

5.8.3 Local Permits.

5.8.3.1 The DB 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 DB shall give the Contracting Authority and ~~the~~ 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 DB 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.

5.8.4.2 The DB shall prepare and certify a storm water pollution prevention plan to provide sedimentation and erosion controls at the Project.

5.8.4.3 The DB 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 ~~Final Acceptance of the Project.~~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 DB 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.

6.2 DB's General Responsibilities

6.2.1 Consistent with the DB Staffing Plan approved by the Contracting Authority, the DB 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 DB shall 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 DB shall cooperate and coordinate fully with all Separate Consultants and Separate Contractors and shall freely share all of the DB'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 DB shall 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 DB 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 DB is responsible for that damage, injury, or expense.

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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 DB'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 ~~a~~ Separate Contractor, the DB shall 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 DB's failure so to report will constitute an acceptance of the other work and services as fit and proper for integration with the DB's Work except for defects and deficiencies in the other work or services that were not reasonably discoverable at the time of the DB's inspection.

6.2.7 The DB shall not delay the Work on account of any claim, dispute, or action between the DB and a Separate Consultant or Separate Contractor.

6.2.8 The DB 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 Contracting Authority's acceptance.

6.2.9 The DB 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 DB shall establish the Project's regular working hours, subject to the Owner's approval.

6.2.11 The DB shall coordinate the Work with the activities and responsibilities of the Owner and ~~the~~ Contracting Authority to complete the Project in accordance with the Contract Documents.

6.2.12 In the event of default of the DB, the DB shall cooperate with the Owner~~, the~~, Contracting Authority, and ~~the~~ DB's Surety to achieve the Substantial Completion date and Contract Completion ~~date~~.

6.2.13 The DB 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 DB shall keep a daily log containing a record of weather, number of workers on Site for the DB, identification of equipment, Work accomplished, problems encountered, and other similar relevant data.

6.3 Construction Procedures

6.3.1 The DB 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.

6.3.2 The DB shall lay out and coordinate all lines, levels, elevations, and measurements for all of the Work, coordinate and verify existing conditions, and notify the Contracting Authority of discrepancies and conflicts before proceeding with installation or excavation.

6.3.3 The DB 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 DB requires sleeves for the Work, the DB shall furnish and install the sleeves. The DB 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 DB's patching shall match and blend with the existing or adjacent surface(s).

6.3.4 The DB shall comply with ORC Sections 3781.25 through 3781.32. In addition, before starting excavation or trenching, the DB 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 DB 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 ~~plans~~Drawings and ~~specifications~~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

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area together with its approximate depth. In the event that any underground utility owner fails to timely perform, the DB shall notify the Contracting Authority and contact the owner of the underground utility.

6.3.5 The DB 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 DB 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 DB 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 DB shall provide continuous supervision at the Site by a competent superintendent when any Work is being performed and the DB's superintendent shall not be involved with any work other than the Project.

6.4.2 The DB's project manager and superintendent shall each have the responsibility and authority to act on behalf of the DB. All communications to the DB's project manager or superintendent shall be binding as if given directly to the DB.

6.4.3 For all Subcontracts in excess of $200,000, the DB 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 DB 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 DB 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 6.11.2** or any other provision relative to that project manager or superintendent.

6.4.3.2 If the Contracting Authority rejects the Subcontractor's proposed project manager or proposed superintendent, the DB 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 DB 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 DB or a Subcontractor subject to **Section 6.4.3** proposes to change its project manager or superintendent, the DB shall submit written justification for the change 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 ~~DB's or Subcontractor's~~DB or Subcontractor's (as applicable) proposed replacement project manager or superintendent.

6.5 Construction Progress Schedule

6.5.1 The DB 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~~, and occupancy requirements~~;

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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 DB's signature and date indicating approval.

6.5.2 The DB shall develop the Construction Progress Schedule using commercially available, personal computer software that is acceptable to the Contracting Authority and shall submit all baseline and updated schedules to the Contracting Authority 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 DB 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 DB shall provide a clear graphics legend and other data including, but not limited to, Milestone dates, constraints, and other items required by the Project, ~~the~~ Contracting Authority and ~~the~~ Owner. Each submission shall show the Contracting Authority's Project number and Project name, and provide a signature approval and date line for the DB.

6.5.5 The DB shall provide in each schedule: **(1)** activity identification and description for each activity broken down to a maximum duration that is appropriate for the activity, **(2)** responsibility of the DB, DB's resources, and crew size for each activity, and **(3)** early start, early finish, late start, late finish for each activity. 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, ~~coordination drawing preparation,~~review and approval durations for Shop ~~Drawings~~Drawings, other action submittals, and mock-up ~~review and approval durations~~Work.

6.5.7 The DB shall submit the initial and all updates of the Construction Progress Schedule in graphic and tabular form to the Contracting Authority. With each monthly schedule update, the DB 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 Contracting Authority shall review and may accept it or reject ~~it~~ and return it to the DB with recommendations for revisions.

6.5.7.2 If the Project is administered using ~~OAKS CI~~the State's web-based project management software, the DB shall create, approve, and submit the initial and all updates of the Construction Progress Schedule to the Contracting Authority and ~~the~~ 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 DB shall 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 DB's failure to timely submit and properly maintain an approved Construction Progress Schedule may result in withholding payment in accordance with **Section 9.2.14**.

6.5.10 For each progress meeting, the DB shall provide a 2- to 6-week look-ahead schedule, as appropriate for the Project.

6.5.11 On a weekly basis, the DB shall prepare and submit to the Contracting Authority 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 DB's workforce size and total resource hours associated with those activities; and

6.5.11.4 other information requested by the Contracting Authority.

6.5.12 The DB shall attach the above information to the minutes of the weekly progress meetings.

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6.5.13 The DB shall provide monthly Progress Status Reports to the Contracting Authority~~,~~ and ~~the~~ Owner, which shall include recommendations for adjusting the Construction Progress Schedule to meet Milestone dates and the ~~Contract~~Substantial Completion date.

6.5.13.1 If it is apparent to the Contracting Authority that the DB may be unable to meet critical path activities, Milestone completion dates, or the ~~Contract~~Substantial Completion date~~;~~, the Contracting Authority shall direct the DB to submit within 3 days a recovery plan to avoid or minimize the 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; and
- **.6** activity logic.

6.5.13.3 If the Contracting Authority approves the recovery plan, the DB shall prepare a revised Construction Progress Schedule that shall be signed and approved in accordance with **Section** ~~6.5.7.1.~~**6.5.7**. If the Contracting Authority does not approve ~~a time~~the recovery plan, the DB shall submit within 3 days an alternate recovery plan to the Contracting Authority in writing for review and approval in accordance with **Section 6.5.7**~~.1~~.

6.5.14 The DB 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**~~.1~~.

6.5.14.1 The updated Construction Progress Schedule signed by the DB shall serve as an affirmation that the DB can meet the requirements of the updated Construction Progress Schedule.

6.5.14.2 The DB 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 DB, and accepted by the Contracting Authority, shall serve as an affirmation that the DB agrees to and can meet the applicable requirements of the updated Construction Progress Schedule.

6.5.15 The DB's failure to timely submit an approved, updated Construction Progress Schedule may result in withholding payment in accordance with **Section 9.2.14**.

6.6 Progress Meetings

6.6.1 The DB shall schedule a weekly progress meeting for the Contracting Authority 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.

6.6.2 The DB 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 DB shall notify the Contracting Authority 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 Contracting Authority notifies the DB and other Persons involved in the Project of a different day and hour at least 2 days in advance.

6.6.2.2 The DB shall have any of its Subcontractors attend the progress meeting as determined advisable by the DB, or as requested by the Contracting Authority.

6.6.3 The DB shall prepare a written report of each progress meeting and distribute the report to the Contracting Authority and ~~the~~ Owner.

6.6.3.1 If any Person in attendance objects to anything in a report of a progress meeting, the Person shall notify the DB, ~~the~~ 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 ~~OAKS CI~~the State's web-based project management software, the DB shall distribute written reports of progress meetings through the "Meeting Minutes" business process, and issues

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identified during progress meetings that require resolution by one or more ~~construction~~Project participants~~,~~ shall be documented through the "Action Items" business process.

6.7 Additional Tests and Inspections

6.7.1 If the Contracting Authority determines that any portion of the Work requires special inspection, testing, or approval not otherwise required under the Contract Documents, the Contracting Authority may order such inspection, testing, or approval.

6.7.1.1 If the special inspection, testing, or approval reveals Defective Work, the DB 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.

6.7.1.2 The Contracting Authority may deduct the costs described under **Section 6.7.1.1** from payments then or thereafter due the DB. If payments then or thereafter due the DB are not sufficient to cover those amounts, the DB shall immediately pay the amount of the insufficiency to the Owner.

6.7.1.3 If the special inspection, testing, or approval reveals that the Work complies with the Contract Documents and the DB believes that it is entitled to an adjustment of the Contract Sum or Contract Times, or both, on account of the special inspection, testing, or approval, the DB may request ~~an adjustment to the Contract~~a Change Order by giving written notice under **Section** ~~7.3.1.6~~**7.3.2** within 7 days after the special inspection, testing, or approval.

6.7.2 If the DB 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 DB shall timely communicate such information to the Contracting Authority.

6.7.3 Except as described under **Section 6.7.1**, the Owner shall pay for any inspection, testing, or approval that did not become a requirement until after the Contract Sum is initially established.

6.7.4 The DB shall coordinate with and give the Contracting Authority and ~~the~~ Owner reasonable notice of the anticipated dates of all inspections, testing, or approvals.

6.7.5 Within 5 days after completion of an inspection, testing, or approval, the DB shall provide an original report/certificate of the inspection, testing, or approval to the Contracting Authority with a recommendation for or against acceptance of the results therein.

6.8 Review of Contract Documents and Field Conditions

6.8.1 Before starting each portion of the Work, the DB 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.

6.8.2 If the DB finds any perceived ambiguity, conflict, error, omission, or discrepancy on or between any of the documents provided by the Contracting Authority or ~~the~~ Owner, or between any of the those documents and any Applicable Law, the DB, before proceeding with the Work, shall promptly submit a Request for Interpretation ("RFI") to the Contracting Authority for an interpretation or clarification.

6.8.2.1 Before submitting any RFI to the Contracting Authority, the DB shall carefully review the relevant documents to ensure that those documents do not answer the RFI.

6.8.2.2 The Contracting Authority shall promptly respond to an RFI.

6.8.2.3 Any interpretation or clarification made by any Person other than the Contracting Authority, or in any manner other than writing, shall not be binding and the DB shall not rely upon it.

6.8.2.4 If the Project is administered using ~~OAKS CI~~the State's web-based project management software, the DB shall submit RFIs to the Contracting Authority through the "~~Request~~Requests for ~~Interpretations~~Interpretation" business process.

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6.8.3 If the DB 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 Contracting Authority in response to a RFI, the DB may request ~~an adjustment to the Contract~~a Change Order by giving written notice under **Section 7.3.2** within 7 days of receiving the Contracting Authority's RFI response.

6.8.4 If the DB does not notify the Contracting Authority per **Section** ~~6.9.3~~**6.8.3**, the DB will have accepted the RFI response without an adjustment to the Contract Sum or Contract Times.

6.9 Protection of the Project

6.9.1 The DB shall protect the Work from weather and maintain the Work and all materials, apparatus, and fixtures free from injury or damage until ~~Final Acceptance, or Partial Occupancy if applicable~~Substantial Completion of the Work.

6.9.1.1 The DB shall at all times cover or protect the Work.

6.9.1.2 The DB, at its expense, shall remove, and replace with new, any Work damaged as a result of DB's failure to provide coverage or protection.

6.9.1.3 The DB, 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.

6.9.1.4 After the date of ~~Final Acceptance, or Partial Occupancy if applicable,~~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.

6.9.2 The DB 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.

6.9.3 The DB 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 DB shall not subject any part of the Project or existing or adjacent property to stress or pressure that endangers the Project or property.

6.9.4 The DB shall provide all temporary bracing, shoring, and other structural support required for safety of the Project and proper execution of the Work.

6.9.5 Vibration, Noise, and Dust Control.

6.9.5.1 The DB shall provide controls/barriers for vibrations, noise, and dust control in occupied buildings as required by the construction operations.

6.9.5.2 The DB 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 DB does not maintain proper air-quality standards.

6.9.5.3 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 DB 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.

6.9.5.4 The DB is responsible for vibration control and control of transmission of noise arising from the Work. Principal considerations which 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 ~~which are~~ conducive to study and work or other uses for which the facility is designed.

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6.10 Materials and Equipment

6.10.1 The DB 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.

6.10.1.1 The DB shall properly store and protect all materials and equipment it provides to the Project.

6.10.1.2 The DB shall timely remove from the Site any materials or equipment no longer required for the Work.

6.10.2 The DB shall not allow materials or equipment to damage the Project or adjacent property, nor to endanger any individual at or near the Site.

6.10.3 If the DB provides an Acceptable Component, the DB shall be solely responsible for the costs of coordination and modification required.

6.10.4 If the DB provides approved Substitutions that require changes to the Contract Documents, the DB shall be solely responsible for the additional costs incurred as a result, including, but not limited to, changes to the design.

6.10.5 The Contracting Authority shall consider Requests for Substitutions after the Contract Sum is initially established only when the DB can conclusively demonstrate to the Contracting Authority the following conditions:

6.10.5.1 the specified Basis of Design Components, Acceptable Components, or previously-approved Substitutions, through no fault of the DB or a Subcontractor, are not available; or

6.10.5.2 the specified Basis of Design Components, Acceptable Components, or previously-approved Substitutions will not perform as designed or intended.

6.10.6 The DB's incorporation of unapproved Substitutions in the Work shall constitute Defective Work.

6.11 Labor

6.11.1 The DB shall maintain a sufficient workforce and enforce good discipline and order among its employees and the employees of its Subcontractors. The DB shall not permit employment of individuals not skilled in tasks assigned to them.

6.11.2 The DB shall dismiss from the Project any individual employed by the DB or a Subcontractor who the Contracting Authority finds, in its sole discretion, to be incompetent, guilty of misconduct, or detrimental to the Project.

6.11.3 The DB 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.

6.12 Safety Precautions

6.12.1 The DB shall take reasonable precautions to ensure the safety of individuals on the Project.

6.12.1.1 The DB is responsible for designing and implementing its own safety program, including compliance with OSHA regulations. The DB's safety plans, such as fall protection, hazards, communications, competent person, etc., shall meet or exceed the Owner's safety plan (if any).

6.12.2 The DB shall pay any fine or cost incurred because of the DB's violation, or alleged violation, of Applicable Law.

6.12.3 Before starting any Work, the DB shall submit to the Contracting Authority a copy of the DB's site-specific safety plan and safety manuals.

6.12.4 The DB shall not introduce Hazardous Materials to the Project or burn any fires on the Site.

6.12.4.1 The DB 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 DB shall inform the Project Manager of the DB'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.

6.12.4.2 The DB 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 DB's operations.

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6.12.5 Work Stoppage Due to Hazardous Materials.

6.12.5.1 If the DB encounters material the DB reasonably believes to be, or contain, a Hazardous Material, which has not been rendered harmless, the DB shall immediately stop Work in the affected area and verbally report the condition to the Contracting Authority, and within 1 business day deliver written notice of the condition to the Contracting Authority.

6.12.5.2 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.

6.12.5.3 The DB shall resume Work in the affected area upon written notice from the Contracting Authority 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.

6.12.5.4 If the DB knowingly or negligently proceeds with the Work in an area where a Hazardous Material exists and has not been rendered harmless, the DB shall be solely responsible for all related claims, damages, losses, and expenses, including, but not limited to, ~~attorney's~~attorneys' fees, arising out of or resulting from performing the Work in the affected area.

6.12.5.5 The term "rendered harmless" means that the level of exposure is less than any applicable exposure standards set forth in Applicable Law.

6.12.6 Material Safety Data Sheets.

6.12.6.1 The DB shall identify any material it uses at the Site with a Material Safety Data Sheet ("MSDS").

6.12.6.2 The DB shall maintain a notebook containing all of its applicable MSDSs. This notebook shall be kept at the Site for the duration of the Project.

6.13 Construction Facilities, Utilities, and Equipment

6.13.1 Facilities.

6.13.1.1 The DB shall provide and maintain in a clean condition suitable temporary facilities, equipment, services, and enclosed storage for its use at the Site.

6.13.1.2 The DB shall provide and maintain in a clean condition:

- **.1** Suitable facilities, equipment, and services for use by the 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.

6.13.2 Environmental Controls.

6.13.2.1 The DB shall protect its Work and materials from weather and damage from heat, cold, and humidity.

6.13.2.2 Until the permanent HVAC system is complete and available for use:

- **.1** The DB shall make arrangements and pay for installation and maintenance of temporary heating and ventilating systems; and
- **.2** The DB shall pay the costs incurred in operating the temporary heating and ventilating systems.

6.13.2.3 When the permanent HVAC system is complete and available for use:

- **.1** The DB 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 DB shall pay the costs of energy consumed in operating the permanent HVAC system until ~~Final Acceptance, or Partial Occupancy if applicable.~~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.

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6.13.2.4 From the date of ~~Final Acceptance, or Partial Occupancy if applicable,~~Substantial Completion, the Owner shall pay the cost of operating the permanent HVAC system for the occupied portion of the Project.

6.13.2.5 If the permanent HVAC system is used during construction, the DB shall furnish an extended warranty and service contract in effect until the expiration of the Correction Period.

6.13.3 Water and Drainage.

6.13.3.1 The DB shall provide water necessary for the Work until the permanent plumbing system is available for use.

6.13.3.2 The DB 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.

6.13.3.3 The DB shall make arrangements and pay for installation and maintenance of temporary plumbing systems until the permanent plumbing system is available for use.

6.13.3.4 When the permanent plumbing system is complete and available for use:

- **.1** The DB 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 DB shall pay the costs of water consumed and sewerage charges until ~~Final Acceptance, or Partial Occupancy if applicable.~~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.

6.13.3.5 From the date of ~~Final Acceptance, or Partial Occupancy if applicable,~~Substantial Completion, the Owner shall pay the costs of water consumed and sewerage charges for the occupied portion of the Project.

6.13.3.6 If the permanent plumbing system is used during construction, the DB shall furnish an extended warranty and service contract in effect until the expiration of the Correction Period.

6.13.4 Electric Service.

6.13.4.1 The DB shall provide temporary light and power; pay the charges for temporary electric service installation, and removal if required.

6.13.4.2 If the Project consists entirely of new construction, the DB shall pay the cost of energy consumed until ~~Final Acceptance of the Project, or Partial Occupancy if applicable.~~Substantial Completion.

6.13.4.3 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.

6.13.4.4 From the date of ~~Final Acceptance, or Partial Occupancy if applicable,~~Substantial Completion, the Owner shall pay the cost of energy consumed for the occupied portions of the Project.

6.13.4.5 If the permanent electrical system is used during construction, the DB shall furnish an extended warranty and service contract in effect until the expiration of the Correction Period.

6.13.5 Hoisting Facilities.

6.13.5.1 The DB shall erect and maintain any hoisting equipment required for its Work.

6.13.5.2 If the electric service requirements of hoisting facilities differ from that available at the Site, the DB shall provide and pay for all necessary connections.

6.13.5.3 If a permanent elevator is identified in the Contract Documents to be used for hoisting materials or personnel during construction, the DB shall furnish an extended warranty and service contract in effect until the expiration of the Correction Period.

6.14 Progress Cleaning

6.14.1 The DB shall remove all waste materials, rubbish, and mud attributable to the Work to an appropriate disposal location at or near the Site.

6.14.2 The DB shall perform weekly broom cleaning of hard flooring surfaces in the area of the Work.

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6.14.3 The DB 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.

6.14.4 The DB shall remove, as appropriate for the Project or as the Contracting Authority or Owner directs, any waste materials or rubbish from areas adjacent to the Project.

6.14.4.1 The DB shall dispose of waste materials, rubbish, and construction debris ~~and~~ in a lawful manner in approved recycling facilities or landfills.

6.14.5 If the DB fails to clean up during the progress of the Work, the Contracting Authority may clean up on behalf of the DB and at the DB's expense. If the DB 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 DB's expense.

6.14.5.1 The Contracting Authority may deduct the cleaning costs from payments then or thereafter due the DB. If payments then or thereafter due the DB are not sufficient to cover those amounts, the DB shall immediately pay the amount of the insufficiency to the Owner.

6.14.6 The DB shall remove excavated material and spoil to a suitable off-site location approved by the Contracting Authority.

6.14.6.1 If the Owner designates a location on its property for disposal or storage of clean topsoil and/or subsoil in the Contract Documents, the DB shall remove such materials to the designated location.

6.15 Use of Premises

6.15.1 The DB shall use corridors, stairs, and elevators as designated by the Contracting Authority. The DB shall exercise extreme care to not exceed the carrying capacity of elevators or damage the cab interior in any way.

6.15.2 Loitering or wandering through interior of buildings or exterior grounds outside the limits of the Work will not be permitted.

6.15.3 The DB shall confine its apparatus, materials, and the operations of its workers to the limits indicated by law, ordinances, permits, and the directions of the Contracting Authority.

6.15.4 No signs or advertising of any kind will be permitted on or about the Site, except those appearing on trucks and trailers.

6.15.5 Smoking and Tobacco Products.

6.15.5.1 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 DB shall enforce these restrictions on any individual employed by the DB or a Subcontractor.

6.16 Interruption of Existing Services

6.16.1 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 DB 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.

6.16.2 Before beginning that Work, the DB shall apply in writing to, and receive approval in writing from, the Owner, through the Contracting Authority, to establish a time when interruption of the service will cause a minimum of interference with the activities of the Owner and its tenants.

6.17 Explosives and Blasting

6.17.1 The DB shall not conduct blasting on, or bring explosives to, the Site without the prior written approval of the Contracting Authority~~, the Owner,~~, Owner, and other authorities with jurisdiction.

6.17.2 The DB shall perform all blasting, storing, and handling of explosives as required under Applicable Law.

6.17.2.1 The DB 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 DB shall deliver evidence of that insurance to the Contracting Authority.

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6.18 Building Commissioning

6.18.1 If the Project scope includes building commissioning, the DB shall participate in the Commissioning Process, as prescribed in the Contract Documents.

6.18.2 The DB shall permit the Commissioning Agent ("CxA") access to commission performance based equipment, fixtures, and/or systems (e.g., HVAC, fire protection, smoke evacuation, fume hoods, emergency power, etc.), prior to ~~Final Acceptance, or Partial Occupancy if applicable.~~Substantial Completion.

6.18.3 The CxA shall promptly notify, in writing, the DB of any deficiency identified during the Commissioning Process.

6.18.4 To facilitate the Commissioning Process, the DB shall submit 4 sets of Operation and Maintenance Manuals for dynamic and engineered systems to the Contracting Authority~~, and the~~, and CxA if applicable, for approval. This submission shall occur within 30 days following approval of all related ~~CM~~DB submittals required by the Contract Documents.

6.19 Action Submittals

6.19.1 Contracting Authority's Submittal Review. The Contracting Authority 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 Contracting Authority and ~~the~~ DB. It is not the purpose of the Contracting Authority's review of submittals to determine the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the DB's responsibility.

6.19.1.1 If the Project is administered using ~~OAKS CI~~the State's web-based project management software, the DB shall submit electronic files of its submittals ~~to the Contracting Authority and the CxA if applicable,~~ for review, using the "Submittals" business process.

6.19.2 Risk of Nonpayment. The DB 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 Contracting Authority. If the DB starts Work before the Contracting Authority's final approval of the submittal, the DB does so at its own risk that payment ~~shall~~may not be approved by the Contracting Authority or made by the Owner for the related Work.

6.19.3 Equipment Statement. Shop Drawings on equipment shall include the following written statement from the manufacturer of the equipment:

6.19.3.1 "This equipment submitted for approval shall perform as specified when installed ~~by the DB~~ 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 DB will be deemed to have included the above statement as required even if the associated Shop Drawing does not actually contain the statement.

6.19.3.2 This equipment statement shall not be required for Samples, Product Data, and other standard submittals that are not created specifically for this Project.

6.20 Warranty

6.20.1 The DB warrants to the Contracting Authority and the 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 Contracting Authority, the DB shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

6.20.1.1 If the DB 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 DB to the Owner that the recommended product, material, system, or item of equipment is fit and appropriate for the associated purpose.

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6.21 Uncovering the Work

6.21.1 If the DB covers Work contrary to the requirements of the Contract Documents or contrary to the written request of the Contracting Authority, the DB shall, if the Contracting Authority requests in writing, uncover that Work for observation, correct it if not in conformity with the Contract Documents, and recover it at the DB's expense ~~and~~ without adjustment of the Contract Times.

6.21.2 If the DB covers Work in accordance with the Contract Documents and not contrary to a request from the Contracting Authority for an opportunity to observe the Work prior to covering, the DB shall, if the Contracting Authority requests in writing, uncover that Work.

6.21.2.1 If the uncovered Work is Defective Work, the DB shall pay the costs of uncovering, correcting, and recovering the Work and shall not be entitled to an adjustment of the Contract Times.

6.21.2.2 If the uncovered Work is not Defective Work and the DB 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 DB may request ~~an adjustment to the Contract~~a Change Order by giving written notice under **Section 7.3.2** within 7 days after the Contracting Authority observes the uncovered Work.

6.22 Correction of the Work

6.22.1 Before ~~Final Acceptance~~Substantial Completion.

6.22.1.1 If the DB provides Defective Work or fails or neglects to perform the Work in accordance with the Construction Progress Schedule, the Contracting Authority may issue a written notice to the DB and ~~the~~ DB's Surety directing the DB to correct the Defective Work or to recover schedule deficiencies. Unless otherwise specified in that written notice, the DB shall begin to correct the Defective Work and recover the schedule deficiencies within no more than 3 days after the Contracting Authority issues ~~receiving~~ the written notice ("72-Hour Notice").

~~**6.22.1.1**~~**6.22.1.2** If the DB fails to promptly commence and diligently pursue correction of Defective Work or recovery of schedule deficiencies required under **Section 6.22.1.1**, the Owner may correct the Defective Work or take action to recover schedule deficiencies without giving further notice to the DB or DB's Surety.

6.22.2 After ~~Final Acceptance~~Substantial Completion.

6.22.2.1 In addition to the DB's other obligations under the Contract Documents, if ~~during the Correction Period~~ any of the Work is found to be Defective Work after Substantial Completion, the DB shall correct it promptly after receipt of written notice from the Contracting Authority or ~~the~~ Owner to do so, unless the Contracting Authority and ~~the~~ Owner have previously acknowledged and accepted the Defective Work in writing. The Contracting Authority or ~~the~~ Owner may send a copy of the written notice to the DB's Surety, but are not obligated to do so.

~~**6.22.2.2** The Correction Period shall not be extended by corrective Work performed by the DB under this Section 6.22.2.~~

6.22.2.2 During the Correction Period. If the Contracting Authority or Owner issues a notice under **Section 6.22.2.1** during the Correction Period, the Owner may correct the Defective Work itself without giving further notice to the DB or DB's Surety if the DB fails to **(1)** notify the Owner in writing of the DB'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.

6.22.2.3 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;
- ~~**.1**~~**.2** relates only to the DB's specific obligation and opportunity to correct the Work during the Correction Period;
- ~~**.2**~~**.3** does not establish a period of limitation with respect to any of the DB's other obligations under the Contract Documents;
- ~~**.3**~~**.4** has no relationship to the time within which the State or Owner may seek to enforce the Contract; ~~and~~
- ~~**.4**~~**.5** does not establish a period of limitation within respect to the commencement of litigation to establish the DB's liability under the Contract or otherwise~~.~~; and

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.6 ~~If the DB fails to promptly commence and diligently pursue correction of Defective Work~~ shall not be extended by corrective Work performed by the DB under this **Section** ~~6.22.1 or 6.22.2 after receiving~~ **6.22.2.2**.

6.22.2.4 After the Correction Period. If the Owner issues notice ~~to do so,~~under **Section 6.22.2.1** after expiration of the Correction Period, the Owner may correct the Defective Work itself without giving further notice to the DB or ~~the~~ DB's Surety~~.~~ if the DB fails to **(1)** notify the Owner in writing of the DB'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.

6.22.3 Emergency Correction of Defective Work.

~~**6.22.2.5**~~**6.22.3.1** Notwithstanding any other provision of the Contract to the contrary, if in the Contracting Authority~~'s or Owner's~~ 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 DB to immediately correct Defective Work or the Owner may correct the Defective Work itself without prior notice to the DB or ~~the~~ DB's Surety.

~~**6.22.3**~~**6.22.4** Responsibility for Costs of Correction.

~~**6.22.3.1**~~**6.22.4.1** The DB shall pay all of the costs and damages associated with the correction of Defective Work and the recovery of schedule deficiencies~~.~~ under this **Section 6.22**. 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~~; and any consequential damages.~~. The Contracting Authority may deduct those costs and damages from payments then or thereafter due the DB. If payments then or thereafter due the DB are not sufficient to cover those amounts, the DB shall immediately pay the amount of the insufficiency to the Owner.

6.23 Acceptance of Defective Work

6.23.1 The Owner may accept any Defective Work instead of requiring its removal or correction, in which case the Contract Sum shall be equitably reduced as described under **Article 7**.

6.23.1.1 The Owner may only accept Defective Work though a deduct Change Order ~~which~~that makes explicit reference to this **Section 6.23**.

6.23.2 None of the following will constitute **(1)** acceptance of Defective Work, **(2)** a release of the DB'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:

6.23.2.1 observations or inspections by the Owner or ~~the~~ Contracting Authority;

6.23.2.2 the making of any payment;

~~**6.23.2.3** Partial Acceptance, Final Acceptance,~~Substantial Completion or the issuance of a ~~Partial or Final Certification of Contract Completion;~~

6.23.2.3 Certificate of Substantial Completion;

6.23.2.4 Partial Occupancy and the ~~Owner's~~Owner's use or occupancy of the Work or any part of it;

6.23.2.5 Contract Completion or the issuance of a partial or final Certificate of Contract Completion;

~~**6.23.2.5**~~**6.23.2.6** any review or approval of a submittal;

~~**6.23.2.6**~~**6.23.2.7** any inspection, test, or approval by other Persons; or

~~**6.23.2.7**~~**6.23.2.8** any correction of Defective Work by the Owner~~.~~.

6.24 ~~Final Cleaning~~ *{moved from 6.24 to Section 6.25}*

~~**6.24.1** Before requesting the Contracting Authority's Punch List review, the DB shall clean the Site, remove waste materials and rubbish attributable to the Project, and restore the property to its original condition so that upon Contract Completion, the premises are ready for occupancy by the Owner.~~

~~**6.24.2** If the DB performs any Work after final cleaning, the DB shall clean the affected area as provided above so that upon Contract Completion, the premises are ready for occupancy by the Owner.~~

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~~6.24.3 Final cleaning shall be done to the reasonable satisfaction of the Contracting Authority.~~

~~6.25 Punch List~~ *{moved from Section 6.25 to Section 6.26}*

~~6.25.1~~6.24.1 ~~DB's Punch List.~~

~~6.25.1.1~~6.24.1.1 ~~When the DB considers the Work, or a designated portion thereof, nearly complete the AOR shall inspect the Work and prepare a list of Defective Work and incomplete or unacceptable Work ("DB's Punch List"). The AOR shall list all items of Work not in compliance with the Contract Documents, including items the DB is requesting to be deferred.~~

~~.1 The DB shall proceed to correct all items listed on the DB's Punch List and certify that the incomplete items listed on the DB's Punch List are to its knowledge an accurate and complete list by signing said Punch List.~~

~~.2~~.1 ~~The DB's or AOR's failure to include an item on the DB's Punch List shall not alter the DB's responsibility to complete the Work in accordance with the Contract Documents.~~

~~.3 The DB shall submit the signed DB's Punch List to the Contracting Authority, together with a request for the Contracting Authority's Review of the Work.~~

~~6.25.1.2 If the Project is administered using OAKS CI, the DB shall submit the DB's Punch List, using the "Punch List" business process.~~

~~6.25.2 Contracting Authority's Review of the Work.~~

~~6.25.2.1 Within 3 business days of receipt of the request for the Contracting Authority's Review of the Work, the Contracting Authority shall notify the DB of acceptance or rejection of the request, stating reasons for any rejection.~~

~~.1 Within 7 days of its acceptance of the DB's request, the Contracting Authority shall conduct the Contracting Authority's Review to determine whether the Work, or the designated portion, is in conformity with the Contract Documents. The Contracting Authority shall notify the DB, and the Owner of the scheduled time of the Contracting Authority's Review.~~

~~.2 The Contracting Authority shall include comments from the Owner in the Contracting Authority's Review.~~

~~.3 Within 3 business days after the Contracting Authority's Review, the Contracting Authority shall provide to the DB a list of Defective, incomplete, or unacceptable Work ("Contracting Authority's Punch List").~~

~~.4 The Contracting Authority's failure to include an item on the Contracting Authority's Punch List shall not alter the DB's responsibility to complete the Work in accordance with the Contract Documents.~~

~~.5 If the Contracting Authority accepts the request and subsequently determines that the Work is not in conformity with the Contract Documents, the DB shall pay any additional costs incurred by the Contracting Authority and the Owner resulting from any attendant delay and any re-inspections. The Contracting Authority may deduct those additional costs from payments then or thereafter due the DB. If payments then or thereafter due the DB are not sufficient to cover those amounts, the DB shall immediately pay the amount of the insufficiency to the Owner.~~

~~6.25.3~~6.24.2 ~~Completion of Punch List Items.~~

~~6.25.3.1~~6.24.2.1 ~~Within 30 days after receipt of the notice required by Section 6.25.2.1.3 and before the date of Final Contract Completion, the DB shall complete all items on the Contracting Authority's Punch List. After completing all items on the Contracting Authority's Punch List, the DB shall provide a written request for Final Inspection of the Work to the Contracting Authority.~~

~~.1 If Work on the Contracting Authority's Punch List cannot be timely completed, the DB shall justify in writing to the reasonable satisfaction of the Contracting Authority the reasons the items cannot be completed, and the DB may propose, for the Contracting Authority's approval, a time when the DB shall complete those items.~~

~~.2 Within 3 business days of receipt of the DB's notice that all Punch List items have been completed, the Contracting Authority shall complete a Final Inspection of the Work for compliance with the Contract Documents.~~

~~.3~~.1 ~~If multiple inspections of items on the Contracting Authority's Punch List are required due to the DB's failure to properly and timely complete them, the DB shall pay any additional costs incurred by the Contracting Authority and the Owner resulting from any attendant delay and re-inspections. The Contracting Authority may deduct those additional costs from payments then or thereafter due the DB. If~~

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~~payments then or thereafter due the DB are not sufficient to cover those amounts, the DB shall immediately pay the amount of the insufficiency to the Owner.~~

~~**6.25.3.2** If the Project is administered using OAKS CI, the DB shall receive the Contracting Authority's Punch List and submit its written request for Final Inspection of the Work, using the "Punch List" business process.~~

~~6.26~~6.25 Project Document Maintenance and Submittal *{moved from Section 6.26 to Section 6.24}*

~~**6.26.1**~~**6.25.1** During Construction.

~~**6.26.1.1**~~**6.25.1.1** The DB 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 ~~by the Ohio Department of Commerce, Division of Industrial Compliance, or its authorized representative,~~in accordance with **Section 5.8.1.1**, and the records required by **Section 6.2.14**.

~~**6.26.1.2**~~**6.25.1.2** Before submitting each DB Payment Request, the DB 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.

~~**6.26.1.3**~~**6.25.1.3** The DB shall keep a record of changes made to the Specifications, noting particularly any approved variation from ~~manufacturer's~~manufacturer's installation instructions and recommendations.

~~**6.26.1.4**~~**6.25.1.4** If the DB uses Shop Drawings to indicate as-built conditions, the DB shall cross-reference the Shop Drawing sheet numbers to the corresponding sheet numbers on the Contract Documents. The DB shall note related numbers where applicable.

~~**6.26.1.5**~~**6.25.1.5** The DB shall at all times permit access to the documents described in this **Section** ~~6.26.1~~**6.24.1** to authorized representatives of the State, local authorities having jurisdiction, ~~the~~ Contracting Authority ~~and the Owner~~, Owner, and Criteria A/E.

~~**6.26.2**~~**6.25.2** Before ~~Final Acceptance~~Contract Completion.

~~**6.26.2.1**~~**6.25.2.1** The DB shall submit the As-Built Documents to the AOR. That 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 DB and each of its Subcontractors, regardless of tier, have complied with all requirements of ORC Chapter 4115.

6.25.2.2 By submitting the As-Built Documents to the AOR, the DB certifies that its As-Built Documents are complete, correct, and accurate.

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~~6.26.2.2~~6.25.2.3 The AOR shall revise the original Contract Documents and related ~~electronic files~~Electronic Files with the information contained on the As-Built Documents. The AOR shall label the revised original Contract Documents and related Electronic Files as "Record Documents" and reflect the date of the AOR's incorporation of the As-Built Documents.

~~6.26.2.3~~6.25.2.4 The DB, as a condition precedent to execution of the ~~Certification~~Certificate of Contract Completion~~, release of retained funds,~~ and final payment, shall submit the Record Documents to the Contracting Authority.

6.25.2.5 By submitting the Record Documents to the Contracting Authority, the DB certifies that its Record Documents are complete, correct, and accurate.

~~6.26.2.4~~6.25.2.6 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.

~~6.27~~6.26 Final Cleaning *{moved from Section 6.24 to Section 6.25}*

6.26.1 Before requesting the Substantial Completion inspection of the Work, the DB 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 DB performs any Work after final cleaning, the DB 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 Contracting Authority.

6.27 Substantial Completion *{moved from Section 6.25 to Section 6.26}*

6.27.1 DB's Punch List.

6.27.1.1 When the DB considers the Work, or a designated portion thereof, Substantially Complete the AOR shall inspect the Work and prepare a list of Defective Work and incomplete or unacceptable Work ("DB's Punch List"). The AOR shall list all items of Work not in compliance with the Contract Documents, including items the DB is requesting to be deferred.

.1 The DB shall proceed to correct all items listed on the DB's Punch List and certify that the incomplete items listed on the DB's Punch List are to its knowledge an accurate and complete list by signing the DB's Punch List.

~~.1~~.2 The DB's or AOR's failure to include an item on the DB's Punch List shall not alter the DB's responsibility to complete the Work in accordance with the Contract Documents.

.3 The DB shall submit the signed DB's Punch List to the Contracting Authority, 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 DB shall submit the DB'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 Contracting Authority shall notify the DB of acceptance or rejection of the request, stating reasons for any rejection.

.1 Within 7 days after its acceptance of the DB's request, the Contracting Authority shall conduct the Substantial Completion inspection to determine whether the Work, or the designated portion, is in conformity with the Contract Documents and Substantially Complete. The Contracting Authority shall notify the DB and Owner of the scheduled time of the Contracting Authority's inspection.

.2 If the Contracting Authority determines that the Work is Substantially Complete, within 3 business days after the Substantial Completion inspection, the Contracting Authority 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 ("Contracting Authority's Punch List"). The Contracting Authority's Punch List shall include **(1)** the items on the DB's Punch List that are not yet completed or corrected as of the date of the Substantial Completion inspection, and **(2)** comments from the Owner.

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.3 The Contracting Authority shall submit the Certificate of Substantial Completion to the Owner and DB for their written acceptance. Upon their acceptance and consent of the DB's Surety, and subject to the Owner's right to withhold payment, the Owner shall release retainage as described under **Section 9.2.13.2**.

.4 The Contracting Authority's failure to include an item on the Contracting Authority's Punch List shall not alter the DB's responsibility to complete the Work in accordance with the Contract Documents.

.5 If the Contracting Authority accepts the request for the Substantial Completion inspection and subsequently determines that the Work is not Substantially Complete, the Contracting Authority may request compensation for expenses related to excessive Punch List activities. The Contracting Authority may deduct those additional costs from payments then or thereafter due the DB. If payments then or thereafter due the DB are not sufficient to cover those amounts, the DB shall immediately pay the amount of the insufficiency to the Owner.

~~6.27.2~~6.27.3 Completion of Punch List Items.

~~6.27.2.1~~6.27.3.1 Within 30 days after the date of Substantial Completion and before the date of Contract Completion, the DB shall complete all items on the Contracting Authority's Punch List. After completing all items on the Contracting Authority's Punch List, the DB shall provide a written request for Final Inspection of the Work to the Contracting Authority.

.1 If Work on the Contracting Authority's Punch List cannot be timely completed, the DB shall justify in writing to the reasonable satisfaction of the Contracting Authority the reasons the items cannot be completed, and the DB may propose, for the Contracting Authority's approval, a time when the DB shall complete those items.

.2 Within 3 business days after receipt of the DB's request for Final Inspection, the Contracting Authority shall complete a Final Inspection of the Work for compliance with the Contract Documents.

~~.1~~.3 If multiple inspections of items on the Contracting Authority's Punch List are required due to the DB's failure to properly and timely complete them, the DB shall pay any additional costs incurred by the Contracting Authority and Owner resulting from any attendant delay and re-inspections. The Contracting Authority may deduct those additional costs from payments then or thereafter due the DB. If payments then or thereafter due the DB are not sufficient to cover those amounts, the DB 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 DB shall receive the Contracting Authority's Punch List and submit its request for Final Inspection, using the "Punch List" business process.

6.28 Partial Occupancy *{moved from Section 2.3 to Section 6.27}*

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 DB 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 DB and has consented to it.

6.28.2 Before the Owner commences Partial Occupancy, the Owner, Contracting Authority, DB, and AOR shall proceed as described under **Section 6.26** for the area designated for Partial Occupancy.

6.28.3 The DB shall be relieved of the obligation to maintain the area accepted for Partial Occupancy of the Work, 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.

~~6.28~~6.29 Demonstration and Training, Operating Appurtenances *{moved from Section 6.27 to Section 6.28}*

~~6.28.1~~6.29.1 The DB, as a condition precedent to execution of the ~~Certification~~Certificate of Contract Completion~~, release of retained funds,~~ and final payment, shall perform demonstration and training of the ~~Owner's~~Owner's maintenance personnel as specified in the Contract Documents.

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~~6.28.2~~6.29.2 The DB, as a condition precedent to execution of the ~~Certification~~Certificate of Contract Completion~~, release of retained funds,~~ and final payment, shall organize and submit operating appurtenances and loose items related to ~~the~~ operation and maintenance of the completed Project to the Owner, including, but not limited to:

~~6.28.2.1~~6.29.2.1 Keys to door and window hardware, panels, and other devices not directly provided to the Owner from the manufacturer;

~~6.28.2.2~~6.29.2.2 Operating handles, levers, cranks, specialized wrenches or drivers, remote controls, and similar items; and

~~6.28.2.3~~6.29.2.3 Extra materials (e.g., attic stock).

~~6.28.3~~6.29.3 If the Project is administered using ~~OAKS CI~~the State's web-based project management software, the DB shall document submission of its operating appurtenances to the Owner, using the "Transmittals" business process.

~~6.29~~6.30 ~~Certification of~~ Contract Completion *{moved from Section 6.28 to Section 6.29}*

~~6.29.1~~6.30.1 Partial Contract Completion~~.~~.

6.30.1.1 When items of Work cannot be completed until a subsequent date, the ~~DB may request~~ Contracting Authority shall prepare a partial Certificate of Contract Completion that ~~these items be~~ shall include a detailed list of the deferred Work and the ~~Contracting Authority~~date(s) by which the DB will complete that Work.

~~6.29.1.1~~6.30.1.2 The Contracting Authority shall submit the partial Certificate of Contract Completion to the Owner and DB for their written acceptance. Upon their acceptance of the partial Certificate of Contract Completion and consent of the DB's Surety, the Contracting Authority may release payment to the DB, as determined in the sole discretion of the Contracting Authority. ~~The Contracting Authority shall list the deferred items on a Partial Certification of Contract Completion with the dates the items are to be completed.~~

~~6.29.1.2 The date that the Contracting Authority executes the Partial Certification of Contract Completion ("Partial Acceptance") is the date that the Correction Period commences, and retained funds may be released for that portion of the Work. Partial Acceptance is subject to Section 6.23.~~

~~6.29.2 Final Acceptance.~~

6.30.2 Final Contract Completion.

~~6.29.2.1~~6.30.2.1 When all items on the Contracting ~~Authority's~~Authority's Punch List have been completed to the satisfaction of the Contracting Authority, all requirements of the Contract Documents have been completed, and the provisions of **Sections** 6.24~~1.1~~ through 6.~~27~~28 have been fulfilled, the Contracting Authority shall prepare and issue a ~~Final Certification~~final Certificate of Contract Completion.

~~6.29.2.2~~6.30.2.2 The date that the Contracting Authority executes the ~~Final Certification~~final Certificate of Contract Completion is the date ~~that the Work of the Contract is accepted ("Final Acceptance"). If a Partial Certification of Contract Completion was not executed for the Contract, the date that the Contracting Authority executes the Final Certification of Contract Completion Certification is the date that the Correction Period commences, and retained funds may be released. Final Acceptance is subject to Section 6.23~~of Contract Completion.

ARTICLE 7 - ~~CONTRACT~~ MODIFICATIONS

7.1 General

7.1.1 ~~The~~ Preconstruction Services Amendments. *{new Section}*

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 DB and Contracting Authority, with concurrence of the Owner.

7.1.1.2 The DB 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 9.1.6** or **Section 9.1.7** as applicable.

7.1.1.3 If the Project is administered using the State's web-based project management software, the DB shall initiate its Preconstruction Services Amendment using the "Change Order" (Agency/Higher Education) or "Contract Modifications" (School Facilities) business process.

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7.1.2 Changes in the Work.

~~**7.1.1.1**~~**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 ~~an~~ order for a minor change in the Work.

~~**7.1.1.2**~~**.1** The DB shall proportionately increase the amount of the Bonds whenever the Contract Sum (not including the Construction Stage Design Services Fee) is increased.

~~**7.1.1.3**~~**.2** If notice of any change affecting the Contract is required by the provision of any Bond, ~~the giving of the~~ notice is the ~~DB's~~DB's responsibility, and the amount of each applicable Bond shall be adjusted accordingly.

~~**7.1.1.4**~~**7.1.2.2** The DB shall not proceed with any change in the Work without the Contracting Authority's prior written authorization except as provided under **Section 1.10**.

~~**7.1.1.5**~~**7.1.2.3** Except as provided in **Section 1.10**, the DB's failure to obtain prior written authorization for a change in the Work constitutes a waiver by the DB of an adjustment to the Contract Sum or Contract Times, or both, for the related Work.

~~**7.1.2**~~**7.1.2.4** The DB shall perform all changes in the Work under the applicable provisions of the Contract Documents, and the DB 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~~Modifications, with the same or similar justification (e.g., Owner Request or field resolution), may be consolidated into the same ~~change-related document.~~Change Order.

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

7.1.4 ~~Change Order~~Modification Numbering.

7.1.4.1 The DB shall assign a number to each Modification~~;~~, which shall uniquely identify it.

7.1.4.2 The DB 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 ~~Change Order~~Modification Log.

7.1.5.1 The DB shall create and maintain a ~~Change Order~~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 parties shall enter into 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 exceeds the scheduled quantity by 20 percent or more, the DB shall immediately notify the Contracting Authority. 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 ~~the~~ DB, the Contracting Authority shall issue a Proposal Request or the DB shall issue a request for a Change Order (as appropriate). The parties shall thereafter negotiate an appropriate adjustment of the Unit Price and scheduled quantity and enter into an associated Change Order.

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.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.

7.2 Change Order Procedure

7.2.1 A Change Order is a written instrument prepared by the Contracting Authority and executed by the Contracting Authority and ~~the~~ DB 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 DB 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 DB signs the Change Order. By signing a Change Order, the DB 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 Contracting Authority shall prepare each Change Order form, attach the supporting documentation, and issue the Change Order to the DB for signature.

7.2.4 Within 3 days after receiving a Change Order: **(1)** if the DB agrees with the Change Order under **Section 7.2.1**, the DB shall sign the Change Order and transmit the signed Change Order and the updated Change Order Log to the Owner; or **(2)**~~-~~ if the DB does not agree with the Change Order under **Section 7.2.1**, the DB shall provide written notice of the disagreement to the Contracting Authority and ~~the~~ Owner.

7.2.5 When the Owner receives the Change Order, the Owner ~~shall~~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 ~~shall~~will reject ~~it~~ and forward it to the Contracting Authority.

7.2.6 When the Contracting Authority receives the Change Order, the Contracting Authority ~~shall~~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 ~~shall~~will reject ~~it~~ and notify the Owner and DB of the rejection.

7.2.7 When the Change Order is signed by the DB, ~~the~~ Owner, and ~~the~~ Contracting Authority, the fully executed Change Order modifies the Contract Documents and authorizes and directs the DB to proceed, and the DB shall promptly proceed with the associated change in the Work.

7.2.8 If the Project is administered using ~~OAKS CI~~the State's web-based project management software, the DB shall indicate its agreement with the Change Order using the "Change Order" (Agency/Higher Education) or "Contract Modifications" (School Facilities) business process.

7.3 Initiation of Change Orders

7.3.1 Proposal Request.

7.3.1.1 The Contracting Authority shall prepare and issue a Proposal Request to the DB to obtain the DB's Proposal for the adjustment of the Contract Sum or ~~the~~ Contract Times, or both, associated with a contemplated Modification~~.~~.

.1 In any Proposal for an adjustment of the Contract Sum, the DB shall specifically identify the items set forth in **Section 7.7**.

.2 In any Proposal for an adjustment of the Contract Times, the DB shall specifically identify the items set forth in **Section 7.8**.

.3 The DB's cost of preparing and providing Proposals is included in the Contract Sum.

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7.3.1.2 The DB shall respond with a Proposal to the Contracting Authority within 14 days after receiving the Proposal Request. The allowable time for the DB's response may be extended by written agreement of the DB and ~~the~~ Contracting Authority.

7.3.1.3 The DB 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 DB and ~~the~~ 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 DB to proceed with a change in the Work.

7.3.1.5 If the DB does not timely submit a Proposal within the time required in **Section 7.3.1.3**, the DB 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 ~~OAKS CI~~the State's web-based project management software, the DB shall respond to a Proposal Request issued by the Contracting Authority 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 DB may initiate a change in the Work by submitting written notice to the Contracting Authority accompanied by a Proposal as described under **Section 7.3.1**.

7.3.2.2 If the Project is administered using ~~OAKS CI~~the State's web-based project management software, the DB 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 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

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 Contracting Authority may prepare a Change Directive, for ~~Owner's signature~~the Contracting Authority's and the Owner's signatures pursuant to **Section 7.4.1**, authorizing the DB 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 ~~in~~ the situation described under **Section 7.5.3**.

7.4.4 Upon receipt of a Change Directive, the DB shall promptly proceed with the change in the Work involved.

7.4.5 The DB 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 Contracting Authority shall prepare and the Contracting Authority, Owner, and DB 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 DB shall respond with a Proposal as described under **Section 7.3.1** to the 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** ~~**7.4.1.1.**~~**7.4.1.2.** If the Change Directive is performed on a time and materials basis, the DB 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 DB that the proposed adjustment is the entire adjustment in the Contract Sum associated with the change.

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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 DB that the proposed adjustment is the entire adjustment of the Contract Times associated with the change.

7.4.7 If the DB 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 DB does not agree with the Contracting Authority's determination, the DB shall initiate a Claim under **Article 8** within 10 days of the date ~~on which~~that the Contracting Authority issues its determination, and the DB'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 DB agree on the adjustments of the Contract Sum and Contract Times associated with a Change Directive, the Contracting Authority shall prepare an appropriate Change Order promptly after receiving the DB's Proposal. The Contracting Authority, Owner, and DB shall promptly sign the Change Order as described under **Section 7.2**.

7.4.10 If the Contracting Authority, Owner, and DB 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 DB does not agree with the Contracting Authority's determination, the DB shall initiate a Claim under **Article 8** within 10 days of the date ~~on which~~that the Contracting Authority issues its determination, and the DB's failure to do so shall constitute an irrevocable waiver of the Claim.

7.4.11 If the Project is administered using ~~OAKS CI~~the State's web-based project management software, the DB shall respond to a Change Directive issued by the Contracting Authority 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 Contracting Authority 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 DB.

7.5.2 The DB shall promptly carry out each order for a minor change in the Work if the DB agrees that the order does not involve adjustment of the Contract Sum or Contract Times, or both.

7.5.3 If the DB 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 DB, within 3 business days after receiving the order, shall give the Contracting Authority written notice of the DB'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 DB 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 ~~which~~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 ~~OAKS CI~~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 DB encounters a Differing Site Condition, the DB shall stop Work on that Differing Site Condition and give immediate written notice of the condition to the Contracting Authority.

7.6.1.1 The DB'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.

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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 DB under **Section 7.6.1**, the Contracting Authority shall investigate to determine whether the DB has encountered a Differing Site Condition. The Criteria Contracting Authority~~A/E~~ shall give written notice of its determination to ~~the Contracting Authority and~~ the DB within 10 days after completing the investigation.

7.6.2.1 If the Contracting Authority determines that the DB has encountered a Differing Site Condition and the Owner agrees with the Contracting Authority's determination, the Contracting Authority shall prepare (as appropriate) a resulting Change Order or a Change Directive.

~~**7.6.2.1**~~**7.6.2.2** If the Contracting Authority determines that the DB has encountered a Differing Site Condition but the Owner disagrees with the Contracting Authority's determination, the Contracting Authority shall process an appropriate Change Directive through which the Owner may convey its disagreement with the Contracting Authority's determination.

~~**7.6.2.2**~~**7.6.2.3** If the Contracting Authority determines that the DB has not encountered a Differing Site Condition and the DB does not agree with that determination, the DB shall initiate a Claim under **Article 8** within 10 days of the date ~~on which~~that the Contracting Authority 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 DB shall not assign any portion of the Work to another Person whereby the DB 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 DB and Subcontractors.

7.7.1.4 For each change in the Work, the DB shall furnish a detailed Proposal itemized on the ~~Change Order Estimate~~**Proposal Worksheet Summary** ~~form~~**Form (Design-Builder)** published by the Ohio Facilities Construction Commission through which the DB 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 ~~Change Order Estimate~~**Proposal Worksheet Summary** ~~form~~**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 Work ("Pricing Criteria"). These Pricing Criteria also govern the value of deduct Change Orders and the DB'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 Construction Stage Design Services Fee: The AOR's Services directly involved in the Work on an hourly basis according to the rates set forth in the AOR's Fee Schedule attached to the Agreement.

7.7.2.2 DB Construction Stage Personnel Costs: The DB'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 DB be entitled to an increase in the Contract Sum on account of Construction Stage Personnel Costs unless the DB actually incurs additional demonstrated Construction Stage Personnel Costs solely on account of the associated change in the Work.

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.2 Under no conditions will the increase under this **Section 7.7.2.2** exceed those additional demonstrated Construction Stage Personnel Costs the DB actually incurs.

7.7.2.3 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 DB be entitled to an increase in the Contract Sum on account of labor costs unless the DB actually incurs additional demonstrated labor costs on account of the associated change in the Work.

.2 Under no conditions will the increase under this **Section 7.7.2.3** exceed those additional demonstrated labor costs the DB actually incurs.

~~.1~~.3 The cost for supervision above the level of working ~~foremen~~forepersons (such as general ~~foremen~~forepersons, superintendent, project manager, etc.) is included in the adjustment under **Section 7.7.2.2** for the DB and under **Section 7.7.2.11** for Subcontractors.

7.7.2.4 Fringes: Fringe benefit credit for labor provided under **Section 7.7.2.3** 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 DB shall submit documentation supporting the calculation of the amounts for each fringe benefit for each worker classification, including labor provided by Subcontractors.

7.7.2.5 Allowable Payroll Expenses: Allowable payroll expenses for labor provided under **Section 7.7.2.3** 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.

7.7.2.6 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. DB shall submit copies of actual paid invoices to substantiate rental costs.

7.7.2.7 Owned Equipment: All charges for certain heavy or specialized equipment owned by the DB or ~~the~~ Subcontractor performing the Work at up to 100 percent of the cost listed by the current edition of the Associated Equipment ~~Dealers~~Distributors' *AED Green Book* heavy equipment rental rates~~ and specifications for construction equipment~~. 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.

7.7.2.8 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.

7.7.2.9 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.

7.7.2.10 DB's General Conditions Costs: The DB's General Conditions Costs to the extent attributable to an associated change in the Contract Time for achievement of ~~Final Acceptance~~Substantial Completion resulting from the change in the Work.

~~7.7.2.10~~.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 DB'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 ~~Final Acceptance.~~Substantial Completion.

~~.1~~.2 The DB shall **(1)** exclude the Bond premium from the Schedule of Values for the purposes of the calculation under **Section** ~~7.7.2.10~~**7.7.2.10.1**, and **(2)** include the actual adjustment of the Bond premium attributable to an associated change in the Contract Sum.

~~.2~~.3 If the DB purchases the ~~Builder's Risk~~builder's risk insurance for the Project, the DB shall **(1)** exclude the ~~Builder's Risk~~builder's risk insurance premium from the Schedule of Values for the purposes of the

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calculation under **Section** ~~7.7.2.10~~**7.7.2.10.1**, and **(2)** include the actual adjustment of the ~~Builder's Risk~~builder's risk insurance premium attributable to an associated change in the Contract Sum.

7.7.2.11 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 7.7.2.3** through **7.7.2.9** that are associated with that changed Work.

.1 The allowance applies to DB 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 7.7.2.11.2**, 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 7.7.2.3**, **7.7.2.4**, and **7.7.2.5** of these Pricing Criteria.

.4 An exception is allowed for field supervision labor on items in **Section 7.7.2.11.2**, for those portions of the Change Order Work that will be performed, or were 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 7.7.2.3**, **7.7.2.4**, and **7.7.2.5** of these Pricing Criteria.

7.7.2.12 DB's Fee: Adjustment of the Contract Sum on account of a change in the Work shall include an allowance for the DB's Fee equal to **(1)** the percentage for the DB's Fee identified in the Agreement times **(2)** the sum of the costs described under **Sections 7.7.2.1** through **7.7.2.11**.

7.7.2.13 Miscellaneous: Adjustment of the Contract Sum on account of a change in Work may include the following costs with no allowance for DB's Fee under **Section 7.7.2.12** or Subcontractor overhead and profit under **Section 7.7.2.11**.

.1 The premium portion only for approved overtime (labor and fringes). The straight time portion is included in items in **Sections** ~~7.7.2.3~~**7.7.2.3**, **7.7.2.4**, and **7.7.2.5**.

.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 DB'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 DB's entitlement to additional time through the Claims and dispute resolution processes on account of changes in the Work.

7.8.2 The DB 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;

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;

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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 which would fully compensate the DB for all costs of acceleration of the Work needed to completely overcome the associated delay, if any.

~~**7.8.3** A Change Order may authorize extension of the Contract Times for specific elements, while maintaining Milestone dates for unaffected elements. Such a Change Order may also authorize an appropriate adjustment to Liquidated Damages.~~

~~**7.8.4**~~**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.

~~**7.8.4.1**~~**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 DB's Records

7.9.1 The Contracting Authority and ~~the~~ Owner may examine all books, records, documents and other data of the DB and ~~of all~~its Subcontractors related to the bidding, pricing, or performance of the Work for the purpose of evaluating any DB Payment Request, Proposal, Modification, or Claim.

7.9.2 The above-referenced materials shall be made available at the office of the DB or Subcontractor, as applicable, at all reasonable times for inspection, audit, and reproduction until the expiration of 6 years after the date of ~~Final Acceptance~~Substantial Completion of ~~the Project~~all Work.

7.9.2.1 The DB shall maintain, and require ~~all~~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 DB shall timely make records available, and shall require its Subcontractors to timely make records available, at the office of the Contracting Authority or ~~the~~ Owner upon request for the records.

7.9.3 To the extent that the DB or a Subcontractor, as applicable, informs the Contracting Authority or ~~the~~ Owner in writing that any documents provided to the Contracting Authority or ~~the~~ Owner are trade secrets, the Contracting Authority or ~~the~~ Owner shall treat these documents, to the extent permitted by law, as trade secrets of the DB 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 DB or Subcontractor as applicable, shall indemnify the Contracting Authority and ~~the~~ Owner against all costs, expenses, and damages, including~~,~~ but not limited to~~, attorney~~ 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.

8.1.2 ~~The~~Except as provided under **Section 1.10**, the DB shall initiate every Claim by giving written notice of the Claim to the Contracting Authority within 10 days after occurrence of the event giving rise to the Claim.

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 ~~on which~~that the Contracting Authority issues its determination under **Section 7.4.7** or **Section 7.4.10**, as applicable.

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8.1.2.2 The 10-day time limit on initiating a Claim arising from the response of the Contracting Authority~~ to a Request for Interpretation~~ to a RFI begins to run on the date ~~on which~~that the Contracting Authority issues the Contracting Authority's response to the ~~Request for Interpretation~~RFI.

8.1.2.3 The 10-day time limit on initiating a Claim arising from the Contracting Authority's determination concerning a Differing Site Condition begins to run on the date ~~on which~~that the Contracting Authority issues the Contracting Authority's determination under **Section 7.6**.

8.1.3 The DB'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 DB;

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 ~~which~~that will be affected by the impact or new activities ~~which~~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 DB's failure to initiate a Claim as and when required under this **Section 8.1** shall constitute the DB's irrevocable waiver of the Claim.

8.1.5 The Contracting Authority~~,~~ shall respond to the written notice of the Claim within a reasonable time of receipt.

8.2 Substantiation of Claims

8.2.1 Within 30 days after the initiation of a Claim, the DB shall submit 3 copies of all information and statements required to substantiate a Claim as provided in this **Article 8** and all other information ~~which~~that the DB believes substantiates the Claim. The DB shall file the 3 copies by delivery of one copy to the Owner, and two copies to the Contracting Authority.

8.2.2 The DB 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 DB'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 DB entitlement;

8.2.2.5 copies of the DB'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~~claim included; and

8.2.2.6 the notarized certification described under **Section 8.5.1.1**~~;~~.

8.2.3 The DB'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 DB 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 DB due to the event giving rise to the Claim;

8.3.1.2 a written statement from the DB that the increase requested is the entire increase in the Contract Sum associated with the Claim; and

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8.3.1.3 the general substantiation documentation described under **Section 8.2**.

8.3.2 The DB'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 DB 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 ~~which~~that would fully compensate the DB 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 DB 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 DB 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 ~~10~~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 DB'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 DB 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 DB:

8.5.1.1 "The undersigned ~~DB~~Design-Builder certifies that the Claim is made in good faith; that the supporting data is accurate and complete to the best of the ~~DB~~Design-Builder's knowledge and belief; that the amount requested is a fair, reasonable, and necessary adjustment for which the ~~DB~~Design-Builder believes the State is liable; and that the undersigned is duly authorized to certify the Claim on behalf of the ~~DB~~Design-Builder."

8.5.2 The date that the DB's certified and fully substantiated Claim is received by the Contracting Authority, or the date ~~on which~~that the DB 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 DB'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~~Derrivative~~ Claims

8.6.1 Subject to other provisions of the Contract, the DB 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 DB's failure to comply with Applicable Law, fires, floods, epidemics, weather, and labor disputes beyond the DB's control.

8.6.2 Notwithstanding any other provision of the Contract Documents to the contrary, the DB 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 DB; 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 DB 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 DB 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 DB.

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 ~~a~~ Separate Contractor to recover damages the DB suffers on account of the acts or neglects of a Separate Consultant or ~~a~~ Separate Contractor or a person or entity for whom either is legally responsible, the Owner's liability to the DB ~~will~~shall not exceed the amount the Owner actually recovers from the Separate Consultant or ~~the~~ 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 DB fails to achieve a Milestone within the associated Contract Time, it would be difficult, if not impossible, to determine the ~~Owner's~~Owner's resulting damages. Therefore, if the DB fails to achieve a Milestone within the associated Contract Time, the DB 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 DB 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	$~~10,000~~ 7,500
From $20,000,000.01 to $50,000,000	$~~20~~10,000
More than $50,000,000	$~~50~~15,000

8.7.2 If the DB 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** ~~8.6.5~~**8.7** are only intended to compensate the Owner for the ~~direct~~ damages the Owner itself incurs as a direct result of the DB's failure to achieve the Milestones within their associated Contract Times.

8.7.4 The Liquidated Damages described in this **Section** ~~8.6.5~~**8.7** are not intended to compensate the Owner for any damages the Owner incurs on account of **(1)** any claims attributable to the DB that are brought by others including Separate Consultants and Separate Contractors as a result of the DB's failure to achieve the Milestones within their associated Contract Times or **(2)** any failure of the DB 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 DB's failure to achieve the Milestones within their associated Contract Times.~~, and they~~ 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 DB's failure to achieve one or more of the Milestones within the Contract Times.

~~**8.7.6** Nothing contained in this Section 8.6.5 shall preclude the Owner's recovery from the DB of actual damages.~~

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~~8.7.7~~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 DB are not sufficient to cover such amounts, the DB shall immediately pay the amount of the insufficiency to the Owner.

8.8 Mutual Waiver of Consequential Damages *{new Section}*

8.8.1 Except as provided under **Section 8.8.2**, the Owner and DB 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 DB'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 DB'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 DB's gross negligence or willful misconduct.

8.8.3 This **Section 8.8** shall survive termination of the Contract.

~~8.8~~8.9 Claim Decision

~~8.8.1~~8.9.1 The Project Manager shall review the DB's Claim and approve or deny all or any part of it, and forward a written decision to the DB, ~~the Owner, and the Commission~~Owner, and Contracting Authority within 30 days after receiving the DB's Claim.

~~8.8.1.1~~8.9.1.1 The Project Manager may employ independent resources to assist in its review, or refer evaluation of the Claim to a consultant.

~~8.8.2~~8.9.2 If the DB and ~~the~~ Owner agree with the Project Manager's decision, the decision shall be incorporated into a Change Order.

~~8.8.3~~8.9.3 Any Claim remaining unresolved after completion of the process described under this **Section ~~8.8~~8.9** shall be subject to Claim decision review as described under **Section 8.~~9~~10**.

~~8.9~~8.10 Claim Decision Review

~~8.9.1~~8.10.1 The DB 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.

~~8.9.1.1~~8.10.1.1 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.

~~8.9.1.2~~8.10.1.2 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.

~~8.9.2~~8.10.2 The Commission or Institutional Designee, if applicable, shall schedule and conduct a meeting within 30 days after receiving the ~~CM's~~ DB's request for review.

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~~8.9.2.1~~8.10.2.1 ~~The Contracting Authority~~The Commission or Institutional Designee may employ independent resources to assist in the meeting and review.

~~8.9.3~~8.10.3 The Commission or Institutional Designee, if applicable, shall determine the final disposition of the DB's request for review and provide a written decision to the DB and ~~the~~ Owner within 14 days after the meeting.

~~8.9.4~~8.10.4 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).

~~8.9.5~~8.10.5 If the DB and ~~the~~ Owner agree with the Commission's or the Institutional Designee's decision, the decision shall be incorporated into a Change Order.

~~8.9.6~~8.10.6 Any Claim remaining unresolved after completion of the process described under this **Section 8.~~9~~10** shall be subject to litigation, which may be preceded by Alternative Dispute Resolution ("ADR") as described under **Section 8.~~11~~12**.

~~8.10~~8.11 Delegation

~~8.10.1~~8.11.1 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.

~~8.11~~8.12 Alternative Dispute Resolution

~~8.11.1~~8.12.1 The intent of the ADR process is to resolve disputes quickly and equitably in a manner agreed upon by all parties to the dispute.

~~8.11.2~~8.12.2 The ADR procedure shall be accepted by all of the Project's key stakeholders.

~~8.11.3~~8.12.3 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**.

~~8.11.4~~8.12.4 The following forms of non-binding ADR may be considered:

~~8.11.4.1~~8.12.4.1 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.

8.12.4.2 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.

~~8.11.4.2~~8.12.4.3 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.

~~8.11.4.3~~8.12.4.4 Another ADR procedure accepted by all of the Project's key stakeholders.

~~8.12~~8.13 Audit of the Claim

~~8.12.1~~8.13.1 All Claims shall be subject to audit at any time following ~~the~~ filing of the Claim, whether or not the Claim is part of a lawsuit.

~~8.12.2~~8.13.2 The audit may be performed by employees of the Contracting Authority or by a consultant engaged by the Contracting Authority.

~~8.12.3~~8.13.3 The audit may begin upon 10-days' notice to the DB or affected Subcontractor.

~~8.12.4~~8.13.4 The DB shall cooperate with the request.

~~8.12.5~~8.13.5 Failure of the DB 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 ~~the~~ portion of the Claim that could not be completely audited.

~~8.12.6~~8.13.6 The DB shall make available to the Contracting Authority all DB and Subcontractor documents related to the Claim including, without limitation, the following documents:

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~~8.12.6.1~~8.13.6.1 daily time sheets and superintendent's daily reports;

~~8.12.6.2~~8.13.6.2 union agreements, if any, and employer agreements;

~~8.12.6.3~~8.13.6.3 insurance, welfare, fringes, and benefits records;

~~8.12.6.4~~8.13.6.4 payroll register;

~~8.12.6.5~~8.13.6.5 earnings records;

~~8.12.6.6~~8.13.6.6 payroll tax returns;

~~8.12.6.7~~8.13.6.7 material invoices, purchase orders, ~~Subcontractor contracts~~Subcontracts, and all material and supply acquisition contracts;

~~8.12.6.8~~8.13.6.8 material cost distribution worksheets;

~~8.12.6.9~~8.13.6.9 equipment records (list of DB equipment, rates, etc.);

~~8.12.6.10~~8.13.6.10 vendor rental agreements and Subcontractor invoices;

~~8.12.6.11~~8.13.6.11 Subcontractor payment certificates;

~~8.12.6.12~~8.13.6.12 canceled checks (payroll and vendors);

~~8.12.6.13~~8.13.6.13 complete and detailed ~~job~~ job-cost report;

~~8.12.6.14~~8.13.6.14 job payroll ledger;

~~8.12.6.15~~8.13.6.15 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;

~~8.12.6.16~~8.13.6.16 cash disbursements journal;

~~8.12.6.17~~8.13.6.17 financial statements for all years reflecting operations on the Project;

~~8.12.6.18~~8.13.6.18 income tax returns for all years reflecting operations on the Project;

~~8.12.6.19~~8.13.6.19 depreciation records on all equipment utilized whether the records are maintained by the DB, its accountant, or others;

~~8.12.6.20~~8.13.6.20 if a source other than depreciation records is used to develop costs for the DB's internal purposes in establishing the actual cost of owning and operating equipment, all other source documents;

~~8.12.6.21~~8.13.6.21 all documents ~~which~~that reflect the DB's actual profit and Overhead during the years the Project was being performed;

~~8.12.6.22~~8.13.6.22 all documents related to the preparation of the DB's GMP Proposal, including the final calculations on which the Contract Sum was based;

~~8.12.6.23~~8.13.6.23 all documents ~~which~~that relate to the Claim together with all documents ~~which~~that support the amount of damages as to the Claim;

~~8.12.6.24~~8.13.6.24 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 ~~which~~that establish the periods of time ~~periods~~, individuals involved, the hours and rate of pay for the individuals; and

~~8.12.6.25~~8.13.6.25 all other documents required by the Contracting Authority to reasonably review the Claim.

~~8.13~~8.14 False Certification of the Claim

~~8.13.1~~8.14.1 If the DB 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 DB from future State contracting opportunities as permitted by law.

~~8.14~~8.15 Performance and Payment

~~8.14.1~~8.15.1 The DB shall proceed with the Work during any dispute resolution process, unless otherwise agreed by the DB and ~~the~~ Contracting Authority in writing.

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~~8.14.2~~8.15.2 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 DB and ~~the~~ 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 Design-Services Fee, **(3)** Preconstruction Stage Personnel Costs, and **(4)** Preconstruction Stage Reimbursable Expenses. The Owner shall pay the Preconstruction Stage Compensation to the DB in exchange for the DB's proper, timely, and complete performance of the Preconstruction Stage Services.

9.1.1.2 If the DB engages a Consultant other than the AOR to perform a portion of the Preconstruction Stage Services, the Consultant's compensation is included in the DB'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 DB'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 Design-Services Fee.

9.1.3.1 The Owner will pay the Preconstruction Stage Design-Services Fee on an hourly basis according to the rates set forth in the AOR's Fee Schedule for Personnel attached to the Agreement but **(1)** for each Preconstruction Stage Phase/Task, not in excess of the portion of the Preconstruction Stage Design-Services Fee allocated to that Phase/Task in the Agreement and **(2)** not in excess of the total Preconstruction Stage Design-Services Fee stated in the Agreement.

9.1.3.2 If the AOR engages a Consultant to perform a portion of the AOR's Services, the Consultant's compensation is included in the Preconstruction Stage Design-Services Fee as described in the Contract. Unless the Owner and Contracting Authority agree otherwise in writing, **(1)** the Consultant's hourly rates shall be set forth in the AOR's Fee Schedule for Personnel attached to the Agreement and **(2)** the Consultant's compensation will be administered on the same basis as the Preconstruction Stage Design-Services Fee.

9.1.3.3 For the purpose of invoicing, the DB may group AOR employees within the same category to determine a blended rate.

9.1.3.4 Any Reimbursable Expenses incurred by the AOR shall be requested and paid under **Section 9.1.5**.

9.1.4 Preconstruction Stage Personnel Costs.

9.1.4.1 The Owner shall pay the DB'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.

9.1.4.2 For the purpose of invoicing, the DB may group employees within the same category of labor to determine a blended rate.

9.1.5 Preconstruction Stage Reimbursable Expenses.

9.1.5.1 The Owner shall pay the DB on account of the Preconstruction Stage Reimbursable Expenses the DB 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 DB is not entitled to any mark-up on Preconstruction Stage Reimbursable Expenses.

9.1.5.2 Notwithstanding the Preconstruction Stage Reimbursable Expenses Schedule attached to the Agreement, the DB shall obtain the Contracting Authority's written approval before purchasing any tangible property where the DB

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intends to seek reimbursement of the purchase price from the Owner as a Reimbursable Expense. The DB shall maintain a detailed inventory of all such tangible property.

9.1.6 Allocation of Preconstruction Stage Design-Services Fee, Preconstruction Stage Personnel Costs and Preconstruction Stage Reimbursable Expenses.

9.1.6.1 The Owner, Contracting Authority, and DB will agree upon the allocation of Preconstruction Stage Design-Services Fee, Preconstruction Stage Personnel Costs, and Preconstruction Stage Reimbursable Expenses through the Preconstruction Stages, and the DB shall prepare and maintain the Staffing Plan to reflect those agreed-upon allocations.

9.1.6.2 At the DB's request, the Contracting Authority and the Owner may agree in writing to reallocate costs between the Preconstruction Stage Design-Services Fee cap, ~~the~~ Preconstruction Stage Personnel Costs cap, and ~~the~~ Preconstruction Stage Reimbursable Expenses cap provided that the sum of the Preconstruction Stage Design-Services Fee cap, the Preconstruction Stage Personnel Costs cap, and ~~the~~ Preconstruction Stage Reimbursable Expenses cap does not change.

9.1.7 Preconstruction Compensation Increases.

9.1.7.1 Extension of Project Time. If the DB 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** 5.2.4.1~~5.2.3.1~~, that the Preconstruction Services are reasonably expected to be completed more than 30 days after that date through no fault of the DB, the DB's compensation caps for Preconstruction Stage Design-Services Fee, 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, ~~the~~ Contracting Authority, and ~~the~~ DB. If as a result of that negotiation, the Owner agrees to pay the DB additional compensation, the Contract shall be amended ~~in writing~~though a Preconstruction Services Amendment to reflect that agreement before the DB renders any services made necessary because of the extension unless the Owner and Contracting Authority agree otherwise in writing.

9.1.7.2 Change in Project Scope or Budget. The Owner, Contracting Authority, and DB will negotiate a mutually satisfactory adjustment of the DB's caps for Preconstruction Stage Compensation if, through no fault of the DB, 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 DB additional compensation, the Contract shall be amended ~~in writing~~though a Preconstruction Services Amendment to reflect that agreement before the DB renders any services made necessary because the change in the Approved Program of Requirements or Construction Budget.

~~**9.1.7.3** If the Project is administered using OAKS CI, the Contracting Authority, the Owner, and the DB shall amend the Contract using the "Change Order" business process.~~

9.1.8 DB Preconstruction Invoices.

9.1.8.1 All of the DB'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 Stage Design-Services Fee, Preconstruction Fee, Preconstruction Stage Personnel Costs, and Preconstruction Stage Reimbursable Expenses included in the total invoiced amount;
- **.3** identify the DB's, AOR's, or their 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.

9.1.8.2 The DB shall submit its invoices for Preconstruction Services to the Contracting Authority, which will review and forward them to the Owner.

~~**9.1.8.2**~~**9.1.8.3** Payments for Preconstruction Services shall not be subject to retainage.

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9.1.9 Preconstruction Payment Timing.

9.1.9.1 The Owner shall pay the DB on a monthly basis within 30 days after the Contracting Authority's receipt of the DB's invoice unless the Contracting Authority disputes the invoice amount or exercises its rights under **Section 9.1.10**.

.1 If the Contracting Authority disputes the invoice amount or chooses to exercise its rights under **Section 9.1.10**, **(1)** the Contracting Authority shall give the DB written notice within 14 days after the Contracting Authority's receipt of the DB's invoice, and **(2)** the Owner shall timely pay all undisputed amounts or amounts not subject to **Section 9.1.10** (as appropriate).

.2 If the DB takes exception to the withholding of payment under **Section 9.1.10** the DB shall initiate and prosecute a Claim under **Article 8** and continue to perform the Contract.

9.1.10 Right to Withhold Payment.

9.1.10.1 The Contracting Authority may decline to approve any DB invoice or part thereof, or nullify any previous DB 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 DB;

.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.

9.1.10.2 If the DB remedies the basis for withholding payment under **Section 9.1.10.1** to the Contracting Authority's reasonable satisfaction, the Owner shall pay the amounts withheld.

9.2 Construction Stage Compensation

9.2.1 Establishing the Contract Sum—General Provisions.

9.2.1.1 In exchange for the DB's proper, timely, and complete performance of the Work in the Construction Stage, the Owner shall pay the Contract Sum to the DB except as described under **Sections 9.2.5.~~5~~6** and **9.2.5.~~6~~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 DB's Fee, plus the estimated Cost of the Work (including Allowances and Unit Price Work), plus the DB's Contingency, plus the Construction Stage Design-Services Fee.

~~.1~~9.2.2.2 The DB shall propose the amount of the Cost of the Work as a part of the proposed GMP Amendment.

~~.2~~.1 The portion of the Cost of the Work attributable to the DB's Construction Stage Personnel Costs~~,~~ shall not exceed but may be less than the cap on DB's Construction Stage Personnel Costs identified in the Agreement.

~~.3~~.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 DB in the proposed GMP Amendment, shall not exceed but may be less than the ~~percentage for the~~ General Conditions Costs cap identified in the Agreement.

~~9.2.2.2~~9.2.2.3 The DB shall propose the amount of the DB's Contingency as a part of the proposed GMP Amendment; provided, however, that the DB's Contingency, as a percentage of the Cost of the Work identified by the DB in the proposed GMP Amendment, shall not exceed but may be less than the percentage for the DB's Contingency identified in the Agreement.

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~~.1~~9.2.2.4 The DB shall propose the amount of the Construction Stage Design Services Fee as a part of the proposed GMP Amendment; provided, however, that the Construction Stage Design Services Fee, as a percentage of the sum of the Cost of the Work plus the DB's Contingency identified by the DB in the proposed GMP Amendment, shall not exceed the percentage for the Construction Stage Design Services Fee identified in the Agreement.

~~9.2.2.3~~9.2.2.5 The DB shall propose the amount of the DB's Fee as a part of the proposed GMP Amendment; provided, however, that the DB's Fee, as a percentage of the sum of the Cost of the Work plus the DB's Contingency plus the Construction Stage Design Services Fee, all as identified by the DB in the proposed GMP Amendment, shall not exceed the percentage for the DB's Fee identified in the Agreement.

9.2.3 DB's Fee.

9.2.3.1 After the parties enter into the GMP Amendment, the DB'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 9.2.10.1.1**), the DB may request payment of the DB's Fee on a percent-complete progress basis.

9.2.3.3 The DB shall account for the DB's Fee as a separate line item of the Contract Sum in all financial reports and like documents presented to the Owner and ~~the~~ Contracting Authority 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 DB may request payment of the General Conditions Costs on a percent-complete progress basis.

9.2.4.3 The DB 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 and ~~the~~ Contracting Authority during the Project.

9.2.4.4 Notwithstanding the General Conditions Costs Description attached to the Agreement, the DB shall obtain the Contracting Authority's written approval before purchasing any tangible property where the DB intends to pay for that tangible property with General Conditions Costs paid to the DB. The DB shall maintain a detailed inventory of all such tangible property.

9.2.5 DB's Contingency.

9.2.5.1 After the parties enter into the GMP Amendment and thereby establish the original balance of the DB's Contingency, the DB's Contingency will be further funded by the "buy-out savings," if any, realized as result of a DB's estimate of the cost of a particular Subcontract or DB 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 DB or a DB Affiliated Entity.

9.2.5.2 After the parties enter into the GMP Amendment and after the Date of Commencement:

.1 the DB may use the DB'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 DB'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 DB or a DB 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 DB would not be entitled to a Modification; and

.2 the Owner will pay the DB's Contingency to the DB on a cost-reimbursable basis on account of the DB's appropriate use of the DB's Contingency as described under **Section 9.2.5.2.1**.

.3 As between the Owner, Contracting Authority, and DB, the entire risk of the occurrence of the events described under **Section 9.2.5.2.1** is allocated to the DB. All costs described under **Section 9.2.5.2.1** shall be funded solely from the DB's Contingency or by the DB, and the DB shall have no claim against the Owner or Contracting Authority for those costs if the DB's Contingency is depleted.

9.2.5.3 The DB's use of the DB's Contingency on account of a Subcontractor's breach of its Subcontract is subject to the DB'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 DB shall return any recovered DB Contingency funds to the Owner.

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~~**9.2.5.3**~~**9.2.5.4** The DB shall account for the DB's Contingency as a separate line item of the Contract Sum in all financial reports and like documents presented to the Owner and ~~the~~ Contracting Authority during the Project.

~~**9.2.5.4**~~**9.2.5.5** Neither the DB nor ~~the~~ Owner will be entitled to adjustment of the DB's Contingency on account of a Modification or Claim except as described under **Sections 9.2.5.~~5~~6** and **9.2.5.~~6~~7**.

~~**9.2.5.5**~~**9.2.5.6** ~~The~~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 ~~Final Acceptance~~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~~ DB will meet to review the balance in the DB'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 DB's Contingency exceeds the original balance of the DB's Contingency as established through the GMP Amendment, plus **(2)** the amount of the DB's Contingency that the DB decides to release to the Owner at that time, plus **(3)** an associated reduction of the DB's Fee.

> **Example:** Assume that **(1)** the original balance of the DB's Contingency established through the GMP Amendment is $100,000, **(2)** the DB's Fee is established in the Agreement at 3 percent of the sum of the Cost of the Work plus the DB's Contingency plus the Construction Stage Design Services Fee, **(3)** the balance of the DB's Contingency as of the Contingency Review Date is $125,000, and **(4)** the DB has decided to reduce the DB's Contingency by an additional $15,000. **Step 1.** The amount that the balance in DB's Contingency exceeds the original balance of the DB's Contingency as established through the GMP Amendment is $25,000 [$125,000 - $100,000 = $25,000]. **Step 2.** The additional amount of the DB's Contingency that the DB decides to release to the Owner at that time is $15,000. **Step 3.** The associated reduction of the DB'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 **1.1**, no more than 30 days before final payment to the DB, 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 DB's Contingency as of the date on which the Shared-Savings Change Order is entered into and shall not be based upon any DB's Contingency previously released to the Owner as described under **Section 9.2.5.6**.

~~**.1**~~**.2** Notwithstanding **Sections 9.2.5.2.2** and **9.2.10.1**, in the DB's final Payment Request, the DB may request payment by lump sum of any portion of the DB's Contingency remaining in the Contract Sum after execution of that Shared-Savings Change Order.

9.2.6 Construction Stage Design Services Fee.

9.2.6.1 After the parties enter into the GMP Amendment, the Construction Stage Design Services Fee is subject to adjustment as provided elsewhere in the Contract.

9.2.6.2 After the parties enter into the GMP Amendment and after the Date of Commencement (except as provided under **Section 9.2.10.1.1**), the DB may request payment of the Construction Stage Design Services Fee on an hourly basis according to the rates set forth in the AOR's Fee Schedule attached to the Agreement but not in excess of the total Construction Stage Design-Services Fee stated in the GMP Amendment.

9.2.6.3 The DB shall account for the Construction Stage Design-Services Fee as a separate line item of the Contract Sum in all financial reports and like documents presented to the Owner and ~~the~~ Contracting Authority during the Project.

9.2.6.4 Before final payment, an appropriate Change Order shall be issued to ~~reflect~~reconcile actual amounts due to the DB on account of the Construction Stage Design Services Fee, and the Contract Sum shall be correspondingly adjusted.

9.2.7 Allowances.

9.2.7.1 The Contract Sum includes the Allowances (if any) identified in the GMP Amendment.

9.2.7.2 All Allowances include the cost to the DB (less any applicable trade discounts) of materials and equipment required by the Allowances to be delivered at the Site, and all applicable taxes.

9.2.7.3 ~~Except as explicitly set forth in the Contract, the~~The DB's Fee and ~~the DB's~~ 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 ~~and not in the Allowances.~~.

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9.2.7.4 Before final payment, an appropriate Change Order shall be issued to ~~reflect~~reconcile the Contract Sum so that it reflects actual amounts due to the DB on account of Work covered by Allowances~~, and the Contract Sum shall be correspondingly adjusted~~ including an associated adjustment on account of the DB's Fee.

9.2.8 Unit Prices.

9.2.8.1 The Contract Sum includes the Unit Price Work (if any) identified in the GMP Amendment.

9.2.8.2 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 DB's Fee on that Unit Price Work.

~~**9.2.8.1**~~**9.2.8.3** The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of ~~comparison of Bids and~~ determining an initial Contract Sum. The Contracting Authority will determine the actual quantities and classifications of Unit Price Work performed by DB.

~~**9.2.8.2** Except as explicitly set forth in the Contract, the DB's Fee on account of Unit Price Work is included in the Contract Sum and not in the Unit Price.~~

~~**9.2.8.3**~~**9.2.8.4** Before final payment, an appropriate Change Order shall be issued ~~to reflect~~as described under **Section 7.1.6** to reconcile the Contract Sum so that it reflects actual amounts due to the DB on account of Unit Price Work~~, and the Contract Sum shall be correspondingly adjusted~~ actually performed including an associated adjustment on account of the DB's Fee.

9.2.9 Schedule of Values.

9.2.9.1 ~~The~~Within 10 days after receipt of the Notice to Proceed, or other period as mutually agreed by the DB and Contracting Authority, the DB shall prepare the 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 DB shall clearly indicate on the Schedule of Values, the amount(s) allocated for each ~~certified~~ EDGE-certified Business ~~Enterprise~~ 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 DB and Contracting Authority, the DB 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 Contracting Authority.

9.2.9.2 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 DB 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 DB 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.

.8 Line items shall be included for each Allowance, DB's Contingency, DB's Fee, Construction Stage Personnel Costs, Construction Stage Design-Services Fee, Punch List Work, ~~Project~~ Record Document Submittals, delivery of attic stock, and specified ~~demonstrations~~demonstration and training.

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9.2.9.3 The Contracting Authority may return the Schedule of Values to the DB 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 Contracting Authority determines that it conforms to this **Section 9.2.9**.

9.2.9.4 No payment shall be made until the Contracting Authority has approved the DB's Schedule of Values.

9.2.9.5 If the Project is administered using ~~OAKS CI~~the State's web-based project management software, the DB shall submit its Schedule of Values, using the "Contract Schedule of Values" business process.

9.2.10 DB Payment Request.

9.2.10.1 After the parties enter into the GMP Amendment and after the Date of Commencement, the DB may request payment of the Contract Sum. The Owner will pay the Contract Sum (not including the DB's Contingency or the Construction Stage Design Services Fee) to the DB on a percent-complete progress basis. The Owner will pay the DB's Contingency portion of the Contract Sum to the DB on a cost-reimbursable basis as described under **Section** ~~9.2.5.2.2.~~**9.2.5.2.2**. The Owner will pay the Construction Stage Design Services Fee on an hourly basis as described under **Section 9.2.6**.

.1 Notwithstanding **Section 9.2.10.1**, the DB may request payment of a portion of the Contract Sum on account of the DB's procurement of long-lead-time items before the Date of Commencement.

.2 The Contracting Authority and Owner may audit DB Payment Requests as described under **Section 7.9**.

9.2.10.2 The DB may submit a DB Payment Request to the Contracting Authority 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 DB may submit DB Payment Requests twice a month. The DB shall base each DB Payment Request on the Schedule of Values current as of the date ~~on which~~that the DB submits the DB Payment Request.

.1 The DB shall support each DB Payment Request with documentation substantiating the DB's right to payment. The DB shall supply additional documentation as the Contracting Authority may request in connection with each payment to the DB.

.2 The DB shall support each use of the DB Contingency in sufficient detail to enable the Contracting Authority and ~~the~~ 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 DB shall attach certified payroll reports for the relevant period to 1 copy of each DB Payment Request, see **Document 00 73 43 - ~~"~~Prevailing Wage Requirements~~."~~**.

.5 The DB may list on the DB Payment Request any Change Orders approved and performed prior to submission of the DB Payment Request.

.6 The DB shall submit its ~~application for payment~~DB Payment Request using the DB 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.

~~**.1**~~ If the Project is not administered using ~~OAKS CI~~the State's web-based project management software, the DB shall submit 1 draft copy of its DB Payment Request ("Pencil Copy") to the Contracting Authority not less than 1 week prior to submitting multiple copies of its DB Payment Request.

~~**.2**~~ The Contracting Authority shall review the Pencil Copy and provide comments to the DB within 3 days of receiving it.

.7 The DB shall incorporate the Contracting Authority's comments into its DB Payment Request prior to submitting multiple copies for payment.

.8 The DB shall clearly indicate on the DB Payment Request, the amount(s) requested for each ~~certified~~ EDGE-certified Business ~~Enterprise~~ used in the performance of the Contract. The amount(s) shall indicate labor and materials, as appropriate.

.9 The DB shall submit an electronic copy of the DB Payment Request to the Contracting Authority with its paper copies of the DB Payment Request for collection and reporting of information used for contract compliance evaluation and statistical purposes. The DB may issue the copy in any electronic media acceptable to the Contracting Authority.

9.2.10.3 Payments, except for lump sum items, in Unit Price Contracts shall be made to the DB only for the authorized actual quantities of Work performed or materials furnished in accordance with the Contract Documents.

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9.2.10.4 Subject to **Section 9.2.14**, the Owner shall pay an approved DB Payment Request within 30 days from the date the Contracting Authority recommends acceptance of the DB Payment Request.

.1 Payments due and not paid to the DB, through no fault of the DB, within the 30 day period shall, from the date payment is due, bear simple interest at the applicable statutory rate.

9.2.10.5 If the Project is administered using ~~OAKS CI~~the State's web-based project management software, the DB shall submit its DB Payment Request, using the "Contractor Pay Request" (Agency/Higher Education) or "Applications for Payment" (School Facilities) business process.

9.2.11 Labor Payments.

9.2.11.1 Partial payments to the DB 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 DB Payment Request that shows the Work is 50 percent complete~~, as evidenced by payments in the amount of at least 50 percent of the original Contract Sum~~.

9.2.11.2 After the Work is 50 percent complete, as evidenced by payments ~~in the amount~~ of at least 50 percent of the ~~original~~ Contract Sum including approved Change Orders to ~~the DB~~date, no additional funds shall be retained from payments for labor.

9.2.12 Material Payments.

9.2.12.1 The Owner shall pay the DB at the rate of 100 percent of the scheduled value for materials incorporated into the Project.

9.2.12.2 The Owner shall pay the DB 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 Contracting Authority, provided the DB provides the following information with the DB 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 DB and signed by the Contracting Authority 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 DB shall directly reimburse the Contracting Authority 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.

9.2.12.3 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 DB for credit of an amount proportionate to the value of the extra materials.

9.2.13 Retainage.

9.2.13.1 Payments for Construction Stage Personnel Costs, Construction Stage Design Services Fee, and DB's Fee shall not be subject to retainage.

~~**9.2.13.1**~~**9.2.13.2** If the total Contract Sum is $15,000 or more, when the Contract is 50 percent complete, ~~as evidenced by payments in the amount of at least 50 percent of the Contract Sum to the DB,~~ all funds retained for ~~the~~ faithful performance of the Work, in accordance with **Section 9.2.11.1**, 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 DB, ~~the~~ Contracting Authority, and ~~the~~ applicable bank.

~~**9.2.13.2**~~**9.2.13.3** When the ~~major portion~~DB has achieved Substantial Completion of ~~the~~all Work ~~is occupied or in use~~, and there is no other reason to retain funds~~, including, but not limited to, compliance with Section 6.26.2;~~; upon request of the DB, the funds retained in connection with that Work shall be released from escrow and paid to the DB, 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 6.24.2**.

~~**.1** Funds in the escrow account not previously paid shall be authorized for release to the DB within 30 days of the Contracting Authority's approval of a final DB Payment Request and Payment Release Affidavit furnished by the DB, and execution of the Certification of Contract Completion by the Contracting Authority.~~

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~~9.2.13.3~~9.2.13.4 Upon consent by the DB'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 DB's Surety remains responsible for all damages that may be caused due to default by the DB, 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.

9.2.14 Payments Withheld.

9.2.14.1 The Contracting Authority may decline to approve any DB Payment Request or part thereof, or nullify any previous DB 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 DB;

.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 DB's proposed lower-tier Subcontractors in accordance with **Section 4.6.2**;

~~.7~~**.8** failure to timely approve a Construction Progress Schedule in accordance with **Section 6.5**;

~~.8~~**.9** failure to carry out the Work in accordance with the Contract Documents; or

~~.9~~**.10** that which is permitted under other provisions of the Contract Documents.

9.2.14.2 If the DB remedies the basis for withholding payment under **Section 9.2.14.1** to the Contracting Authority's satisfaction, the Owner shall pay the amounts withheld.

9.2.15 Final DB Payment Request.

9.2.15.1 The DB, as a condition precedent to ~~execution of the Certification of~~ Contract Completion and ~~to~~ final payment, shall complete all requirements of the Contract Documents.

.1 The DB and each of its Subcontractors, regardless of tier, shall execute a Payment Release Affidavit to certify that the DB 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 DB (either as a Preconstruction Stage Reimbursable Expense or as a General Conditions Cost) the DB's cost to purchase tangible property, and that tangible property has any remaining useful life after ~~Final Acceptance~~Substantial Completion, the DB shall deliver that tangible property to the Owner before the Owner makes final payment to the DB.

9.2.15.2 The Owner shall pay the final DB Payment Request within 30 days from the date the Contracting Authority recommends acceptance of the final DB Payment Request.

.1 Payments due and not paid to the DB within the 30-day period shall bear interest from the date payment is due under the Contract Documents at the applicable statutory rate.

9.2.15.3 ~~The acceptance~~Acceptance of final payment by the DB 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 DB Payment Request.

9.2.15.4 If the Project is administered using ~~OAKS CI~~the State's web-based project management software, the DB shall submit its final DB Payment Request, using the "Contractor Pay Request" (Agency/Higher Education) or "Applications for Payment" (School Facilities) business process.

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ARTICLE 10 - BONDS, INSURANCE, AND INDEMNIFICATION

10.1 Performance and Payment Bonds

10.1.1 Before signing the Agreement, the DB shall provide the Performance Bond and ~~the~~ Payment Bond ~~as~~ 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.

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 DB 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 DB provides the Bonds under **Section 10.1.1**, the DB 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 DB 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 DB 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 DB increases the penal sums of the Bonds under **Section 10.1.3** or **Section 10.1.4**, the DB 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 DB 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 DB shall provide that notice.

10.1.7 For the purposes of determining the penal sum of the Bonds under this **Section 10.1** only, the Preconstruction Stage Compensation and the Contract Sum do not include the Design Services Fee.

10.2 DB's General Insurance Requirements

10.2.1 Throughout the performance of the Work or longer as may be described below, the DB 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 DB.

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 DB 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 ~~which~~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 the~~ and DB 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 DB shall deliver to the Contracting Authority certificates evidencing that the required insurance is in force.

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10.2.3 With the exception of government-controlled workers compensation coverage:

10.2.3.1 the DB 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 ~~if~~ the ~~certificate(s) of insurance is not on the ACORD 25 (2009/09 or more recent) form, it (1)~~ policies shall ~~provide or~~ be endorsed to ~~provide that coverage will not be cancelled or not renewed until~~ require the DB's insurance carrier to **(1)** provide at least 30-days' ~~prior~~ written notice ~~(10-day notice for nonpayment of premium) has been given to~~ to the Contracting Authority~~, and (2) shall have the words "endeavor to"~~ (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 ~~"but failure to do so shall impose no obligation or liability of any kind upon insurer, its agents or representatives" and any like provisions crossed out or deleted; and~~

10.2.3.3 within 30 days of the Contracting Authority's request, the DB shall submit insurance-company certified copies of the policies, the policy endorsements, loss-run reports, or all three~~both~~.

10.2.4 The DB shall pay all deductibles, or self-insured retentions, or both contained in the DB'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 DB may use to comply with any insurance requirement.

10.2.5 The DB 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 DB's proportionate share will derive from the percentage of the associated claim or loss attributable to the alleged or actual negligence of the DB ~~or~~, a Subcontractor~~.~~, or a Consultant.

10.2.6 The Contracting Authority and Owner do not represent that required coverage or limits are adequate to protect the DB.

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 DB's obligation to maintain the required insurance.

10.2.8 The Contracting Authority may terminate the Contract for cause on account of the DB's failure to maintain ~~the~~ required insurance.

10.3 DB's Minimum Coverage Requirements

10.3.1 Workers Compensation. The DB shall maintain workers compensation coverage meeting the requirements of Applicable Law.

10.3.2 Employers Liability Coverage. The DB 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 DB shall maintain commercial general liability ("CGL") coverage ~~which~~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 DB shall include the State, ~~the~~ Contracting Authority, ~~the~~ Owner, and ~~the~~ Criteria A/E as additional insureds under the CGL policy using ISO endorsement CG 20 10 ~~11 85~~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 ~~which~~that cover the additional insured(s).

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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 DB shall maintain the CGL insurance in effect for no less than 5 years after the earlier of the termination the Contract or ~~Final Acceptance~~Substantial Completion of all Work.

10.3.4 Business Automobile Liability. The DB 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 DB shall include the State, ~~the~~ Contracting Authority, ~~the~~ Owner, and ~~the~~ Criteria A/E as additional insureds under the BA policy.

~~**10.3.5**~~ Umbrella/Excess Liability.

~~**10.3.5.1**~~**10.3.5** The DB may employ an umbrella/excess liability policy to achieve the above-required minimum coverage.

~~**10.3.5.2**~~**10.3.5.1** The DB 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;
- **.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.

~~**10.3.5.3**~~**10.3.5.2** The DB 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 DB 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,

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errors and/or omissions of the DB for damages (including from mold) sustained by the ~~Contracting Authority~~Owner by reason of the DB's performance of the Work.

10.3.6.1 The CPL policy shall have an effective date, which is on or before the date ~~on which~~that the DB 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 DB shall advise the Contracting Authority in writing of any actual or alleged claims ~~which~~that may erode the CPL policy's limits.

10.3.6.3 The DB shall maintain the CPL insurance in effect for no less than 5 years after the earlier of the termination the Contract or ~~Final Acceptance~~Substantial Completion of all Work.

10.3.7 Professional Liability—DB and AOR. The DB and AOR shall each separately maintain professional liability insurance without design-build exclusions with limits not less than as identified in the following table:

Contract Sum	Each Claim	Annual Aggregate
Up to $~~10~~25,000,000	$1,000,000	$2,000,000
From $~~10,000,000.01 to $~~25,000,000 .01 to $50,000,000	$~~3~~2,000,000	$~~3~~4,000,000
From $~~25,000,000.01 to $~~50,000,000.01 to $100,000,000	$5,000,000	$5,000,000
More than $~~50~~100,000,000	$10,000,000	$10,000,000

10.3.7.1 -The professional liability policy shall have an effective date ~~which is~~ on or before the date ~~on which~~that the DB or AOR (as applicable) 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 DB shall advise the Contracting Authority in writing of any actual or alleged claims ~~which~~that may erode the professional liability policy's limits.

10.3.7.3 The DB and AOR shall each maintain the professional liability insurance in effect for no less than 5 years after the earlier of the termination the Contract or ~~Final Acceptance~~Substantial Completion of all Work.

10.3.7.4 If the DB is not authorized under Applicable Law to directly provide professional design services, the DB may satisfy the requirements of this **Section 10.3.7** by providing a contractor's professional liability insurance policy.

10.3.8 Professional Liability—Consultants. Each Consultant which provides professional design services shall maintain professional liability insurance without design-build exclusions with limits not less than as identified in the following table:

Contract Sum Applicable to Consultant's Scope of Services	Each Claim	Annual Aggregate
Up to $~~10~~25,000,000	$1,000,000	$2,000,000
From $~~10,000,000.01 to $~~25,000,000 .01 to $50,000,000	$~~3~~2,000,000	$~~3~~4,000,000
From $~~25,000,000.01 to $~~50,000,000.01 to $100,000,000	$5,000,000	$5,000,000
More than $~~50~~100,000,000	$10,000,000	$10,000,000

10.3.8.1 The professional liability policy shall have an effective date ~~which is~~ on or before the date ~~on which~~that the Consultant 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 DB shall advise the Contracting Authority in writing of any actual or alleged claims ~~which~~that may erode the professional liability policy's limits.

10.3.8.3 The Consultant shall maintain the professional liability insurance in effect for no less than 5 years after the earlier of the termination the Contract or ~~Final Acceptance~~Substantial Completion of all Work.

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10.3.8.4 If the Consultant is not authorized under Applicable Law to directly provide professional design services, the Consultant may satisfy the requirements of this **Section 10.3.8** by providing a contractor's professional liability insurance policy.

10.3.9 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 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 $10,000,000	$1,000,000	$2,000,000
~~From $10,000,000.01 to $25,000,000~~	~~$3,000,000~~	~~$3,000,000~~
~~From $25,000,000.01 to~~More than $50,000,000	$~~5~~2,000,000	$~~5~~4,000,000
~~More than $50,000,000~~	~~$10,000,000~~	~~$10,000,000~~

10.3.9.1 The professional liability policy shall have an effective date~~, which is~~ on or before the date ~~on which~~that the Subcontractor first started to provide any Project-related services.

10.3.9.2 Upon submission of the associated certificate of insurance and at each policy renewal, the DB shall advise the Contracting Authority in writing of any actual or alleged claims~~, which~~ that may erode the Subcontractor's professional liability policy's limits.

10.3.9.3 The Subcontractor shall maintain the professional liability insurance in effect for no less than 5 years after the earlier of the termination the Contract or ~~Final Acceptance~~Substantial Completion of all Work.

10.3.9.4 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~~**10.3.9** by providing a contractor's professional liability insurance policy.

10.3.10 Aviation Liability. If the DB or a Subcontractor uses aircraft, including helicopters, in ~~the~~ performance of the Work, the DB 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 DB or ~~a~~ Subcontractor.

10.3.11 Watercraft Liability. If the DB or a Subcontractor uses watercraft in ~~the~~ performance of the Work, the DB 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 DB or ~~a~~ Subcontractor.

10.3.12 Equipment Coverage. The Contracting Authority and Owner will not insure or be liable for damage to any DB or Subcontractor owned, leased, rented, or borrowed tools, equipment, or vehicles. The DB and Subcontractors are solely responsible for maintaining all insurance necessary to cover their tools, equipment, and vehicles.

10.3.13 Ocean Marine Insurance. If the shipment of equipment or materials for the Work will not be covered by the ~~Builder's Risk~~builder's risk insurance required under **Section 10.4**, the DB 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 ~~the~~ equipment/materials shipped to final destination point. The insurance shall include the following minimum requirements:

10.3.13.1 all-risk basis including war risk and all forms of terrorism;

10.3.13.2 coverage for general average and salvage charges;

10.3.13.3 "on deck" coverage;

10.3.13.4 warehouse-to-warehouse coverage;

10.3.13.5 coverage to include losses from strikes, riots, and civil commotions ("SR&CC coverage");

10.3.13.6 coverage to include losses from free of capture and seizure warranty ("FC&S Warranty coverage");

10.3.13.7 "Inchmaree" clause;

10.3.13.8 sue and labor;

10.3.13.9 "both-to-blame" coverage;

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10.3.13.10 free of particular average;

10.3.13.11 inland coverage including on-land shipment, port storage, and barge transit upon inland waterways; and

10.3.13.12 damage by saltwater and rainwater perils and cargo sweat.

10.3.14 Additional Property Insurance. For any demolition, blasting, excavating, tunneling, shoring, or similar operations, the DB 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 DB shall provide and maintain, during the progress of the Work and until ~~the execution of the final Certification of~~ Contract Completion ~~by the Contracting Authority, a Builder's Risk~~, a builder's risk insurance policy to cover all Work in the course of construction including false-work, temporary buildings and 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~~, which~~ 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 ~~the~~ 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 Criteria A/E and reasonable DB 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, ~~the~~ Contracting Authority, ~~the~~ DB, 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~~builder's risk policy shall specifically permit and allow for Partial Occupancy by the Owner prior to ~~execution of the final Certification of~~ Contract Completion ~~by the Contracting Authority~~ and coverage shall remain in effect until all punch list items are completed.

10.4.1.11 The DB's tools and equipment shall not be covered under the ~~Builder's Risk~~builder's risk policy. It is the DB's sole responsibility to maintain such coverage, which shall be included in its Overhead and not included as a separate item in the DB's Schedule of Values.

10.4.2 If the DB is involved solely in the installation of material and equipment and not in new building construction, the DB shall purchase and maintain a ~~Builder's Risk, Builder's Risk-Renovations, or Installation Floater~~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 DB 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.

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10.5.2 The Owner, ~~the~~ Contracting Authority, and ~~the~~ DB 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~~builder's risk insurance applicable to the Work.

10.6 Indemnification for Injury or Damage

10.6.1 Liability Other than Professional Liability. To the fullest extent permitted by Applicable Law, the DB 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 ~~contractors, engineers, architects,~~ 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 ~~(all of which may be direct, indirect, or consequential)~~ 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 DB or a person or entity for whom the DB may be liable;

10.6.1.2 infringement of patent rights or copyrights by the DB or a person or entity for whom the DB may be liable; or

10.6.1.3 a violation of Applicable Law but only to the extent attributable to the DB or a person or entity for whom the DB may be liable.

10.6.2 Professional Liability. To the fullest extent permitted by Applicable Law, the DB shall indemnify and hold harmless the State, Contracting Authority, Owner, and their respective officers, officials, and employees from and against all claims, costs, damages, losses, fines, penalties, and expenses (including but not limited to all fees and charges of attorneys and other professionals and all court, arbitration, or other dispute-resolution costs) arising out of or in connection with the failure of the DB or Person for whom the DB is legally liable to meet the standard of care described under **Section 1.12.1**.

~~**10.6.2**~~**10.6.3** The DB'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 ~~party~~Person indemnified under **Section 10.6**. But nothing in **Section 10.6** obligates the DB to indemnify any individual or entity from and against the consequences of that ~~individual's or entity's~~Person's own negligence.

~~**10.6.2.1**~~**10.6.3.1** The DB's obligations under **Section 10.6** shall not extend to the liability of the Criteria A/E, ~~the~~ Criteria 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 Criteria A/E, except to the extent covered by the DB's insurance.

~~**10.6.3**~~**10.6.4** In claims against ~~an Indemnified Party~~a Person indemnified under **Section 10.6** by any direct or indirect employee (or the survivor or personal representative of that employee) of the DB or a ~~person or entity~~Person for whom the DB 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.

~~**10.6.4**~~**10.6.5** The DB's indemnification obligation under **Section 10.6** will not be limited by any insurance policy provided or required in connection with the Project.

~~**10.6.5**~~**10.6.6** The DB'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.~~a Person indemnified under **Section 10.6**.

~~**10.6.6**~~**10.6.7** The DB's indemnification obligation under **Section 10.6** will survive termination of the Contract and ~~Final Acceptance of the Work.~~Contract Completion.

~~**10.6.7**~~**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 DB 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 DB shall immediately pay the difference to the Owner.

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~~10.7 Indemnification for Use of Electronic Files~~ *{deleted – refer to new Section 12.1.3}*

~~**10.7.1** To the fullest extent permitted by law, the DB shall indemnify and hold harmless the Indemnified Parties from and against all claims, damages, losses, and expenses (including, but not limited to, the fees and charges of contractors, engineers, architects, attorneys, and other professionals) arising out of, or related to the DB's, or any other Person's use of electronic files, including, but not limited to, CAD or BIM files (collectively "Electronic Files").~~

~~**10.7.1.1** These Electronic Files are provided solely for the DB's convenience and use related to the Project. Any use of the Electronic Files shall be at the sole risk of the DB.~~

~~**10.7.1.2** The Owner alone owns the Electronic Files and every right, title, and interest therein from the moment of creation.~~

~~**10.7.1.3** The Electronic Files are not products.~~

~~**10.7.1.4** The DB shall not use the Electronic Files for any purpose other than as a convenience for preparing Shop Drawings, Coordination Drawings, Record Drawings, or fabrication data for components, systems, and assemblies intended solely for use on the Project.~~

~~**10.7.1.5** The State and the Criteria A/E make no warranties, either express or implied, of the merchantability or fitness of the Electronic Files for any particular purpose.~~

~~**10.7.1.6** The DB understands and accepts that the Electronic Files may deteriorate or be inadvertently or otherwise modified without authorization of the State or the Criteria A/E.~~

~~**10.7.1.7** The State and the Criteria A/E make no representations as to compatibility, usability, or readability of the Electronic Files resulting from the use of software, application packages, operating systems, or computer hardware differing from those used to create the Electronic Files.~~

~~**10.7.1.8** In the event of a conflict between the Contract Documents and the Electronic Files, the Contract Documents shall control, take precedence over, and govern the Electronic Files.~~

~~**10.7.1.9** The DB alone is responsible to check, verify, and otherwise confirm the accuracy of data on the Electronic Files.~~

~~**10.7.1.10** The DB shall not make any claims and hereby waives, to the fullest extent permitted by law, any claims or causes of action of any nature against the Indemnified Parties, which may arise out of, or in connection with, the use of the Electronic Files.~~

ARTICLE 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 DB in writing to suspend, delay, or interrupt ~~the~~ performance of the Work in whole or in part for such period ~~of time~~ 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 DB 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 DB 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 DB submits a proper DB invoice or Payment Request, ~~but~~ subject to all other provisions of the Contract Documents, the DB 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 DB in writing to suspend, delay, or interrupt the performance of the Work in whole or in part for such period ~~of time~~ as the Contracting Authority may determine for any of the following reasons: **(1)** Defective Work; **(2)** the DB is causing undue

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risk of damage to any part of the Project or adjacent area; **(3)** the DB 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 ~~a~~ 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 DB to any adjustment of the Preconstruction Stage Compensation, Contract Sum, or Contract Times.

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 DB shall cease Work on the suspended activities and take all necessary or appropriate steps to limit disbursements and minimize respective costs. The DB 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 DB 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 terminate the Contract in whole or in part for the Owner's convenience and without cause, at any time upon written notice to the DB.

11.2.2 Upon receipt of the notice of termination for convenience, the DB 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 DB for services rendered before the date of termination in accordance with the Personnel Rate Schedule and the AOR's Fee 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 DB be entitled to Preconstruction Fee associated with services the DB 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 DB 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 DB may receive for them.

11.2.4.1 All materials, equipment, facilities, and supplies at the Site or stored off-site, for which the DB has received payment, shall become the property of the Owner.

11.2.4.2 The DB is entitled to a fair and reasonable profit for Work performed and reasonable expenses directly attributable to ~~the~~ termination of the Contract. In no event shall the DB be entitled to **(1)** DB'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 ~~Final Acceptance,~~Contract Completion, the DB shall not be entitled to any portion of the DB'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 DB then existing or which may thereafter accrue.

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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 DB's default, the DB shall be entitled to receive only such sums as it would be entitled to receive following the occurrence of an event of default as provided in **Section 11.3**.

11.3 Termination for Cause

11.3.1 The Contracting Authority may terminate all or a portion of the Contract if the DB 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;

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 DB and the DB'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 6.22.1** 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 6.22.1** will not prejudice the Contracting Authority's rights under **Section 11.3**.

11.3.3 If the DB 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 DB 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 DB's Surety may perform the Contract. If the DB'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 DB shall not be entitled to further payment.

11.3.5.1 If the Contract is terminated before~~after~~ 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 DB 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 DB 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 ~~Final Acceptance,~~Contract Completion, the DB shall not be entitled to any portion of the DB's Contingency through the Shared-Savings Change Order described at **Agreement Article 3**.

11.3.6 If the DB's Surety performs the Work, the provisions of the Contract Documents govern the Surety's performance, with the Surety in place of the DB 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 DB then existing or which may thereafter accrue. The Contracting Authority's

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retention or payment of funds due the DB shall not release the DB or the DB'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 DB Insolvency

11.4.1 Bankruptcy of DB.

11.4.1.1 If the DB files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it, the DB, the DB as the debtor-in-possession, or the trustee of the DB'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 failure to file and prosecute that motion within the time ~~frames~~limits provided by this **Section 11.4** shall constitute a material breach of the Contract as time is of the essence with respect to DB's performance of all terms of this Contract. The DB 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 DB makes a general assignment for the benefit of creditors or if a receiver is appointed for all or a substantial part of the DB's business or property, the Contracting Authority shall serve written notice on the DB and ~~the~~ DB's Surety stating that any failure of the DB 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 DB's Documents and Contract Documents

12.1.1 Ownership.

12.1.1.1 The Owner alone owns the DB's Documents and the Contract Documents and every right, title, and interest therein ~~from the moment of creation~~.

.1 The DB shall 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 DB's Documents and the Contract Documents.

12.1.1.2 The DB may retain copies, including reproducible copies, of the DB's Documents and the Contract Documents for information, reference, and performance of the Work.

12.1.1.3 The submission or distribution of the DB's Documents and 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 DB's Documents and the Contract Documents. Any unauthorized use of the DB's Documents and the Contract Documents shall be at the sole risk of the entity making the unauthorized use.

12.1.1.4 The DB shall provide Electronic Files (in native format) to Separate Consultants and Separate Contractors for their use in connection with the Project. The DB 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 DB.

12.1.2.2 The Contract Documents are complementary, and what is required by one is binding as if required by all.

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12.1.2.3 The DB 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 DB 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 DB 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.

12.1.3 Use of Electronic Files. ***{new Section – refer to deleted Section 10.7}***

12.1.3.1 The Owner, Contracting Authority, Criteria A/E, and DB 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, Criteria A/E, and DB 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, Criteria A/E, and DB 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, Criteria A/E, and DB 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 DB of its responsibility for the preparation, completeness, or accuracy of the DB'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 DB may exercise reasonable public relations and marketing efforts related to the Project, provided the DB properly identifies the Owner and ~~the~~ Contracting Authority, and their participation in the Project.

12.2.3 Professional Photography. If the DB commissions photography of the completed Project, the DB 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 ~~the~~ Contracting Authority with a reasonable quantity of

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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~~ Design Awards, Craft Awards, and Other Recognition.

~~12.2.4.1~~ If the DB submits the Project for design awards, craft awards, or other similar venues for recognition of the Project, the DB shall properly identify the Owner and ~~the~~ Contracting Authority, and their participation in the Project.

~~12.2.5~~12.2.4 In addition, if the Project receives any design award, craft award, or other recognition, the DB shall provide duplicate copies of the award plaque or other memento~~momento~~ 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 DB 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 DB, ~~the~~ Criteria A/E, ~~the~~ Contracting Authority, and ~~the~~ Owner are set forth throughout the Contract Documents and included under different titles, articles, and paragraphs for convenience.

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 the~~ or DB 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, ~~the~~ Contracting Authority, or ~~the~~ DB gives notice to one of the other 2, 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 DB shall immediately notify the Contracting Authority and ~~the~~ Owner by telephone.

12.6.5 The Contracting Authority, ~~the~~ Owner, or ~~the~~ DB 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.

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12.7 Taxes

12.7.1 Only those materials that ultimately become a part of the completed structure or improvement~~, which~~ 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 ~~time~~ 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;

12.8.4.7 Columbus Day – Second Monday in October;

12.8.4.8 ~~Veteran's~~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 DB 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 DB 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 DB 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 DB achieving Contract Completion within the associated Contract ~~Times~~Time.

12.9.1.2 The DB 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 DB 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.

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12.10 Successors and Assigns

12.10.1 The Contracting Authority and ~~the~~ DB 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 ~~the~~ DB each acknowledge that the Owner is an intended third-party beneficiary of this Contract.

12.10.3 The DB 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 Agreement. This Agreement, including the attached documents, and the Contract Documents represent the entire and integrated agreement between the Contracting Authority ~~and the~~ and DB 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 the provisions of the ~~RFQ or RFP~~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.

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 DB, 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 ~~the~~ DB.

12.15 No Waiver

12.15.1 The failure of the Contracting Authority or ~~the~~ DB 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 Rights and Remedies

12.16.1 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.

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12.17 Survival of Obligations

12.17.1 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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