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ARTICLE 1 - CONTRACTOR'S RESPONSIBILITIES

1.1 Nondiscrimination

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

1.1.1.1 As required under ORC Section 153.59, the Contractor 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 Contractor shall cooperate fully with the State's Equal Opportunity Coordinator ("EOC"), with any other official or agency of the state or federal government that seeks to eliminate unlawful employment discrimination, and with all other state and federal efforts to assure equal employment practices under the Contract.

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

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

1.1.2 Hiring Under State Public Improvement Contracts.

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

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

1.1.3 Affirmative Action.

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

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

1.3 Royalties and Patents

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

1.4 Assignment of Antitrust Claims

1.4.1 By signing the Agreement, the Contractor 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 Contractor 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 Contractors and Subcontractors shall comply with ORC Section 153.011 regarding the use of domestically produced steel products, and furnish the certifications required by **Section 6.21.8**. Copies of ORC Section 153.011 may be obtained from the Ohio Facilities Construction Commission.

1.6 Drug Free Safety Program Participation

1.6.1 Throughout the performance of the Work, the Contractor 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 Contractor shall obtain the Contracting Authority's approval, and shall also submit written confirmation of the Subcontractor's enrollment on the Subcontractor and Material Supplier Declaration form to the A/E.

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

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

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

1.7.2 All costs for the Contractor's use of the State's web-based project management software for the Project shall be included in the Contract Sum. If the Contractor's staff is unfamiliar with the proper use of such software, the Contractor shall provide its staff for training without additional compensation.

1.8 EDGE Participation and Reporting

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

1.8.1.1 If the Contractor is an EDGE-certified Business, the Contractor 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 Contract Sum.

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

1.8.2 The Contractor shall provide an EDGE Participation Report with each Contractor Payment Request.

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

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

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

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

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

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

1.8.4.1 Failure to timely submit EDGE Participation Reports may result in withholding payment in accordance with **Section 9.8.2**.

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

1.9 Owner Work Rules

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

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

1.11 Contractor's Standard of Care

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

1.12 Limit of Contractor's Responsibility

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

1.13 Sustainability Requirements

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

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

ARTICLE 2 - STATE'S RIGHTS AND RESPONSIBILITIES

2.1 Contracting Authority

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

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

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

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

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

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

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

2.2 Owner

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

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

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

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

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

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

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

2.3 Approval of Owner, Contracting Authority, and State

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

2.4 Neutral Facilitation

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

2.4.1.1 For example, a Neutral Facilitator may facilitate the organizational meeting, partnering session(s), and efforts to resolve disputes throughout the Project.

2.4.2 The Contracting Authority, Owner, and Contractor 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 Contractor of any of their respective rights or obligations under the Contract.

2.5 Contractor Performance Evaluation

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

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

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

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

ARTICLE 3 - A/E'S RESPONSIBILITIES

3.1 The A/E's Contract Administration Duties

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

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

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

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

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

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

3.2 Site Visits and Observation

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

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

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

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

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

3.3 Testing and Inspection Services

3.3.1 Unless otherwise specified in the Contract Documents, the A/E shall apply for, secure, and pay for the costs of structural testing and special inspections under Chapter 17 of the Ohio Building Code; testing including geotechnical analysis, environmental testing and analysis, concrete, masonry, structural steel, reinforcing steel, welding, bolts, steel connections, HVAC systems and controls, plumbing and piping, air and water balancing and testing, or other testing; or approval required by Applicable Law.

3.4 Approval of A/E

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

3.5 Limitation of A/E's Authority

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

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

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

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

3.5.1.4 assume any responsibilities of the Contractor or Subcontractors.

ARTICLE 4 - SUBCONTRACTORS

4.1 Evaluation and Approval

4.1.1 Within 10 days after the Notice to Proceed, or other period as mutually agreed by the Contractor and Contracting Authority, the Contractor shall submit to the A/E a **Subcontractor and Material Supplier Declaration** form through which the Contractor identifies its Subcontractors.

4.1.2 The Contractor's failure to timely submit the information regarding a proposed Subcontractor may result in withholding payment in accordance with **Section 9.8**.

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

4.1.4 If the Contracting Authority rejects any proposed Subcontractor, the Contractor shall propose a replacement Subcontractor with no adjustment of the Contract Sum. The proposed replacement Subcontractor will be evaluated as described above.

4.1.5 No less than 10 days before Work is to be performed by the Subcontractor, or within a shorter period as mutually agreed by the Contractor and Contracting Authority, the Contractor shall submit to the Contracting Authority a complete copy of the executed Subcontract between the Contractor and Subcontractor.

4.1.6 If the Project is administered using the State's web-based project management software, the Contractor shall identify its proposed Subcontractors and submit its Subcontracts through the "Subcontractor Supplier Declaration" business process.

4.2 Replacement of Subcontractors

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

4.3 Contractor's Responsibility

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

4.3.1.1 The Contractor is fully responsible for any delay, interference, disruption, or hindrance attributable to the Contractor's Subcontractors.

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

4.3.1.3 The Contractor 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.

4.3.2 The Contractor will not be relieved of its full responsibility for Subcontractors and their performance of the Work by **(1)** the participation of the Owner, Contracting Authority, and A/E in the processes described under this **Article 4** or other related provisions of the Contract Documents or **(2)** the Contracting Authority's rejection of a Subcontractor or failure to reject a Subcontractor under **Section 4.1**.

4.4 Contingent Assignment of Subcontracts

4.4.1 The Contractor 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 the Contracting Authority accepts by notifying the Contractor and applicable Subcontractor in writing. The Contracting Authority may re-assign accepted agreements.

4.5 Prompt Payment

4.5.1 The Contractor 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 4.5**.

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

4.5.2 The Contractor may reduce the amount paid to a Subcontractor pursuant to **Section 4.5.1** at a rate equal to the percentage retained from the Contractor and may withhold amounts necessary to **(1)** resolve disputed liens or claims involving the Work of the Subcontractor or **(2)** account for the failure of the Subcontractor to perform its obligations under its agreement with the Contractor.

4.5.2.1 Labor Payments.

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

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

4.5.2.2 Material Payments.

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

.2 The Contractor shall pay the Subcontractor at the rate of 92 percent of the invoice cost, not to exceed the scheduled value in a Unit Price or lump sum Subcontract, for materials delivered to the Site, or other off-site storage location approved by the A/E, provided the Subcontractor provides the information required by **Sections 9.6.2.1** and **9.6.2.2** with its request for payment.

4.5.3 If the Contractor fails to comply with this **Section 4.5**, the Contractor 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.

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

4.5.5 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.

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

ARTICLE 5 - PRECONSTRUCTION ACTIVITIES

5.1 Partnering

5.1.1 The formation of a cohesive, mutually beneficial partnering arrangement among the Contractor, all Separate Contractors, Contracting Authority, A/E, and Owner will accomplish the construction of the Project most effectively and efficiently. This arrangement draws on their collective strengths, skills, and knowledge to achieve a Project of the intended quality, within budget, and on schedule. To achieve that objective, participation in a partnering session is required for the following key stakeholders:

5.1.1.1 Contracting Authority: Project Manager

5.1.1.2 Owner: Primary representative

5.1.1.3 A/E: Principal-in-charge, project manager, field representative, major consultants

5.1.1.4 Contractor: Principal-in-charge, project manager, and superintendent

5.1.1.5 Separate Contractors: Principal-in-charge, project manager, and superintendent

5.1.1.6 Major Subcontractors (e.g., masonry, fire protection): Principal-in-charge, project manager or superintendent

5.1.1.7 Schedule Consultant, if applicable

5.1.1.8 CxA, if applicable

5.1.2 The purpose of the partnering arrangement is to build cooperative relationships between the Project's key stakeholders, avoid or minimize disputes, and nurture a more collaborative ethic characterized by trust, cooperation and teamwork. This arrangement is intended to produce a voluntary, non-binding, but formally structured agreement among the Project's key stakeholders, leading to an attitude that fosters risk sharing.

5.1.3 To create and implement the partnering arrangement, the Project's key stakeholders shall meet prior to the construction of the Project for developing a partnering agreement. The agreement should be comprehensive and focus on all issues necessary for successful completion of the Project, and shall identify common goals and objectives, develop a problem solution process, an Alternative Dispute Resolution ("ADR") strategy in accordance with **Section 8.13**, and an implementation plan for the partnering arrangement.

5.1.4 Formal contractual relations, responsibilities, and liabilities are not affected by any partnering arrangement. The cost associated with establishing this partnership, including but not limited to engaging the services of a Neutral Facilitator, shall be included in an allowance in the Lead Contractor's bid. The Contractor shall include in its base bid the resources necessary to participate in the partnering session.

5.1.5 Partnering services may extend over the entire period of performance of the Contract and may include intervention or project realignment services to be utilized if serious disputes arise. The Project's key stakeholders should agree, during the initial partnering session, to the types of situations and circumstances in which intervention or realignment services shall be utilized.

5.2 Building and Trade Permits and Licenses

5.2.1 Plan Approval.

5.2.1.1 The A/E shall secure the required structural, plumbing, HVAC, and electrical plan approvals.

5.2.1.2 The Contractor shall schedule and attend all intermediate and final inspections required for any permit applicable to its Work. The Lead Contractor shall schedule the State Fire Marshal or local fire authority for the life safety inspection for occupancy permits. The Contractor shall give the A/E, Contracting Authority, and Owner reasonable notice of the dates and times arranged for inspections.

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

5.2.2 Trade Permits and Licenses.

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

5.2.3 Local Permits.

5.2.3.1 The Contractor 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 Contractor shall give the A/E, Contracting Authority, and Owner reasonable notice of the date arranged for inspections.

5.2.4 National Pollutant Discharge Elimination System ("NPDES") Storm Water General Permit.

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

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

5.2.4.3 The A/E shall prepare and process the required Notice of Termination ("NOT") prior to Contract Completion.

ARTICLE 6 - CONSTRUCTION AND CLOSEOUT

6.1 Commencement of Work on the Site

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

6.2 Responsibility of the Contractor

6.2.1 The Contractor shall complete portions of the Work in the sequence and time in the Construction Progress Schedule.

6.2.2 The Contractor shall supervise the Work in coordination with the Lead Contractor.

6.2.3 The Contractor must perform the Work so as not to interfere with, disturb, hinder, or delay the services of Separate Consultants or the work of Separate Contractors. The Contractor must cooperate and coordinate fully with all Separate Consultants and Separate Contractors and must freely share all of the Contractor'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.

6.2.4 The Contractor must afford every Separate Consultant and Separate Contractor proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of their services and work, and shall properly connect and coordinate the Work with the Separate Contractors' work.

6.2.5 If the Contractor 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 Contractor is responsible for that damage, injury, or expense.

6.2.6 The intent of **Sections 6.2.3** through **6.2.5** 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 Contractor's obligations under the Contract.

6.2.7 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 Contractor must inspect that other work and appropriate instruments of service, and promptly report to the Contracting Authority in writing any defects or deficiencies in that other work or services that render it unavailable or unsuitable for the proper execution and results of the Work. The Contractor's failure so to report will constitute an acceptance of the other work and services as fit and proper for integration with the Contractor's Work except for defects and deficiencies in the other work or services that were not reasonably discoverable at the time of the Contractor's inspection.

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

6.2.9 The Contractor shall coordinate the Work with the activities and responsibilities of the A/E, Lead Contractor, Owner, and Contracting Authority to complete the Project in accordance with the Contract Documents.

6.2.10 In the event of default of the Contractor, the Contractor shall cooperate with the A/E, Contracting Authority, and Contractor's Surety to achieve the Substantial Completion date and Contract Completion.

6.3 Construction Procedures

6.3.1 The Contractor 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.

6.3.1.1 If the Contract Documents give instructions that affect construction means, methods, manners, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety of them and, except as stated below, shall be fully and solely responsible for the jobsite safety of the means, methods, manners, techniques, sequences, or procedures.

6.3.1.2 If the Contractor determines that the means, methods, manners, techniques, sequences, or procedures specified in the Contract Documents may not be safe, the Contractor shall give timely written notice to the A/E, Owner, and Contracting Authority. The Contractor shall not proceed with that portion of the Work without further written instructions from the A/E. Any modification of the Contract shall be in accordance with **Article 7**.

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

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

6.3.4 The Contractor shall comply with ORC Sections 3781.25 through 3781.32. In addition, before starting excavation or trenching, the Contractor 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 Contractor shall give notice at least 2 business days in advance of excavation to the owners of underground utilities registered with the Ohio Underground Utility Protection Services ("OUPS" at http://oups.org, phone 811 or 800-362-2764), and the owners of underground utilities shown on the Drawings and Specifications who are not registered members of OUPS. The owner of an underground utility is required within 48-hours' notice

to stake, mark, or otherwise designate the location of its utilities in the construction area together with its approximate depth. In the event that any underground utility owner fails to timely perform, the Contractor shall notify the A/E and contact the owner of the underground utility.

6.3.5 The Contractor 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 Contractor shall comply with all requirements and conditions of the NPDES general permit, including, but not limited to, implementing and maintaining the sedimentation and erosion control measures specified in the storm water pollution prevention plan prepared by the A/E pursuant to **Section 5.2.4**, 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.

6.3.7 The Contractor shall communicate with the Contracting Authority and Owner through the A/E.

6.4 Construction Supervision

6.4.1 Unless waived by the Contracting Authority in writing, the Contractor shall provide continuous supervision at the Site by a competent superintendent when any Work is being performed and the Contractor's superintendent shall not be involved with any work other than the Project.

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

6.4.3 The Contractor shall submit an outline of the qualifications and experience of the Contractor's proposed project manager and proposed superintendent, including references, to the Contracting Authority no less than 10 days of the Notice to Proceed. For all Subcontracts in excess of $200,000, and for all other Subcontracts on request from the Contracting Authority, the Contractor 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.

6.4.3.1 The Contracting Authority may reject the Contractor or Subcontractor's proposed project manager or proposed superintendent. If the Contracting Authority does not notify the Contractor 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 6.13.2** or any other provision relative to that project manager or superintendent.

6.4.3.2 If the Contracting Authority rejects the Contractor or Subcontractor's proposed project manager or proposed superintendent, the Contractor shall replace, or 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 Contractor 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 Contractor or Subcontractor subject to **Section 6.4.3** proposes to change its project manager or superintendent, the Contractor shall submit written justification to the Contracting Authority, along with the name and qualifications of the proposed replacement.

6.4.4.2 The procedure provided in **Section 6.4.3** shall be conducted to evaluate the Contractor or Subcontractor's (as applicable) proposed replacement project manager or superintendent.

6.5 Responsibility and Authority of the Lead Contractor

6.5.1 The Lead Contractor shall consult with the Owner to obtain full knowledge of the Owner's rules, regulations, or requirements affecting the Project. The Lead Contractor shall establish the Project's regular working hours, subject to approval by the A/E and the Owner.

6.5.2 The Lead Contractor shall coordinate the Work with the work of all Separate Contractors and with the activities and responsibilities of the Owner, A/E, and Contracting Authority to complete the Project in accordance with the Contract Documents.

6.5.2.1 The Lead Contractor's coordination activities shall not relieve the Contractor from the Contractor's duty to supervise and direct the Work in accordance with the Contract Documents.

6.5.3 If the Estimated Construction Cost for the Project is $500,000 or more, the Lead Contractor shall engage a Schedule Consultant, who shall be the Schedule Manager, to develop and keep current the Construction Progress Schedule in accordance with **Section 6.6**, and prepare and keep current a schedule of submittals that is coordinated with the Construction Progress Schedule, for the A/E and Contracting Authority's acceptance.

6.5.3.1 Within 3 days after issuance of the Notice to Proceed, the Lead Contractor shall submit to the Contracting Authority a list of 3 qualified and independent consulting firms that the Lead Contractor recommends to be the Schedule Manager. The Contracting Authority shall have the opportunity to object to any of the recommended firms to serve as the Schedule Manager. The Lead Contractor shall select and engage one of the firms with which the Contracting Authority has no objection.

6.5.3.2 If the Estimated Construction Cost for the Project is less than $500,000, the Lead Contractor shall be the Schedule Manager, develop and keep current the Construction Progress Schedule for the Project in accordance with **Section 6.6**, and prepare and keep current a schedule of submittals that is coordinated with the Construction Progress Schedule, for the A/E and Contracting Authority's acceptance.

6.5.4 The Construction 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.

6.5.5 The Lead Contractor 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 by the Contract Completion date.

6.5.6 The Lead Contractor shall monitor the progress of the Work for conformance with the Construction Progress Schedule and shall initiate revisions as required by **Section 6.6.14**.

6.5.7 In the event of default of the Contractor or any Separate Contractor, the Lead Contractor shall cooperate with the A/E, Contracting Authority, and defaulted contractor's Surety to achieve the Substantial Completion date and Contract Completion.

6.5.8 The Lead Contractor shall remove all snow and ice as may be required for reasonably safe access to the Project including, but not limited to, building entries, driveways, parking lots, and sidewalks.

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

6.6 Construction Progress Schedule

6.6.1 The Contractor and each Separate Contractor shall provide information to the Schedule Manager as the basis of the Construction Progress Schedule for the Project. If the Estimated Construction Cost is less than $500,000, the Schedule Manager may provide a bar chart schedule with a logical sequence of events and sufficient detail to properly anticipate and monitor construction progress. If the Estimated Construction Cost for the Project is $500,000 or more, the Schedule Manager shall prepare and maintain a resource-loaded Construction Progress Schedule that provides the following information:

6.6.1.1 a graphic presentation of the sequence of the Work for the Project in the media and format required for the Project;

6.6.1.2 identification of each stage of the Work and any Milestone dates;

6.6.1.3 identification of activities and durations for review and approval of Shop Drawings and other action submittals, fabrication and review of mock-up Work, product review and procurement, fabrication, shop inspection, and delivery, including, but not limited to, lead time, coordination drawing delivery, Substantial Completion, Punch List, Punch List Correction, Project close-out requirements, occupancy requirements, and Contract Completion;

6.6.1.4 identification of disruptions and shutdowns due to other operations;

6.6.1.5 identification of the critical path of the Work;

6.6.1.6 identification of the crew size and total resource hours for each activity in the schedule; and

6.6.1.7 the Contractor's signature and date indicating approval.

6.6.2 The Contractor shall develop the Construction Progress Schedule using commercially available, personal computer software acceptable to the Contracting Authority and shall submit all baseline and updated schedules to the A/E in the schedules' native electronic format.

6.6.2.1 Within 7 days of the date of the Notice to Proceed, the Schedule Manager shall distribute a preliminary construction schedule to the Contractor and each Separate Contractor.

6.6.2.2 Within 7 days after receiving the preliminary construction schedule, the Contractor shall submit to the Schedule Manager the the Contractor's comments on the preliminary construction schedule, the Contractor's proposed plan and schedule to coordinate with Separate Contractors, and all other information requested and required by the Schedule Manager to prepare the Construction Progress Schedule.

6.6.2.3 Within 7 days after receiving the Contractor's proposed plan and schedule, the Schedule Manager shall provide comments to the Contractor on the Contractor's proposed plan and schedule.

6.6.2.4 Within 7 days after receiving the Schedule Manager's comments, the Contractor shall revise its proposed plan and schedule to incorporate those comments and submit the revised plan and schedule to the Schedule Manager.

6.6.3 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.

6.6.4 The Project participants 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 Schedule Manager shall provide a clear graphics legend and other data including, but not limited to, Milestone dates, constraints, and other items required by the Project, A/E, Contracting Authority, and Owner. Each submission shall show the Contracting Authority's Project number and Project name, and provide a signature approval and date line for all Contractors.

6.6.5 The Schedule Manager shall provide in each schedule: Activity identification and description for each activity broken down to a maximum duration that is appropriate for the activity, responsibility of the Contractor, Contractor's resources and crew size for each activity, provide early start, early finish, late start, late finish dates. Each schedule shall show predecessor activities and successor activities for each activity, entry free float, total float, and percentage of completion, and identify the appropriate predecessors and successors for all related activities.

6.6.6 The Construction Progress Schedule shall show all submittal dates, review and approval durations for coordination drawings, Shop Drawings, other action submittals, and mock-up Work.

6.6.7 Within 30 days of the date of the Notice to Proceed, the Lead Contractor shall submit to the A/E a proposed Construction Progress Schedule approved by all Contractors. If the Project is $4 million total construction cost or more, the Lead Contractor may submit an intermediate Bar Chart Schedule for the first 120 days to the A/E within 30 days of the date of the Notice to Proceed; followed by the complete resource-loaded precedence or arrow diagram schedule within 90 days of the date of the Notice to Proceed.

6.6.7.1 The Lead Contractor shall submit the initial and all updates of the Construction Progress Schedule in graphic and tabular form to the A/E. With each monthly schedule update, the Schedule Manager shall include a list of all changes to the previously approved baseline schedule or monthly updated schedule.

6.6.7.2 After receiving the Construction Progress Schedule, the A/E shall review and submit a copy of the Construction Progress Schedule to the Contracting Authority and Owner for review and acceptance, or reject and return it to the Contractor with recommendations for revisions.

6.6.7.3 If the Project is administered using the State's web-based project management software, the Schedule Manager and all Contractors shall create, approve, and submit the initial and all updates of the Construction Progress Schedule to the A/E, Contracting Authority, and Owner through the "Schedule Approvals" business process.

6.6.8 The Construction Progress Schedule shall be managed using early start dates and early finish dates. The Contractor must exhaust existing float before claiming additional time for a Change Order, or show that it is not possible to use float to cover the time requirements of the Change Order.

6.6.9 The Contractor's failure to timely submit and properly maintain an approved Construction Progress Schedule may result in withholding payment in accordance with **Section 9.8**.

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

6.6.11 On a weekly basis, the Contractor shall prepare and submit to the Lead Contractor and A/E a written report describing:

6.6.11.1 activities begun or finished during the preceding week;

6.6.11.2 activities in progress and expected completion;

6.6.11.3 activities to be started or finished in the upcoming 2 weeks, including but not limited to, the Contractor's workforce size and total resource hours associated with those activities; and

6.6.11.4 other information requested by the Lead Contractor or the A/E.

6.6.12 The A/E shall attach the above information to the minutes of the weekly progress meetings.

6.6.13 The Lead Contractor shall provide monthly Progress Status Reports to the Contracting Authority, A/E, and Owner, which shall include recommendations for adjusting the Construction Progress Schedule to meet Milestone dates and the Substantial Completion date.

6.6.13.1 If it is apparent to the Lead Contractor or A/E that the Contractor may be unable to meet critical path activities, Milestone completion dates, or the Substantial Completion date, the Lead Contractor or A/E shall direct the applicable Contractor to submit within 3 days a recovery plan to avoid or minimize delay to the Project.

6.6.13.2 A recovery plan shall include, but is not limited to, adjustments to one or more of the following:

.1 workforce

.2 hours per shift

.3 shifts per workday

.4 workdays per week

.5 equipment

.6 activity logic

6.6.13.3 If the Contractor and all of the Separate Contractors approve the recovery plan, the Schedule Manager shall prepare a revised Construction Progress Schedule approved in accordance with **Section 6.6.7**. If the Contractor or any Separate Contractor does not approve the recovery plan, the Contractor shall submit within 3 days an alternate recovery plan to the A/E in writing for review and approval in accordance with **Section 6.6.7**.

6.6.14 The Schedule Manager shall update the Construction Progress Schedule on a monthly basis, or other interval approved by the Contracting Authority, in accordance with **Section 6.6.7**.

6.6.14.1 The updated Construction Progress Schedule approved by the Contractor shall serve as an affirmation that the Contractor can meet the requirements of the updated Construction Progress Schedule.

6.6.14.2 The Contractor 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 Contractor, and accepted by the A/E, shall serve as an affirmation that the Contractor agrees to and can meet the applicable requirements of the updated Construction Progress Schedule.

6.6.15 The Contractor's failure to timely submit an approved, updated Construction Progress Schedule may result in withholding payment in accordance with **Section 9.8**.

6.7 Progress Meetings

6.7.1 The A/E shall schedule a weekly progress meeting for the Contractor, all Separate Contractors, 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.

6.7.2 The Contractor 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.

6.7.2.1 The A/E shall notify the Contractor and other Persons involved in the Project of the time and place of the progress meeting that shall thereafter be the same day and hour of the week for the duration of the Project, unless the A/E notifies the Contractor and other Persons involved in the Project of a different day and hour at least 2 days in advance.

6.7.2.2 The Contractor shall have any of its Subcontractors attend the progress meeting as determined advisable by the Contractor, or as requested by the A/E.

6.7.3 The A/E shall prepare a written report of each progress meeting and distribute the report to the Contracting Authority, Owner, and Contractor. The A/E shall not delegate the duty to prepare a written report of any progress meeting.

6.7.3.1 If any Person in attendance objects to anything in a report of a progress meeting, the Person shall notify the A/E, Contracting Authority, and any other affected Person in writing explaining the objection within 5 days.

6.7.3.2 The report of each progress meeting shall reflect any objection made to the report of the previous progress meeting and any response.

6.7.3.3 If the Project is administered using the State's web-based project management software, the Contractor shall receive written reports of progress meetings from the A/E through the "Meeting Minutes" business process, and issues identified during progress meetings that require resolution by one or more Project participants shall be documented through the "Action Items" business process.

6.8 Project Coordination

6.8.1 The Lead Contractor shall schedule and conduct a weekly coordination meeting for the Contractor and all Separate Contractors and appropriate Subcontractors ("Coordination Participants").

6.8.1.1 The purpose of the coordination meeting is to discuss the sequence of construction and its relationship with the approved Construction Progress Schedule; to establish the intended location of equipment, pipe, duct, conduit, and other components of the Project; and to coordinate the appropriate shared use of available construction space; especially interstitial spaces, chases and mechanical rooms; and construction storage space.

6.8.1.2 Each Coordination Participant shall be knowledgeable about the Project and the scope of its work. One individual from each Coordination Participant shall have authority to make decisions regarding the coordination process and drawings.

6.8.1.3 Each Coordination Participant shall come to the coordination meetings prepared to demonstrate and furnish documentation that it has anticipated the work of other Persons, and planned its installation. Each Coordination Participant shall coordinate its installation with the work of other Persons.

6.8.1.4 Each Coordination Participant shall utilize documentation and information provided by other Coordination Participants to verify that the utility requirements, physical size, and characteristics of planned equipment are compatible with related or connected equipment, existing or planned building components, and existing or planned utilities.

6.8.1.5 The Coordination Participants shall utilize the documentation and information provided by each of them in determining the actual placement and positioning of equipment and devices to avoid interference with the work of other Persons, building finishes, and architectural details.

6.8.1.6 The Coordination Participants shall utilize the documentation and information provided by each of them to coordinate space requirements and installation considerations to maximize accessibility to equipment and devices for purposes of maintenance, repairs, and replacement.

6.8.1.7 The Lead Contractor shall prepare a written report of each coordination meeting and distribute the report within 3 business days of the meeting to the A/E, Contracting Authority, Owner, Contractor, Separate Contractors, and other Coordination Participants. The Lead Contractor shall not delegate the duty to prepare a written report of any coordination meeting.

6.8.1.8 If the Project is administered using the State's web-based project management software, the Contractor shall receive written reports of progress meetings from the Lead Contractor through the "Meeting Minutes" business process, and issues identified during progress meetings that require resolution by one or more Coordination Participants shall be documented through the "Action Items" business process.

6.8.2 The contractor responsible for the permanent HVAC system ("HVAC Contractor") shall prepare drawings ("Preliminary Coordination Drawings") after the Coordination Participants **(1)** determine the sequence of the Project, **(2)** identify the areas requiring special attention ("Coordination Areas"), and **(3)** determine the need for a coordination drawing for any Coordination Area. The HVAC Contractor shall prepare the Preliminary Coordination Drawings with CAD or BIM software acceptable to the Contracting Authority. The Preliminary Coordination Drawings shall show the sheet metal work with plan and elevation dimensions, which specifically locate all HVAC ductwork, HVAC equipment, and HVAC piping for each Coordination Area based upon the information, discussion, and resulting consensus of the Coordination Participants during the coordination meetings.

6.8.2.1 The HVAC Contractor shall provide the Preliminary Coordination Drawings to all Coordination Participants. Each Coordination Participant shall use the Preliminary Coordination Drawings as a baseline to develop drawings of

its work within each applicable Coordination Area to specifically locate equipment, devices, piping, conduits, and other work as discussed and agreed at the coordination meetings.

6.8.2.2 Each Coordination Participant with work within a Coordination Area shall return its drawings to the HVAC Contractor marked to show the location of the Coordination Participant's equipment, devices, piping, conduits, and other work for the HVAC Contractor's preparation of detailed and final coordination drawings ("Coordination Drawings").

6.8.2.3 Any Coordination Participant with no work in any Coordination Area may return the applicable Preliminary Coordination Drawings to the HVAC Contractor with a statement on the drawings signed by an authorized representative of the Coordination Participant certifying that it has no work within that Coordination Area.

6.8.2.4 After the HVAC Contractor completes the Coordination Drawings, the HVAC Contractor shall forward a copy of the Coordination Drawings to the A/E, Contracting Authority, Owner, Contractor, Separate Contractors, and other Coordination Participants with work within the limits of a Coordination Area. The Contractor shall report discrepancies in the drawings, in writing, to the HVAC Contractor within 7 days after receiving the drawings.

6.8.2.5 The A/E shall review the Coordination Drawings to determine whether the Coordination Participants achieved the goals listed in **Section 6.8.2**. The A/E shall report any concerns, in writing, to the Coordination Participants within 14 days after receiving the drawings.

6.8.2.6 If the Project is administered using the State's web-based project management software, the Contractor shall submit the Coordination Drawings to the Lead Contractor, A/E, and CxA if applicable, through the "Submittals" business process.

6.8.3 If installed Work causes or contributes to interference with subsequent work of a Separate Contractor, the A/E shall determine the needed modifications to the installed Work to accommodate the subsequent work. The A/E's decision is final, subject to **Article 8**. The Contractor shall pay the cost of any such modifications.

6.9 Additional Tests and Inspections

6.9.1 If the A/E or the Contracting Authority determines that any portion of the Work requires special inspection, testing, or approval not otherwise required under the Contract Documents, the A/E shall order such inspection, testing, or approval.

6.9.1.1 If the special inspection, testing, or approval reveals Defective Work, the Contractor 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.

6.9.1.2 The Contracting Authority may deduct the costs described under **Section 6.9.1.1** from payments then or thereafter due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover those amounts, the Contractor shall immediately pay the amount of the insufficiency to the Owner.

6.9.1.3 If the special inspection, testing, or approval reveals that the Work complies with the Contract Documents, and the Contractor 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 Contractor may request a Change Order by giving written notice under **Section 7.3.2** within 7 days after the special inspection, testing, or approval.

6.9.2 If the Contractor 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 Contractor shall timely communicate such information to the A/E and Contracting Authority.

6.9.3 Except as described under **Section 6.9.1**, the Owner shall pay for any inspection, testing, or approval that did not become a requirement until after it awarded the Contract.

6.9.4 The Contractor shall coordinate with and give the A/E, Contracting Authority, and Owner reasonable notice of the anticipated dates of all inspections, testing, or approvals.

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

6.10 Review of Contract Documents and Field Conditions

6.10.1 Before starting each portion of the Work, the Contractor 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.

6.10.2 If the Contractor finds any perceived ambiguity, conflict, error, omission, or discrepancy on or between any of the Contract Documents, or between any of the Contract Documents and any Applicable Law, the Contractor, before proceeding with the Work, shall promptly submit a Request for Interpretation ("RFI") to the A/E for an interpretation or clarification.

6.10.2.1 Before submitting any RFI to the A/E, the Contractor shall carefully review the Contract Documents to ensure that the Contract Documents do not answer the RFI.

6.10.2.2 The A/E shall respond to an RFI within 3 days of receiving the RFI.

6.10.2.3 Any interpretation or clarification of the Contract Documents made by any Person other than the A/E, or in any manner other than writing, shall not be binding and the Contractor shall not rely upon it.

6.10.2.4 If the Project is administered using the State's web-based project management software, the Contractor shall submit RFIs to the A/E through the "Requests for Interpretation" business process.

6.10.3 If the Contractor believes that it is entitled to an adjustment of the Contract Sum or Contract Times, or both, on account of clarifications or instructions issued by the A/E in response to a RFI, the Contractor may request a Change Order by giving written notice under **Section 7.3.2** within 7 days of receiving the A/E's RFI response.

6.10.4 If the Contractor does not notify the A/E per **Section 6.10.3**, the Contractor will have accepted the RFI response without an adjustment to the Contract Sum or Contract Times.

6.11 Protection of the Project

6.11.1 The Contractor shall protect the Work from weather and maintain the Work and all materials, apparatus, and fixtures free from injury or damage until Substantial Completion of the Work.

6.11.1.1 The Contractor shall at all times cover or protect the Work.

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

6.11.1.3 The Contractor, 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.

6.11.1.4 After the date of Substantial Completion of the Work, 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.

6.11.2 The Lead Contractor 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.

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

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

6.11.5 Vibration, Noise, and Dust Control.

6.11.5.1 The Lead Contractor, Contractor, or Separate Contractor responsible for creating dust shall provide controls/barriers for vibrations, noise, and dust control in occupied buildings as required by the construction operations.

6.11.5.2 The Contractor 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 Contractor does not maintain proper air-quality standards.

6.11.5.3 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 Contractor 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.

6.11.5.4 The Contractor or Separate Contractor, whose operations are creating the conditions, is responsible for vibration control and control of transmission of noise arising from the Work. Principal considerations that shall be given to noise and vibration control are:

- **.1** Noise control in compliance with Occupational Safety and Health Administration ("OSHA") requirements for the health and safety of building occupants; control shall be for all areas of the facility, including equipment rooms, boiler rooms, and fan rooms.
- **.2** Vibration control to limit sound produced by construction equipment, and for protection of the equipment existing in a building and the building structure.
- **.3** Vibration control to provide for maximum usefulness of the facility by keeping levels of vibration within ranges conducive to study and work or other uses for which the facility is designed.

6.12 Materials and Equipment

6.12.1 The Contractor shall provide new materials and equipment of the quality specified in the Contract Documents.

6.12.2 The Contractor 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.

6.12.2.1 The Contractor shall properly store and protect all materials and equipment it provides to the Project.

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

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

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

6.12.5 If the Contractor provides approved Substitutions that require changes to the Contract Documents, the Contractor shall be solely responsible for the additional costs incurred as a result, including, but not limited to, changes to the design by the A/E.

6.12.6 The A/E shall consider Requests for Substitutions after the bid opening only when the Contractor can conclusively demonstrate to the A/E the following conditions:

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

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

6.12.7 The Contractor's incorporation of unapproved Substitutions in the Work shall constitute Defective Work.

6.13 Labor

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

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

6.13.3 The Contractor 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.

6.14 Safety Precautions

6.14.1 The Contractor shall take reasonable precautions to ensure the safety of individuals on the Project.

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

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

6.14.3 Before starting any Work, the Contractor shall submit to the Contracting Authority and the Lead Contractor a copy of the Contractor's site-specific safety plan and safety manuals. The Lead Contractor shall provide and inform the Contractor and each Separate Contractor of methods and equipment for protecting the Project, other property, and individuals from fire damage in accordance with Applicable Law.

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

6.14.4.1 The Contractor 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 Contractor shall inform the Project Manager of its 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.

6.14.4.2 The Contractor 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 Contractor's operations.

6.14.5 Work Stoppage Due to Hazardous Materials.

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

6.14.5.2 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.

6.14.5.3 The Contractor shall resume Work in the affected area upon written notice from the A/E that **(1)** the suspect material was evaluated and found not to be or contain a Hazardous Material, or **(2)** the suspect material has been removed or rendered harmless.

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

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

6.14.6 Safety Data Sheets.

6.14.6.1 The Contractor shall identify any material it uses at the Site with a Safety Data Sheet ("SDS") meeting the requirements of OSHA's Hazard Communication Standard (formerly known as a Material Safety Data Sheet).

6.14.6.2 Before starting any Work or bringing materials to the Site, the Contractor shall submit to the Lead Contractor a notebook containing all of its applicable SDS.

6.14.6.3 The Lead Contractor shall maintain all SDS notebooks at the Site for the duration of the Project.

6.15 Construction Facilities, Utilities, and Equipment

6.15.1 Facilities.

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

6.15.1.2 The Lead Contractor shall provide and maintain in a clean condition:

- **.1** suitable facilities, equipment, and services for use by the A/E and Contracting Authority;
- **.2** adequate space, equipment, and furnishings to conduct progress meetings, and store approved documents and permits; and
- **.3** adequate sanitary facilities for use by all Persons at the Site.

6.15.2 Environmental Controls.

6.15.2.1 The Contractor shall protect its Work and materials from weather and damage from heat, cold, and humidity.

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

- **.1** the Contractor responsible for the permanent HVAC system ("HVAC Contractor") shall make arrangements and pay for installation and maintenance of temporary heating and ventilating systems; and
- **.2** the Lead Contractor shall pay the costs incurred in operating the temporary heating and ventilating systems.

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

- **.1** The HVAC Contractor 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 Lead Contractor shall pay the costs of energy consumed in operating the permanent HVAC system until Substantial Completion.
- **.3** If the Project is a renovation of an existing building or structure, addition(s) to an existing building or structure, or any combination of new construction and renovation work that does not allow separate metering of utilities, the Owner shall pay the costs of energy consumed in operating the permanent HVAC system.

6.15.2.4 From the date of Substantial Completion, the Owner shall pay the cost of operating the permanent HVAC system for the occupied portion of the Project.

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

6.15.3 Water and Drainage.

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

6.15.3.2 The Contractor 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.

6.15.3.3 The contractor responsible for the permanent plumbing system ("Plumbing Contractor") shall make arrangements and pay for installation and maintenance of temporary plumbing systems until the permanent plumbing system is available for use.

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

- **.1** The Plumbing Contractor 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 Lead Contractor shall pay the costs of water consumed and sewerage charges until Substantial Completion.
- **.3** If the Project is a renovation of an existing building or structure, addition(s) to an existing building or structure, or any combination of new construction and renovation work that does not allow separate metering of utilities, the Owner shall pay the costs of water consumed and sewerage charges.

6.15.3.5 From the date of Substantial Completion, the Owner shall pay the costs of water consumed and sewerage charges for the occupied portion of the Project.

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

6.15.4 Electric Service.

6.15.4.1 The contractor responsible for the permanent electric service ("Electrical Contractor") shall provide temporary light and power and pay the charges for temporary electric service installation and removal if required.

- **.1** The Electrical Contractor shall not be responsible for electric service requirements of contractors related to temporary hoists, cranes, welding equipment, or elevators.
- **.2** A contractor requiring these services shall subcontract with a licensed contractor for the service requirements and shall pay the costs of the services.

6.15.4.2 If the Project consists entirely of new construction, the Lead Contractor shall pay the cost of energy consumed until Substantial Completion.

6.15.4.3 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.

6.15.4.4 From the date of Substantial Completion, the Owner shall pay the cost of energy consumed for the occupied portions of the Project.

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

6.15.5 Hoisting Facilities.

6.15.5.1 Each Contractor shall erect and maintain any hoisting equipment required for its Work in coordination with the Lead Contractor and the Electrical Contractor.

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

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

6.16 Progress Cleaning

6.16.1 The Contractor shall remove all waste materials, rubbish, and mud attributable to the Work to an appropriate disposal location provided by the Lead Contractor at, or near, the Site.

6.16.2 The Lead Contractor shall perform weekly broom cleaning of hard flooring surfaces in the area of the Work.

6.16.3 The Lead Contractor 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.

6.16.4 The Lead Contractor shall remove, as appropriate for the Project or as the A/E or Owner directs, any waste materials or rubbish from areas adjacent to the Project.

6.16.4.1 The Lead Contractor shall dispose of waste materials, rubbish, and construction debris in a lawful manner in approved recycling facilities or landfills.

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

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

6.16.5.2 If the Lead Contractor determines that the cleaning is attributable to the Contractor and to one or more Separate Contractors, the Lead Contractor shall also allocate the cleaning costs as the Lead Contractor deems appropriate. If the Lead Contractor cannot or does not allocate the costs, the Contracting Authority shall allocate the costs as the Contracting Authority deems appropriate in its sole discretion.

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

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

6.17 Use of Premises

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

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

6.17.3 The Contractor shall confine its apparatus, materials, and the operations of its workers to the limits indicated by law, ordinances, permits and the directions of the A/E or Project Manager.

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

6.17.5 Site Logistics Plan.

6.17.5.1 The Lead Contractor shall prepare, in coordination with the Contractor and all Separate Contractors, a plan of the Site indicating how the contractors intend to use the Site. The plan should illustrate, as an example, 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.

6.17.6 Smoking and Tobacco Products.

6.17.6.1 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 Contractor shall enforce these restrictions on any individual employed by the Contractor, or a Subcontractor.

6.18 Interruption of Existing Services

6.18.1 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 Contractor 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.

6.18.2 Before beginning that Work, the Contractor shall apply in writing to, and receive approval in writing from, the Owner, through the A/E, to establish a time when interruption of the service will cause a minimum of interference with the activities of the Owner and its tenants.

6.19 Explosives and Blasting

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

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

6.19.2.1 The Contractor 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 Contractor shall deliver evidence of that insurance to the Contracting Authority.

6.20 Building Commissioning

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

6.20.2 The Contractor shall permit the A/E, or a third-party Commissioning Agent ("CxA") if applicable, access to commission performance based equipment, fixtures, and/or systems (e.g., HVAC, fire protection, smoke evacuation, fume hoods, emergency power, etc.), prior to Substantial Completion.

6.20.3 The A/E, or the CxA if applicable, shall promptly notify, in writing, the Contractor of any deficiency identified during the Commissioning Process.

6.20.4 To facilitate the Commissioning Process, the Contractor shall submit 4 sets of Operation and Maintenance Manuals for dynamic and engineered systems to the A/E, and CxA if applicable, for approval. This submission shall occur within 30 days following approval of all related Contractor submittals required by the Contract Documents.

6.21 Action Submittals

6.21.1 Submittal Description. Shop Drawings, Product Data, Samples, and other submittals for the A/E's review and action shall be provided by the Contractor for any item required by the Contract Documents but not fully described in the Contract Documents, unless waived by the A/E, and include, but are not limited to:

6.21.1.1 construction of the various parts, method of joinery, type of materials, grade, quality and thickness of materials, alloy of materials, profiles of all sections, reinforcement, method of hanging doors or installing windows, anchorage, and type and grade of finish;

6.21.1.2 capacities, types of materials and performance charts that are pertinent to the materials, and performance charts that are pertinent to the equipment item; and

6.21.1.3 wiring diagrams, control diagrams, schematic diagrams, working and erection dimensions, arrangement and specifications.

6.21.2 Form of Submittals. The Contractor shall provide a transmittal letter, review and stamp its approval, and transmit the submittals to the A/E in accordance with the submittal schedule established by the A/E and Contractor.

6.21.2.1 The Contractor shall submit a minimum of 1 reproducible and 3 copies of Shop Drawings, and a minimum of 4 copies of any other submittal, except when using the State's web-based project management software under **Section 6.21.2.4**.

6.21.2.2 The data shown on the Shop Drawings shall be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to communicate to the A/E the materials and equipment that the Contractor proposes to provide.

6.21.2.3 Each Sample shall be identified clearly as to materials, supplier, pertinent data as catalog numbers, the intended use, and other uses as the A/E may require enabling the A/E to review the submittal.

6.21.2.4 If the Project is administered using the State's web-based project management software, the Contractor shall submit electronic files of its submittals for review, using the "Submittals" business process.

6.21.3 Variation from Contract Documents. If the submittals show variations from the requirements of the Contract Documents, the Contractor shall specifically and clearly identify the variations in its letter of transmittal.

6.21.3.1 Variations that may affect the construction quality, cost or timeline shall be submitted by the A/E to the Contracting Authority for review, and if approved, shall be incorporated into the Work by Change Order.

6.21.3.2 The Contractor shall not be relieved of responsibility for deviations from the Contract Documents by the A/E's approval of submittals.

6.21.3.3 Submittals are not Contract Documents. In the event of conflicts between submittals and the Contract Documents, the Contract Documents take precedence and govern the Work.

6.21.4 Contractor's Submittal Review. The Contractor shall review and stamp "approved" all submittals before forwarding them to the A/E. If it is apparent to the A/E that the Contractor has not reviewed the submittals, or has conducted an incomplete review, the A/E may reject the submittals.

6.21.4.1 The Contractor shall field verify conditions as necessary and make corrections of dimensions, locations of various items, encroachments of work of Separate Contractors, or variations from the requirements of the Contract Documents.

6.21.4.2 If required by the Contract Documents or Applicable Law, the Contractor shall have Shop Drawings or other submittals prepared by Persons possessing expertise and experience in an appropriate trade or profession or by a registered architect, professional engineer, or other professional.

6.21.4.3 By approving and submitting submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements, and field construction criteria related to the associated Work, or shall do so, and has checked and coordinated the information contained within the submittals with the requirements of the Work and of the Contract Documents.

6.21.5 A/E's Submittal Review. The A/E shall review submittals for conformity with design intent within 14 days of receiving them or in accordance with the approved submittal schedule, or other period as mutually agreed by the A/E and Contractor. The A/E's review of submittals is to determine if the items covered by the submittals will, after installation and incorporation into the Work, conform to the Contract Documents and be compatible with the design concept of the Project as a functioning whole.

6.21.5.1 The Contractor shall make corrections required by the A/E and resubmit the required number of corrected copies of submittals until approved, which resubmission shall be acted upon by the A/E within 14 days of receiving them, or other period mutually agreed by the A/E and Contractor.

6.21.5.2 When resubmitting corrected submittals, the Contractor shall direct the A/E's attention to revisions made by noting revisions on the resubmittal.

6.21.5.3 The Contractor shall pay all reasonable costs of the A/E, Owner, and Contracting Authority for attendant delay, interference, hindrance or disruption of the Project due to excessive resubmittals without fault of the A/E, Owner, or Contracting Authority. Resubmittals in excess of 2 without fault of the A/E, Owner or Contracting Authority may be determined excessive by the Contracting Authority.

6.21.5.4 The A/E may hold Samples and other submittals used to coordinate finishes, colors, patterns, textures, or other characteristics until submittals for adjacent materials are available. The A/E shall issue a written notice to the Contractor stating that the submittal is being held, within 7 days of receiving it.

6.21.5.5 If coordinating submittals are not received within the period required for action on previously received submittals that are held in accordance with **Section 6.21.5.4**, review of the previously received submittals may be delayed.

6.21.5.6 The A/E's review shall not extend to means, methods, manners, techniques, sequences, or procedures of construction, or to safety precautions or incident programs.

6.21.5.7 The review and approval of a separate item shall not indicate approval of the assembly in which the item functions.

6.21.6 Risk of Nonpayment. The Contractor shall not commence any portion of the Work requiring Shop Drawings, Product Data, Samples, or other submittals until the submittal has been approved by the A/E. If the Contractor starts Work before the A/E's final approval of the submittal, the Contractor does so at its own risk that payment may not be approved by the Contracting Authority or made by the Owner for the related Work.

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

6.21.7.1 "This equipment submitted for approval shall perform as specified when installed in the arrangement shown on this drawing and in the Contract Documents and in conjunction with all other accessories 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 Contractor will be deemed to have included the above statement as required even if the associated Shop Drawing does not actually contain the statement.

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

6.21.8 Domestic Steel Certifications. The Contractor shall include the following written certifications on the front cover or initial sheet of each structural steel fabrication Shop Drawing, signed and dated prior to fabrication:

6.21.8.1 "Steel Fabricator Certification: The steel fabricator identified below certifies that for this project all load-bearing structural steel has been fabricated or produced, to the best of its knowledge, only from steel made in the United States in accordance with Ohio Revised Code Section 153.011. Further, the steel fabricator hereby certifies that it has read and understands that a monetary penalty for violations may be imposed under the authority of Ohio Revised Code Section 153.99." This certification shall be followed by the name of the fabrication company, name of the company official signing the certification, the signature of that company official, and the date of that signature.

.1 The Contractor will be deemed to have included the above certification as required even if the associated Shop Drawing does not actually contain the certification.

6.21.8.2 "Contractor Certification: The contractor identified below certifies that it has required as a condition of purchase, that for this project all load-bearing structural steel shall be fabricated and produced using, to the best of its knowledge, only steel made in the United States in accordance with Ohio Revised Code Section 153.011. Further, the contractor hereby certifies that it has read and understands that a monetary penalty for violations may be imposed under the authority of Ohio Revised Code Section 153.99." This certification shall be followed by the name of the Contractor company, name of the company official signing the certification, the signature of that company official, and the date of that signature.

.1 The Contractor will be deemed to have included the above certification as required even if the associated Shop Drawing does not actually contain the certification.

6.22 Warranty

6.22.1 The Contractor warrants to the Contracting Authority and Owner that all materials and equipment furnished under the Contract shall be new and of good quality unless otherwise required or permitted by the Contract Documents, that the Work shall be free from defects not inherent in the quality required or permitted, and that the Work shall conform to the requirements of the Contract Documents. Work not conforming to those requirements, including Substitutions not properly approved and authorized, may be considered Defective Work. If required by the A/E, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

6.23 Uncovering the Work

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

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

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

6.23.2.2 If the uncovered Work is not Defective Work and the Contractor 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 Contractor may request a Change Order by giving written notice under **Section 7.3.2** within 7 days after the Contracting Authority or A/E observes the uncovered Work.

6.24 Correction of the Work

6.24.1 Before Substantial Completion.

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

6.24.1.2 If the Contractor fails to promptly commence and diligently pursue correction of Defective Work or recovery of schedule deficiencies required under **Section 6.24.1.1**, the Owner may correct the Defective Work or take action to recover schedule deficiencies without giving further notice to the Contractor or Contractor's Surety.

6.24.2 After Substantial Completion.

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

6.24.2.2 During the Correction Period. If the Contracting Authority or Owner issues a notice under **Section 6.24.2.1** during the Correction Period, the Owner may correct the Defective Work itself without giving further notice to the Contractor or Contractor's Surety if the Contractor fails to **(1)** notify the Owner in writing of the Contractor'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.

6.24.2.3 The Correction Period:

- **.1** commences on the date of Substantial Completion of the Work or a designated portion of the Work which the Contracting Authority and Owner have agreed to take Partial Occupancy;
- **.2** relates only to the Contractor's specific obligation and opportunity to correct the Work during the Correction Period;
- **.3** does not establish a period of limitation with respect to any of the Contractor's other obligations under the Contract Documents;
- **.4** has no relationship to the time within which the State or Owner may seek to enforce the Contract;
- **.5** does not establish a period of limitation within respect to the commencement of litigation to establish the Contractor's liability under the Contract or otherwise; and
- **.6** shall not be extended by corrective Work performed by the Contractor under this **Section 6.24.2**.

6.24.2.4 After the Correction Period. If the Owner issues notice under **Section 6.24.2.1** after expiration of the Correction Period, the Owner may correct the Defective Work without giving further notice to the Contractor or Contractor's Surety if the Contractor fails to **(1)** notify the Owner in writing of the Contractor'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.

6.24.3 Emergency Correction of Defective Work.

6.24.3.1 Notwithstanding any other provision of the Contract to the contrary, if in the Contracting Authority or Owner's opinion the Defective Work presents a threat of imminent harm or danger to people, property, or the environment, the Contracting Authority or Owner may order the Contractor to immediately correct Defective Work or the Owner may correct the Defective Work itself without any prior notice to the Contractor or Contractor's Surety.

6.24.4 Responsibility for Costs of Correction.

6.24.4.1 The Contractor shall pay all of the costs and damages associated with the correction of Defective Work and the recovery of schedule deficiencies under this **Section 6.24**. Those costs and damages may include, but are not limited to, the related fees and charges of contractors, engineers, architects, attorneys, and other professionals; and the cost of correcting or replacing adjacent work. The Contracting Authority may deduct those costs and damages from payments then or thereafter due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover those amounts, the Contractor shall immediately pay the amount of the insufficiency to the Owner.

6.25 Acceptance of Defective Work

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

6.25.1.1 The Owner may only accept Defective Work though a deduct Change Order that makes explicit reference to this **Section 6.25**.

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

6.25.2.1 observations or inspections by the Owner, Contracting Authority, or A/E;

6.25.2.2 the making of any payment;

6.25.2.3 Substantial Completion or the issuance of a Certificate of Substantial Completion;

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

6.25.2.5 the Owner's use or occupancy of the Work or any part of it;

6.25.2.6 any review or approval of a submittal;

6.25.2.7 any inspection, test, or approval by other Persons; or

6.25.2.8 any correction of Defective Work by the Owner.

6.26 Project Document Maintenance and Submittal

6.26.1 During Construction.

6.26.1.1 The Contractor 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.

6.26.1.2 The Lead Contractor shall maintain in good order at a secure location on the Site:

.1 a set of Drawings and Specifications, approved in accordance with **Section 5.2.1**, and the records required by **Section 6.5.9**.

6.26.1.3 Before submitting each Contractor Payment Request, the Contractor 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.

6.26.1.4 The Contractor shall keep a record of changes made to the Specifications, noting particularly any approved variation from manufacturer's installation instructions and recommendations.

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

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

6.26.2 Before Contract Completion.

6.26.2.1 The Contractor, as a condition precedent to execution of the Certificate of Contract Completion and final payment, shall organize the As-Built Documents into manageable sets, bind the sets with durable paper cover sheets, and deliver the As-Built Documents to the A/E.

6.26.2.2 The Contractor's As-Built Documents submission shall include, but is not limited to:

- **.1** Certificate of Occupancy;
- **.2** inspection certificates for pressure piping, elevator, boiler, electrical, plumbing or piping purification, etc.;
- **.3** Letter of Approval from the local fire authority or State Fire Marshal for the fire suppression system;
- **.4** Operation and Maintenance Manuals, organized into suitable sets of manageable size. Indexed data bound in individual binders, with pocket folders for folded sheet information and appropriate identification marked on the front and the spine of each binder;
- **.5** neatly and accurately marked sets of As-Built Documents, and other Contract Documents reflecting the actual construction of the Project;
- **.6** detailed Drawings reflecting the exact location of any concealed utilities, mechanical or electrical systems, and components;
- **.7** assignment to the Owner of all warranties and guarantees, including the most-recent address and telephone number of any Subcontractors or manufacturers;
- **.8** an affidavit to certify that all Subcontractors have been paid in full for all Work performed or materials furnished for the Project;
- **.9** final certified payroll reports; and
- **.10** an affidavit to certify that the Contractor and each of its Subcontractors, regardless of tier, have complied with all requirements of ORC Chapter 4115.

6.26.2.3 By submitting the As-Built Documents to the A/E, the Contractor certifies that its As-Built Documents are complete, correct, and accurate.

6.26.3 Record Documents.

6.26.3.1 The A/E shall revise the original Contract Documents and related electronic files with the information contained on the As-Built Documents. The A/E shall label the revised original Contract Documents and related electronic files as "Record Documents" and reflect the date of the A/E's incorporation of the As-Built Documents.

6.26.3.2 The Owner may thereafter use the Record Documents for any purpose relating to the Project including, but not limited to, additions to or completion of the Project.

6.27 Final Cleaning

6.27.1 Before requesting the Substantial Completion inspection of the Work, the Lead Contractor 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.

6.27.2 If the Contractor performs any Work after final cleaning, the Contractor shall clean the affected area as provided above so that upon Substantial Completion, the premises are ready for occupancy by the Owner.

6.27.3 Final cleaning shall be done to the reasonable satisfaction of the A/E and Contracting Authority.

6.27.3.1 If a dispute arises among the Contractor and Separate Contractors as to responsibility for final cleaning, the A/E may authorize the Contractor or a Separate Contractor, or engage a qualified cleaning company, to perform

final cleaning and deduct the cost from amounts due to those contractors responsible, as the A/E recommends and the Contracting Authority determines to be appropriate.

6.27.3.2 If the A/E cannot determine the responsible contractor, the costs shall be shared by the contractors actively working on the Project as determined at the sole discretion of the Contracting Authority.

6.28 Substantial Completion

6.28.1 Contractor's Punch List.

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

- **.1** The Contractor shall proceed to correct all items listed on the Contractor's Punch List and certify that the incomplete items listed on the Contractor's Punch List are to its knowledge an accurate and complete list by signing the Contractor's Punch List.
- **.2** The Contractor's failure to include an item on the Contractor's Punch List shall not alter the Contractor's responsibility to complete the Work in accordance with the Contract Documents.
- **.3** The Contractor shall submit the signed Contractor's Punch List to the A/E, together with a request for the Substantial Completion inspection of the Work.

6.28.1.2 If the Project is administered using the State's web-based project management software, the Contractor shall submit the Contractor's Punch List, using the "Punch List" business process.

6.28.2 Substantial Completion Inspection.

6.28.2.1 Within 3 business days after receipt of the request for the Substantial Completion inspection of the Work, the A/E shall notify the Contractor of acceptance or rejection of the request, stating reasons for any rejection.

- **.1** Within 7 days after its acceptance of the Contractor's request, the A/E shall conduct the Substantial Completion inspection to determine whether the Work, or designated portion, is in conformity with the Contract Documents and Substantially Complete. The A/E shall notify the Contractor, Contracting Authority, and Owner of the scheduled time of the inspection.
- **.2** If the A/E determines that the Work is Substantially Complete, within 3 business days after the Substantial Completion inspection, the A/E shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion and include a list of Defective, incomplete, or unacceptable Work ("A/E's Punch List"). The A/E's Punch List shall include **(1)** the items on the Contractor's Punch List that are not yet completed or corrected as of the date of the Substantial Completion inspection, and **(2)** comments from the Contracting Authority and Owner.
- **.3** The A/E shall submit the Certificate of Substantial Completion to the Contracting Authority, Owner, and Contractor for their written acceptance. Upon their acceptance and consent of the Contractor's Surety, and subject to the Owner's right to withhold payment, the Owner shall release retainage as described under **Section 9.7.2**.
- **.4** The A/E's failure to include an item on the A/E's Punch List shall not alter the Contractor's responsibility to complete the Work in accordance with the Contract Documents.
- **.5** If the A/E accepts the request and subsequently determines that the Work is not Substantially Complete, the A/E may request compensation for expenses related to excessive Punch List activities. The Contracting Authority may deduct that additional compensation to the A/E from payments then or thereafter due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover those amounts, the Contractor shall immediately pay the amount of the insufficiency to the Owner.

6.28.3 Completion of Punch List Items.

6.28.3.1 Within 30 days after the date of Substantial Completion and before the date of Final Contract Completion, the Contractor shall complete all items on the A/E's Punch List. After completing all items on the A/E's Punch List, the Contractor shall provide a written request for Final Inspection of the Work to the A/E.

- **.1** If Work on the A/E's Punch List cannot be timely completed, the Contractor shall justify in writing to the reasonable satisfaction of the Contracting Authority and A/E, the reasons the items cannot be completed, and the Contractor may propose, for the Contracting Authority and A/E's approval, a time when the Contractor shall complete those items.
- **.2** Within 3 business days after receipt of the request for the Final Inspection of the Work, the A/E shall complete a Final Inspection of the Work for compliance with the Contract Documents.

.3 If multiple inspections of items on the A/E's Punch List are required due to the Contractor's failure to properly and timely complete them, the Contractor shall pay any additional costs incurred by the A/E, Owner, and Contracting Authority resulting from any attendant delay. The Contracting Authority may deduct those additional costs from payments then or thereafter due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover those amounts, the Contractor shall immediately pay the amount of the insufficiency to the Owner.

6.28.3.2 If the Project is administered using the State's web-based project management software, the Contractor shall receive the A/E's Punch List and submit its written request for Final Inspection of the Work, using the "Punch List" business process.

6.29 Partial Occupancy

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

6.29.1.1 the building authority with jurisdiction over the Project issues a partial certificate of occupancy for the portion of the Project the Owner intends to occupy;

6.29.1.2 the A/E with the Owner's assistance has provided written notice of the Partial Occupancy to the insurers providing property insurance for the Project; and

6.29.1.3 the Contracting Authority has received notice of the Partial Occupancy from the A/E and has consented to it.

6.29.2 Before the Owner commences Partial Occupancy, the Owner, Contracting Authority, A/E, and Contractor shall proceed as described under **Section 6.28** for the area designated for Partial Occupancy.

6.29.3 The Contractor shall be relieved of the obligation to maintain the area accepted for Partial Occupancy, but shall remain obligated to complete and correct the Work and to carry the insurance required by the Contract Documents during performance of any such Work.

6.30 Demonstration and Training, Operating Appurtenances

6.30.1 The Contractor, as a condition precedent to execution of the Certificate of Contract Completion and final payment, shall perform demonstration and training of the Owner's maintenance personnel as specified in the Contract Documents.

6.30.2 The Contractor, as a condition precedent to execution of the Certificate of Contract Completion and final payment, shall organize and submit operating appurtenances and loose items related to operation and maintenance of the completed Project to the Owner, including, but not limited to:

6.30.2.1 keys to door and window hardware, panels, and other devices not directly provided to the Owner from the manufacturer;

6.30.2.2 operating handles, levers, cranks, specialized wrenches or drivers, remote controls, and similar items; and

6.30.2.3 extra materials (e.g., attic stock).

6.31 Contract Completion

6.31.1 Partial Contract Completion.

6.31.1.1 When items of Work cannot be completed until a subsequent date, the A/E shall prepare a partial Certificate of Contract Completion that shall include a detailed list of the deferred Work and the date(s) by which the Contractor will complete that Work.

6.31.1.2 The A/E shall submit the partial Certificate of Contract Completion to the Contracting Authority, Owner, and Contractor for their written acceptance. Upon their acceptance of the partial Certificate of Contract Completion and consent of the Contractor's Surety, the Contracting Authority may release payment to the Contractor, as determined in the sole discretion of the Contracting Authority.

6.31.2 Final Contract Completion.

6.31.2.1 When all items on the A/E's Punch List have been completed to the satisfaction of the A/E, all requirements of the Contract Documents have been completed, and the provisions of **Sections 6.26** through **6.30** have been fulfilled, the A/E shall prepare and recommend execution of a final Certificate of Contract Completion.

6.31.2.2 The date that the Contracting Authority executes the final Certificate of Contract Completion is the date of Contract Completion.

ARTICLE 7 - MODIFICATIONS

7.1 General

7.1.1 Changes in the Work.

7.1.1.1 The Contracting Authority may order changes in the Work without invalidating the Contract. Subject to the limitations stated in this **Article 7** and elsewhere in the Contract Documents, a change in the Work may be accomplished by a Change Order, Change Directive, or order for a minor change in the Work.

- **.1** The Contractor shall proportionately increase the amount of the Bond whenever the Contract Sum is increased.
- **.2** If notice of any change affecting the Contract is required by the provision of any Bond, notice is the Contractor's responsibility, and the amount of each applicable Bond shall be adjusted accordingly.

7.1.1.2 The Contractor shall not proceed with any change in the Work without the Contracting Authority's prior written authorization except as provided under **Sections 1.10** and **7.5**.

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

7.1.1.4 The Contractor shall perform all changes in the Work under the applicable provisions of the Contract Documents, and the Contractor shall proceed promptly with the change unless otherwise provided in the Change Order, Change Directive, or order for a minor change in the Work

7.1.2 Paperwork Consolidation.

7.1.2.1 Related Modifications, with the same or similar justification (e.g., Owner Request or field resolution), may be consolidated into the same Change Order.

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

7.1.2.3 Modification resulting from errors or omissions shall not be combined with other Modifications for which the A/E will receive a fee.

7.1.3 Modification Numbering.

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

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

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

7.1.3.4 The same sequence of numbers may be utilized for multiple Contracts, if the associated change in Work involves multiple trades.

7.1.4 Modification Log.

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

- **.1** number of the Modification;
- **.2** a brief description of the Modification;
- **.3** cost of the Modification;
- **.4** schedule impact of the Modification; and
- **.5** dates sent to, and received from, the parties.

7.1.5 Reconciliation of Unit Price Items.

7.1.5.1 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.

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

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

.1 If a Unit Price is adjusted as described under **Section 7.1.5.3**, the new Unit Price will only apply to the units of Work performed that are **(1)** less than the 20 percent threshold if the Unit Price is changed on account of an over-estimation of the scheduled quantity of a Unit Price item involved in the Work or **(2)** in excess of the 20 percent threshold if the Unit Price is changed on account of an under-estimation of the scheduled quantity of a Unit Price item involved in the Work.

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

7.2 Change Order Procedure

7.2.1 A Change Order is a written instrument prepared by the A/E and executed by the Contracting Authority and Contractor, 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 Contractor 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 Contractor signs the Change Order. By signing a Change Order, the Contractor irrevocably certifies that the elements of a Change Order described in **Section 7.2.1** are completely satisfied, and waives all rights, if any, to seek further adjustment of the Contract Sum or Contract Times, or both, at a later date with respect to the associated change in the Work including without limitation on account of the "cumulative impact" of the associated change in the Work in combination with one or more other changes in the Work.

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

7.2.4 If the Contractor is in agreement with the Change Order under **Section 7.2.1**, the Contractor shall sign and return the Change Order to the A/E within 3 days after receiving it.

7.2.4.1 If the Project is administered using the State's web-based project management software, the Contractor shall indicate its agreement with the Change Order using the "Change Order" or "Contract Modifications" business process.

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

7.2.6 When the Owner receives the Change Order, the Owner may sign the form accepting the Change Order, attach certification of funding, and transmit the Change Order to the Contracting Authority; or, if the Owner does not accept the Change Order, the Owner will reject and return it to the A/E.

7.2.7 When the Contracting Authority receives the Change Order, the Contracting Authority may sign the form approving the Change Order, and transmit the fully executed Change Order to all signers; or, if the Contracting Authority does not accept the Change Order, the Contracting Authority will reject and return it to the A/E.

7.2.8 When the Change Order is signed by the Contractor, A/E, Owner, and Contracting Authority, the fully executed Change Order modifies the Contract Documents and authorizes and directs the Contractor to proceed, and the Contractor shall promptly proceed with the associated change in the Work.

7.3 Initiation of Change Orders

7.3.1 Proposal Request.

7.3.1.1 The A/E shall prepare and issue a Proposal Request to the Contractor to obtain the Contractor's Proposal for the adjustment of the Contract Sum or Contract Times, or both, associated with a contemplated Modification.

.1 In any Proposal for an adjustment of the Contract Sum, the Contractor shall specifically identify the items set forth in **Section 7.7**.

.2 In any Proposal for an adjustment of the Contract Times, the Contractor shall specifically identify the items set forth in **Section 7.8**.

.3 The Contractor's cost of preparing and providing Proposals is included in the Contract Sum.

7.3.1.2 The Contractor shall respond with a Proposal to the A/E and Contracting Authority within 14 days after receiving the Proposal Request. The allowable time for the Contractor's response may be extended by written agreement of the Contractor and A/E.

7.3.1.3 The Contractor 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 Contractor and Contracting Authority. The time limits described under this **Section 7.3.1.3** apply only to Proposals submitted in response to a Proposal Request.

7.3.1.4 A Proposal may be accepted by the Contracting Authority only through a Change Order. A Proposal Request does not authorize the Contractor to proceed with a change in the Work.

7.3.1.5 If the Contractor does not timely submit a Proposal within the time required in **Section 7.3.1.2**, the Contractor waives its right to an adjustment to the Contract Sum or Contract Times, or both, associated with the contemplated change in the Work.

7.3.1.6 If the Project is administered using the State's web-based project management software, the Contractor shall respond to a Proposal Request issued by the A/E with its Proposal using the "Change Order" or "Contract Modifications" business process.

7.3.2 Request for Change Order.

7.3.2.1 The Contractor may initiate a change in the Work by submitting written notice to the A/E accompanied by a Proposal meeting the requirements of **Section 7.3.1**.

7.3.2.2 If the Project is administered using the State's web-based project management software, the Contractor shall initiate its Request for Change Order using the "Change Order" or "Contract Modifications" business process with the "Request for Change Order" workflow.

7.4 Change Directives

7.4.1 A Change Directive is a written order prepared by the A/E and executed by the Contracting Authority directing a change in the Work and may, if necessary:

7.4.1.1 state a proposed basis for adjustment, if any, in the Contract Sum or Contract Times, or both; or

7.4.1.2 limit the scope of the change in the Work on a time and materials basis, not to exceed a fixed adjustment of the Contract Sum.

7.4.2 If a change in the Work must start immediately to avoid an imminent impact to the schedule of the Project, the A/E may prepare a Change Directive for the Contracting Authority's and the Owner's signatures pursuant to **Section 7.4.1**, authorizing the Contractor to proceed.

7.4.3 A Change Directive shall be used to direct a change in the Work in the absence of total agreement on the terms of a Change Order.

7.4.3.1 For the purposes of clarity, the Contract refers to a Change Directive as if it is only to be used in the absence of total agreement on the terms of a Change Order concerning the associated change of the Work. A Change Directive may also be used in the absence of agreement as to whether the subject of the Change Directive actually constitutes a change in the Work; such as the situation described under **Section 7.5.3**.

7.4.4 Upon receipt of a Change Directive, the Contractor shall promptly proceed with the change in the Work involved.

7.4.5 The Contractor may sign the Change Directive to accept the proposed basis for adjustment, if any, of the Contract Sum or Contract Times, or both. Thereafter, the A/E shall prepare and the A/E, Contracting Authority, Owner, and Contractor 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 Contractor shall respond with a Proposal meeting the requirements of **Section 7.3.1** to the A/E and Contracting Authority for adjustment of the Contract Sum or Contract Times, or both, on account of the change, unless the Change Directive is performed on a time and materials basis under **Section 7.4.1.2**. If the Change Directive is performed on a time and materials basis, the Contractor 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 Contractor that the proposed adjustment is the entire adjustment in the Contract Sum associated with the change.

7.4.6.2 The Proposal for the change in the Contract Times, if any, shall include: **(1)** written documentation as described under **Section 7.8**; and **(2)** a written statement from the Contractor that the proposed adjustment is the entire adjustment of the Contract Times associated with the change.

7.4.7 If the Contractor 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 Contractor does not agree with the Contracting Authority's determination, the Contractor shall initiate a Claim under **Article 8** within 10 days of the date that the Contracting Authority issues its determination, and the Contractor'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 Contractor agree on the adjustments of the Contract Sum and Contract Times associated with a Change Directive, the A/E shall prepare an appropriate Change Order within 7 days after receiving the Contractor's Proposal. The A/E, Contracting Authority, Owner, and Contractor shall promptly sign the Change Order as described under **Section 7.2**.

7.4.10 If the Contracting Authority, Owner, and Contractor 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 Contractor does not agree with the Contracting Authority's determination, the Contractor shall initiate a Claim under **Article 8** within 10 days of the date that the Contracting Authority issues its determination, and the Contractor's failure to do so shall constitute an irrevocable waiver of the Claim.

7.4.11 If the Project is administered using the State's web-based project management software, the Contractor shall respond to a Change Directive issued by the A/E with its Proposal using the "Change Order" or "Contract Modifications" business process.

7.5 Minor Changes in the Work

7.5.1 The A/E may order minor changes in the Work not involving adjustment of the Contract Sum or extension of the Contract Times and not inconsistent with the intent of the Contract Documents. Those changes shall be effected by written order issued to the Contractor.

7.5.2 The Contractor shall promptly carry out each order for a minor change in the Work if the Contractor agrees that the order does not involve adjustment of the Contract Sum or Contract Times, or both.

7.5.3 If the Contractor 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 Contractor, within 3 business days after receiving the order, shall give the Contracting Authority and A/E written notice of the Contractor'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 Contractor waives its right to an adjustment of the Contract Sum or Contract Times on account of an order for a minor change in the Work by:

7.5.4.1 starting the Work that is the subject of the order for a minor change in the Work; or

7.5.4.2 failing to give the notice described under **Section 7.5.3** within 3 business days after receiving the order for a minor change in the Work.

7.5.5 If the Project is administered using the State's web-based project management software, the order for a minor change in the Work shall be documented through the "Action Items" business process.

7.6 Differing Site Conditions

7.6.1 If the Contractor encounters a Differing Site Condition, the Contractor shall stop Work on that Differing Site Condition and give immediate written notice of the condition to the A/E and Contracting Authority.

7.6.1.1 The Contractor's failure to give notice of the Differing Site Condition as required under this **Section 7.6.1** shall constitute an irrevocable waiver of any associated Claim.

7.6.1.2 The written notice of a Differing Site Condition under this **Section 7.6.1** shall be required before the notice of Claim under **Article 8**.

7.6.2 Promptly after receiving notice from the Contractor under **Section 7.6.1**, the A/E shall investigate to determine whether the Contractor has encountered a Differing Site Condition. The A/E shall give written notice of its determination to the Contracting Authority and Contractor within 10 days after completing the investigation.

7.6.2.1 If the A/E determines that the Contractor has encountered a Differing Site Condition and the Contracting Authority agrees with the A/E's determination, the A/E shall process an appropriate Change Order.

7.6.2.2 If the A/E determines that the Contractor has encountered a Differing Site Condition but the Contracting Authority disagrees with the A/E's determination, the A/E shall process an appropriate Change Directive through which the Contracting Authority may convey its disagreement with the A/E's determination.

7.6.2.3 If the A/E determines that the Contractor has not encountered a Differing Site Condition and the Contractor does not agree with that determination, the Contractor must initiate a Claim under **Article 8** within 10 days of the date that the A/E issues its determination.

7.7 Change Order Cost or Credit Determination

7.7.1 General.

7.7.1.1 The maximum cost or credit resulting from a change in the Work shall be determined as described below.

- **.1** Proposals shall include the information required by **Section 7.7.1.4**.
- **.2** A Unit Price Proposal shall only be valid when incorporated into the Contract by Change Order.
- **.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 Contractor shall not assign any portion of the Work to another Person whereby the Contractor 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 Contractor and Subcontractors.

7.7.1.4 For each change in the Work, the Contractor shall furnish a detailed Proposal itemized on **Proposal Worksheet Summary Form (Contractor)** published by the Ohio Facilities Construction Commission through which the Contractor shall document the related changes in the Contract Sum as described under **Section 7.7.2**. Any Subcontractor pricing shall be itemized on the appropriate **Proposal Worksheet Summary Form**.

7.7.1.5 Section 7.7.2 establishes the exclusive and maximum amount that the Owner shall pay for any Change Order, including, but not limited to, all amounts for interference with, delay, hindrance, disruption, or impact of the Work ("Pricing Criteria"). These Pricing Criteria also govern the value of deduct Change Orders and the Contractor'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 Contractor Personnel Costs: The Contractor's on-Site management (including 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 acceptable to the Contracting Authority.

- **.1** In no event will the Contractor be entitled to an increase in the Contract Sum on account of Contractor Personnel Costs unless the Contractor actually incurs additional demonstrated Contractor Personnel Costs solely on account of the associated change in the Work.
- **.2** Under no conditions will the increase under this **Section 7.7.2.1** exceed those additional demonstrated Contractor Personnel Costs the Contractor actually incurs.

7.7.2.2 Labor: Field labor directly involved in the Work based upon the actual rate of pay to the worker. If the Project is subject to payment of prevailing wage rates, field labor shall be paid according to the relevant classification of labor as established in the applicable prevailing wage determination for the Project locality, as determined by the Ohio Department of Commerce, Wage and Hour Bureau.

- **.1** In no event will the Contractor be entitled to an increase in the Contract Sum on account of labor costs unless the Contractor actually incurs additional demonstrated labor costs solely on account of the associated change in the Work.
- **.2** Under no conditions will the increase under this **Section 7.7.2.2** exceed those additional demonstrated labor costs the Contractor actually incurs.

.3 The cost for supervision above the level of working forepersons (such as general forepersons, superintendent, project manager, etc.) is included in the adjustment under **Section 7.7.2.1** for the Contractor and under **Section 7.7.2.10** for Subcontractors.

7.7.2.3 Fringes: Fringe benefit credit for labor provided under **Section 7.7.2.2** is only allowable for prevailing wage fringe benefits pursuant to ORC Chapter 4115, including, but not limited to, Health and Welfare, vacation, apprenticeship training, and certain types of pension plans. The parties shall defer to the Ohio Department of Commerce's policy on which benefits are granted fringe benefit credit. Each fringe benefit for which credit is requested shall be calculated on an hourly basis and listed as a separate line item. The Contractor shall submit documentation supporting the calculation of the amounts for each fringe benefit for each worker classification, including labor provided by Subcontractors.

7.7.2.4 Allowable Payroll Expenses: Allowable payroll expenses for labor provided under **Section 7.7.2.2** including payroll taxes as well as other benefits that are required by Applicable Law, such as federal and state Unemployment and Workers' Compensation shall each be a separate line item and shall not be credited for compliance with ORC Chapter 4115.

7.7.2.5 Equipment Rentals: All charges for certain non-owned heavy or specialized equipment at up to 100 percent of the documented rental cost. No rental charges shall be allowed for hand tools, minor equipment, simple scaffolds, etc. Downtime due to repairs, maintenance and weather delays shall not be allowed. Contractor shall submit copies of actual paid invoices to substantiate rental costs.

7.7.2.6 Owned Equipment: All charges for certain heavy or specialized equipment owned by the Contractor or Subcontractor performing the Work at up to 100 percent of the cost listed by the current edition of the Associated Equipment Distributors' *AED Green Book* heavy equipment rental rates. No recovery shall be allowed for hand tools, minor equipment, simple scaffolds, etc. The longest period of time that the equipment is to be required for the Work shall be the basis for the pricing. Downtime due to repairs, maintenance, and weather delays shall not be allowed.

7.7.2.7 Trucking: A reasonable delivery charge or per-mile trucking charge for delivery of required materials or equipment. Charges for use of a pick-up truck shall not be allowed.

7.7.2.8 Materials: The actual cost (including all discounts, rebates or related credits) of all materials incorporated into the changed Work. Documentation shall show costs, quantities, or Unit Prices of all items, as appropriate.

.1 The cost or credit for reusable materials (e.g., concrete form lumber, shoring, or temporary enclosures) shall be limited to 33 percent how costs, quantities, or Unit Prices of all items, as appropriate. of the material cost for each use.

7.7.2.9 Contractor's General Conditions Costs: The Contractor's General Conditions Costs to the extent attributable to an associated change in the Contract Time for achievement of Substantial Completion resulting from the change in the Work.

.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 Contractor's Schedule of Values approved by the Contracting Authority, **(2)** divided by the total number of days of the original Contract Time for achievement of Substantial Completion.

.2 The Contractor shall **(1)** exclude the Bond premium from the Schedule of Values for the purposes of the calculation under **Section 7.7.2.9.1**, and **(2)** include the actual adjustment of the Bond premium attributable to an associated change in the Contract Sum.

.3 If the Contractor purchases the builder's risk insurance for the Project, the Contractor shall **(1)** exclude the builder's risk insurance premium from the Schedule of Values for the purposes of the calculation under **Section 7.7.2.9.1**, and **(2)** include the actual adjustment of the builder's risk insurance premium attributable to an associated change in the Contract Sum.

7.7.2.10 Subcontractor Overhead and Profit: Adjustment of the Contract Sum on account of a change in Subcontractor-performed Work shall include the Subcontractor's aggregate overhead and profit allowance equal to 15 percent of the sum of the Subcontractor's costs described under **Sections 7.7.2.2** through **7.7.2.8** that are associated with that changed Work.

.1 The allowance applies to each Subcontractor tier.

.2 The allowance covers: the costs required to schedule and coordinate the Work, telephone, telephone charges, facsimile, telegrams, postage, photos, photocopying, hand tools, simple scaffolds (one level high), tool breakage, tool repairs, tool replacement, tool blades, tool bits, home office estimating and expediting, home office clerical and accounting support, home office labor (management, supervision, engineering), all other home office expense, legal services, travel, and parking expenses.

.3 An exception is allowed for shop or engineering labor on items in **Section 7.7.2.10.2**, which shall not be subject to Prevailing Wage rates for steel fabricators, sheet metal fabricators, and sprinkler system fabricators performing work off-site. Recovery for these matters shall be allowed on an hourly basis under items in **Sections 7.7.2.2**, **7.7.2.3**, and **7.7.2.4** of these Pricing Criteria.

.4 An exception is allowed for field supervision labor on items in **Section 7.7.2.9.2**, for those portions of the Change Order Work that will be performed, or was performed, at times when the superintendent is not required to be on site under **Section 6.4**, including but not limited to overtime hours due to acceleration and extensions of the Contract Times. Recovery for this matter will be allowed on an hourly basis under items in **Sections 7.7.2.2**, **7.7.2.3**, and **7.7.2.4** of these Pricing Criteria.

7.7.2.11 Contractor's Fee: Adjustment of the Contract Sum on account of a change in the Work shall include an allowance for the Contractor's Fee equal to 10 percent of the sum of the costs described under **Section 7.7.2.1** through **7.7.2.10** that are associated with that changed Work.

7.7.2.12 Miscellaneous: Adjustment of the Contract Sum on account of a change in Work may include the following costs with no allowance for Contractor's Fee under **Section 7.7.2.11** or Subcontractor overhead and profit under **Section 7.7.2.10**.

.1 The premium portion only for approved overtime (labor and fringes). The straight time portion is included in items in **Sections 7.7.2.2**, **7.7.2.3**, and **7.7.2.4**.

.2 State sales tax shall be allowed on items as defined by **Section 12.7**.

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 Contractor'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 Contractor's entitlement to additional time through the claims and dispute resolution processes on account of changes in the Work.

7.8.2 The Contractor 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;

7.8.2.7 recommended action to avoid or minimize any future interference, disruption, hindrance or delay; and

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 Contractor for all costs of acceleration of the Work needed to completely overcome the associated delay, if any.

7.8.3 Critical Path. Time extensions shall depend upon the extent to which the Work on the critical path of the Construction Progress Schedule is affected, if applicable.

7.8.3.1 A Change Order granting a time extension may provide that the Contract Times shall be extended for only those specific elements so interfered with, disrupted, hindered, or delayed and related remobilization and that remaining Milestone dates shall not be altered and may further provide for adjustment of Liquidated Damages.

7.9 Examination and Audit of Contractor's Records

7.9.1 The Contracting Authority and Owner may examine all books, records, documents and other data of the Contractor and its Subcontractors related to the bidding, pricing, or performance of the Work for the purpose of evaluating any Contractor Payment Request, Proposal, Modification, or Claim.

7.9.2 The above referenced materials shall be made available at the office of the Contractor or Subcontractor, as applicable, at all reasonable times for inspection, audit, and reproduction until the expiration of 6 years after the date of Substantial Completion of all Work.

7.9.2.1 The Contractor shall maintain, and require its Subcontractors to maintain, complete and accurate business records at its principal place of business. If the principal place of business is greater than 50 miles from the Site, the Contractor shall timely make records available, and shall require its Subcontractors to timely make records available, at the office of the Contracting Authority or Owner upon request for the records.

7.9.3 To the extent that the Contractor or Subcontractor, as applicable, informs the Contracting Authority or Owner in writing that any documents provided to the Contracting Authority or Owner are trade secrets, the Contracting Authority or Owner shall treat these documents, to the extent permitted by law, as trade secrets of the Contractor 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 Contractor or Subcontractor as applicable, shall indemnify the Contracting Authority and Owner against all costs, expenses, and damages, including but not limited to attorneys' fees, incurred or paid by reason of that dispute.

7.9.4 The right of inspection, audit, and reproduction extends to all documents necessary to permit adequate evaluation of the cost of pricing data submitted along with the computations and projections used therein.

7.9.5 If the Contract has been terminated, in whole or in part, the records relating to the Work terminated shall be made available to the Contracting Authority or Owner for a period of 6 years from the date of any applicable final settlement or payment, as applicable.

7.9.6 Records that relate to disputes, litigation, or settlement of Claims arising out of the performance of the Work shall be made available until the dispute, litigation or Claims have been finally decided or settled.

ARTICLE 8 - DISPUTE RESOLUTION

8.1 Initiation of a Claim

8.1.1 Every Claim shall accrue upon the date of occurrence of the event giving rise to the Claim.

8.1.2 Except as provided under **Section 1.10**, the Contractor shall initiate every Claim by giving written notice of the Claim to the A/E and Contracting Authority within 10 days after occurrence of the event giving rise to the Claim, with the following exceptions:

8.1.2.1 The 10-day time limit on initiating a Claim arising from a determination of the Contracting Authority concerning a Change Directive begins to run on the date that the Contracting Authority issues its determination under **Section 7.4.7** or **Section 7.4.10**, as applicable.

8.1.2.2 The 10-day time limit on initiating a Claim arising from the response of the A/E to a RFI begins to run on the date that the A/E issues the A/E's response to the Request for Interpretation.

8.1.2.3 The 10-day time limit on initiating a Claim arising from the A/E's determination concerning a Differing Site Condition begins to run on the date that the A/E issues the A/E's determination under **Section 7.6**.

8.1.3 The Contractor'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 Contractor;

8.1.3.2 identification of the circumstances responsible for causing the impact, including, but not limited to, the date or anticipated date, of the commencement of any interference, disruption, hindrance, or delay;

8.1.3.3 identification of activities on the Construction Progress Schedule that will be affected by the impact or new activities that may be created and the relationship with existing activities;

8.1.3.4 anticipated impacts and anticipated duration of any interference, disruption, hindrance, delay, or impact, and any remobilization period; and

8.1.3.5 recommended action to avoid or minimize any interference, disruption, hindrance, delay, or impact.

8.1.4 The Contractor's failure to initiate a Claim as and when required under this **Section 8.1** shall constitute the Contractor's irrevocable waiver of the Claim.

8.1.5 The A/E, in consultation with the Contracting Authority, shall respond to the written notice of the Claim within a reasonable time of receipt, but not to exceed 10 days.

8.2 Substantiation of Claims

8.2.1 Within 30 days after the initiation of a Claim, the Contractor shall submit 4 copies of all information and statements required to substantiate a Claim as provided in this **Article 8** and all other information that the Contractor believes substantiates the Claim. The Contractor shall file the 4 copies by delivery of 1 copy to the A/E, 1 copy to the Owner, and 2 copies to the Contracting Authority.

8.2.2 The Contractor 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 Lead Contractor's daily log (**Section 6.5.9**) for each day of impact;

8.2.2.4 copies of relevant correspondence and other information regarding or supporting Contractor entitlement;

8.2.2.5 copies of the Contractor's most recent income statement, including segregated general and administrative expenses for the most recent reporting period, and for the period of the Contract, if available, and similar information for any Subcontractor claim included; and

8.2.2.6 the notarized certification described under **Section 8.5.1.1**;

8.2.3 The Contractor'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 Contractor 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 Contractor due to the event giving rise to the Claim;

8.3.1.2 a written statement from the Contractor that the increase requested is the entire increase in the Contract Sum associated with the Claim; and

8.3.1.3 the general substantiation documentation described under **Section 8.2**.

8.3.2 The Contractor'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 Contractor shall substantiate each Claim for an extension of the Contract Times with:

8.4.1.1 written documentation as described under **Section 7.8** of the actual delay to the critical path of the Construction Progress Schedule due to the event giving rise to the Claim;

8.4.1.2 a detailed written Proposal as described under **Section 7.7** for an increase in the Contract Sum that would fully compensate the Contractor 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 Contractor 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 Contractor shall document the Claim with data substantiating that weather conditions were abnormal

for the period, could not have been reasonably anticipated, and had an adverse effect on a critical element of the scheduled construction. The support for and evaluation of all adverse weather Claims shall be based upon average weather conditions during the 5 years immediately preceding the dates at issue in the Claim as those weather conditions were recorded at the government-controlled weather-recording facility nearest to the Site.

8.4.3 The Contractor'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 Contractor 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 Contractor:

8.5.1.1 "The undersigned Contractor certifies that the Claim is made in good faith; that the supporting data is accurate and complete to the best of the Contractor's knowledge and belief; that the amount requested is a fair, reasonable, and necessary adjustment for which the Contractor believes the State is liable; and that the undersigned is duly authorized to certify the Claim on behalf of the Contractor."

8.5.2 The date that the Contractor's certified and fully substantiated Claim is received by the Contracting Authority, or the date that the Contractor 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 Contractor's failure to comply with the requirements of this **Section 8.5** shall constitute an irrevocable waiver of any related Claim.

8.6 Delay and Delay Damage Limitations; Derivative Claims

8.6.1 Subject to other provisions of the Contract, the Contractor 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 Contractor's failure to comply with Applicable Law, fires, floods, epidemics, weather, and labor disputes beyond the Contractor's control.

8.6.2 Notwithstanding any other provision of the Contract Documents to the contrary, the Contractor 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 Contractor; or

8.6.2.3 on account of the delay of any Work not on the critical path.

8.6.3 Notwithstanding any other provision of the Contract Documents to the contrary, the Contractor 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 Contractor 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 Contractor.

8.6.5 Derivative Claims. Notwithstanding any other provision of the Contract to the contrary, if the Owner prosecutes a claim, suit, or appeal against a Separate Consultant or Separate Contractor to recover damages the Contractor suffers on account of the acts or neglects of a Separate Consultant or Separate Contractor or a person or entity for whom either is legally responsible, the Owner's liability to the Contractor shall not exceed the amount the Owner actually recovers from the Separate Consultant or Separate Contractor on account of those damages less the costs the Owner incurs recovering them. The Owner is not obligated to prosecute any such claim, suit, or appeal.

8.7 Liquidated Damages

8.7.1 If the Contractor fails to achieve a Milestone within the associated Contract Time, it would be difficult, if not impossible, to determine the Owner's resulting damages. Therefore, if the Contractor fails to achieve a Milestone within the associated Contract Time, the Contractor 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 Contractor fails to achieve a Milestone within the associated Contract Time.

Contract Sum	Liquidated Damages per day
Less than $1,000,000	$500
From $1,000,000.01 to $2,000,000	$1,000
From $2,000,000.01 to $5,000,000	$2,000
From $5,000,000.01 to $10,000,000	$5,000
From $10,000,000.01 to $20,000,000	$7,500
From $20,000,000.01 to $50,000,000	$10,000
More than $50,000,000	$15,000

8.7.2 If the Contractor simultaneously fails to achieve two or more Milestones, the Owner shall be entitled to recover the sum of the associated Liquidated Damages per day rates.

8.7.3 The Liquidated Damages described in this **Section 8.7** are only intended to compensate the Owner for the direct damages it incurs as a result of the Contractor's failure to achieve the Milestones within their associated Contract Times.

8.7.4 The Liquidated Damages described in this **Section 8.7** are not intended to compensate the Owner for any damages the Owner incurs on account of **(1)** any claims attributable to the Contractor that are brought by others including Separate Consultants and Separate Contractors or **(2)** any failure of the Contractor 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, and they 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 Contractor's failure to achieve one or more of the Milestones within the Contract Times.

8.7.6 In addition to other rights that the Owner may have relative to the Liquidated Damages, the Contracting Authority may deduct the Liquidated Damages from the Contract Sum as the damages accrue. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall immediately pay the amount of the insufficiency to the Owner.

8.8 Mutual Waiver of Consequential Damages

8.8.1 Except as provided under **Section 8.8.2**, the Owner and Contractor 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 Contractor'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 Contractor'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 Contractor's gross negligence or willful misconduct.

8.8.3 This **Section 8.8** shall survive termination of the Contract.

8.9 Review of the Claim

8.9.1 The A/E shall review the Claim and prepare a written analysis of its content, which shall include:

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

8.9.1.2 identification of relevant Contract Documents and language;

8.9.1.3 an analysis of whether the Contractor complied with the requirements of the Contract Documents pertaining to Claim initiation and substantiation including, without limitation, the issues of entitlement to, and calculation of, adjustments of the Contract Sum, Contract Times, or both;

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

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

8.9.1.6 a concluding opinion regarding Contractor entitlement to, and the appropriateness and reasonableness of all, or any part of, the Claim; and

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

8.9.2 The A/E shall submit the written analysis to the Project Manager no more than 30 days after receiving the Contractor's substantiated and certified Claim.

8.10 Claim Decision

8.10.1 The Project Manager shall examine the Contractor's Claim and A/E's analysis.

8.10.2 The Project Manager shall approve or deny all, or any part, of the Contractor's Claim and forward a written decision to the Contractor, A/E, Owner, and Contracting Authority within 14 days after receiving the A/E's analysis.

8.10.2.1 The Project Manager may employ independent resources to assist in its review, or refer evaluation of the Claim to a consultant.

8.10.3 If the Contractor and Owner agree with the Project Manager's decision, the decision shall be incorporated into a Change Order.

8.10.4 Any Claim remaining unresolved after completion of the process described under this **Section 8.10** shall be subject to Claim decision review as described under **Section 8.11**.

8.11 Claim Decision Review

8.11.1 The Contractor may request review of the Project Manager's decision by written notice delivered by certified mail within 14 days of the Project Manager's decision.

8.11.1.1 If the Project is administered by the Commission, jointly administered by the Commission and a public school district, or locally administered by authority granted to an agency of the state of Ohio by the Commission, the written notice shall be delivered to the Executive Director of the Commission.

8.11.1.2 If the Project is locally administered by an Institution of Higher Education under ORC Section 3345.50 or ORC Section 3345.51, the written notice shall be delivered to the Institutional Designee who will review the Project Manager's decision instead of the Commission.

8.11.2 The Commission or Institutional Designee, if applicable, shall schedule and conduct a meeting within 30 days after receiving the Contractor's request for review.

8.11.2.1 The Commission or Institutional Designee may employ independent resources to assist in the meeting and review.

8.11.3 The Commission or Institutional Designee, if applicable, shall determine the final disposition of the Contractor's request for review and provide a written decision to the Contractor and Owner within 14 days after the meeting.

8.11.4 The decision of the Commission or Institutional Designee is the final administrative decision of the Contracting Authority as described under ORC Section 153.12(B).

8.11.5 If the Contractor and Owner agree with the Commission's or the Institutional Designee's decision, the decision shall be incorporated into a Change Order.

8.11.6 Any Claim remaining unresolved after completion of the process described under this **Section 8.11** shall be subject to litigation, which may be preceded by Alternative Dispute Resolution ("ADR") as described under **Section 8.13**.

8.12 Delegation

8.12.1 No provision of this **Article 8** shall prevent the Executive Director from delegating the duties or authorities of the Commission to any other person selected at the Executive Director's sole discretion.

8.13 Alternative Dispute Resolution

8.13.1 The intent of the ADR process is to resolve disputes quickly and equitably in a manner agreed upon by all parties to the dispute.

8.13.2 The ADR procedure shall be accepted by all of the Project's key stakeholders.

8.13.3 The accepted ADR methods shall not include binding arbitration; alter any of the requirements for Claim initiation, certification, and substantiation; or alter the administrative process described under this **Article 8**.

8.13.4 The following forms of non-binding ADR may be considered:

8.13.4.1 Negotiation: If negotiation is warranted, the parties to the dispute may agree to a progressive level of negotiators, invested with the authority to agree to a determination of an adjustment in the Contract Sum, Contract Times, or both.

8.13.4.2 Dispute Review Board: If a dispute review board is the accepted ADR procedure, or the process to follow when negotiations are unsuccessful, the parties to the dispute shall jointly select 3 neutral third parties to monitor the progress of construction and provide recommended resolutions to disputes that are brought before them. The costs of the dispute review board shall be shared equally among the parties to the dispute.

8.13.4.3 Mediation: If mediation is the accepted ADR procedure, or the process to follow when negotiations are unsuccessful, the parties to the dispute shall accept a neutral third party to mediate the dispute. The costs of mediation shall be shared equally among the parties to the dispute.

8.13.4.4 Another ADR procedure accepted by all of the Project's key stakeholders.

8.14 Audit of the Claim

8.14.1 All Claims shall be subject to audit at any time following filing of the Claim, whether or not the Claim is part of a lawsuit.

8.14.2 The audit may be performed by employees of the Contracting Authority or by a consultant engaged by the Contracting Authority.

8.14.3 The audit may begin upon 10-days' notice to the affected Contractor or affected Subcontractor.

8.14.4 The Contractor shall cooperate with the request.

8.14.5 Failure of the Contractor or Subcontractor to produce sufficient records to allow the Contracting Authority to audit and verify a Claim shall constitute an irrevocable waiver of the Claim or portion of the Claim that could not be completely audited.

8.14.6 The Contractor shall make available to the Contracting Authority all Contractor and Subcontractor documents related to the Claim including, without limitation, the following documents:

8.14.6.1 daily time sheets and superintendent's daily reports;

8.14.6.2 union agreements, if any, and employer agreements;

8.14.6.3 insurance, welfare, fringes, and benefits records;

8.14.6.4 payroll register;

8.14.6.5 earnings records;

8.14.6.6 payroll tax returns;

8.14.6.7 material invoices, purchase orders, Subcontracts, and all material and supply acquisition contracts;

8.14.6.8 material cost distribution worksheets;

8.14.6.9 equipment records (list of Contractor equipment, rates, etc.);

8.14.6.10 vendor rental agreements and Subcontractor invoices;

8.14.6.11 Subcontractor payment certificates;

8.14.6.12 canceled checks (payroll and vendors);

8.14.6.13 job cost report;

8.14.6.14 job payroll ledger;

8.14.6.15 general ledger, general journal, (if used) and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals;

8.14.6.16 cash disbursements journal;

8.14.6.17 financial statements for all years reflecting operations on the Project;

8.14.6.18 income tax returns for all years reflecting operations on the Project;

8.14.6.19 depreciation records on all equipment utilized whether the records are maintained by the Contractor, its accountant, or others;

8.14.6.20 if a source other than depreciation records is used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all other source documents;

8.14.6.21 all documents that reflect the Contractor's actual profit and overhead during the years the Project was being performed;

8.14.6.22 all documents related to the preparation of the Contractor's Bid, including the final calculations on which the Bid was based, unless the documents are placed in escrow under provisions of the Instructions to Bidders;

8.14.6.23 all documents that relate to the Claim together with all documents that support the amount of damages as to the Claim;

8.14.6.24 worksheets used to prepare the Claim establishing the cost components for items of the Claim including, but not limited to, labor, fringes, benefits and insurance, materials, equipment, Subcontractors, and all documents that establish the periods of time, individuals involved, the hours and rate of pay for the individuals; and

8.14.6.25 all other documents required by the Contracting Authority to reasonably review the Claim.

8.15 False Certification of the Claim

8.15.1 If the Contractor 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 Contractor from future State contracting opportunities as permitted by law.

8.16 Performance and Payment

8.16.1 The Contractor shall proceed with the Work during any dispute resolution process, unless otherwise agreed by the Contractor and Contracting Authority in writing.

8.16.2 The Contracting Authority shall continue to make payment of any undisputed amounts in accordance with the Contract Documents pending final resolution of a Claim, unless otherwise agreed by the Contractor and Contracting Authority in writing.

ARTICLE 9 - COMPENSATION AND PAYMENT

9.1 Allowances

9.1.1 The Contract Sum includes the Allowances (if any) identified in the Contract.

9.1.2 All Allowances include the cost to the Contractor (less any applicable trade discounts) of materials and equipment required by the Allowances to be delivered at the Site, and all applicable taxes.

9.1.3 The Contractor's Fee and costs for unloading and handling on the Site, labor, installation costs, and other expenses contemplated for the Allowances are not in the stated Allowance amounts but are otherwise included in the Contract Sum.

9.1.4 Before final payment, an appropriate Change Order will be issued to reconcile the Contract Sum so that it reflects actual amounts due to the Contractor on account of Work covered by Allowances.

9.2 Unit Prices

9.2.1 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 Contractor's Fee on that Unit Price Work.

9.2.2 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 Contractor.

9.2.3 The Contractor's Fee on account of Unit Price Work is not in the stated Unit Price amounts but are otherwise included in the Contract Sum.

9.2.4 Before final payment, an appropriate Change Order will be issued as described under **Section 7.1.5** to reconcile the Contract Sum so that it reflects actual amounts due to the Contractor on account of Unit Price Work actually performed.

9.3 Schedule of Values

9.3.1 Within 10 days after receipt of the Notice to Proceed, or other period as mutually agreed by the Contractor and Contracting Authority, the Contractor shall submit to the A/E a Schedule of Values on a form published by the Commission, with separate amounts shown for labor and materials for each branch of Work, following the numbers and titles of the Construction Specifications Institute's *MasterFormat* for individual work results, or *UniFormat* for assemblies in place.

9.3.1.1 The Contractor shall clearly indicate on the Schedule of Values, the amount(s) allocated, including amounts for Contractor's Fee (overhead and profit), for each EDGE-certified Business used in the performance of the Work. The amount(s) shall indicate labor and materials, as appropriate.

9.3.2 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.

9.3.2.1 The first items shall be a breakdown of General Conditions Costs.

9.3.2.2 The amounts for labor and materials shall accurately reflect the cost for each item. Separate items shall not be shown for Contractor's Fee, except when Work is performed or materials are supplied by an EDGE-certified Business, pursuant to **Section 9.3.1.1**. Contractor's Fee shall be included in the totals for labor and materials.

9.3.2.3 If the material allocation exceeds 55 percent of the Contract Sum, the Contractor shall provide, upon request, sufficient information to support the higher percentage.

9.3.2.4 Subcontract Work shall show amounts for labor and materials. Fringe benefits shall be shown as a part of labor costs.

9.3.2.5 When more than one major structure is included in the Work, the Contractor shall subdivide the Schedule of Values accordingly, with cost details for each structure shown separately.

9.3.2.6 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.

9.3.2.7 Mechanical and electrical Work shall be included in separate line items for all major pieces of equipment, and group smaller equipment items by type.

9.3.2.8 Line items shall be included for each Allowance, Punch List Work, Project Record Document Submittals, delivery of attic stock, and specified demonstrations and training.

9.3.3 The A/E may return the Schedule of Values to the Contractor for re-submittal if it does not meet the requirements or contains insufficient items or details of the Work, or approve the Schedule of Values if the A/E determines that it conforms to this **Section 9.3**.

9.3.4 No payment shall be made until the A/E has approved the Contractor's Schedule of Values.

9.3.5 If the Project is administered using the State's web-based project management software, the Contractor shall submit its Schedule of Values, using the "Contract Schedule of Values" business process.

9.4 Contractor Payment Request

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

9.4.1.1 The Contractor shall support each Contractor Payment Request with documentation substantiating the Contractor's right to payment. The Contractor shall supply additional documentation as the A/E may request in connection with each payment to the Contractor.

9.4.1.2 The Contracting Authority may require proof of the renewal of required insurance as a condition precedent to payment.

9.4.1.3 The Contractor shall attach certified payroll reports for the relevant period to 1 copy of each Contractor Payment Request, see **Document 00 73 43 - Prevailing Wage Requirements**.

9.4.1.4 The Contractor may list on the Contractor Payment Request any Change Orders approved and performed prior to submission of the Contractor Payment Request.

9.4.1.5 The Contractor shall submit its Contractor Payment Request using the Contractor 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.

9.4.1.6 If the Project is not administered using the State's web-based project management software, the Contractor shall submit 1 draft copy of its Contractor Payment Request ("Pencil Copy") to the A/E not less than 1 week prior to submitting multiple copies of its Contractor Payment Request. The A/E shall review the Pencil Copy and provide comments to the Contractor within 3 days of receiving it. The Contractor shall incorporate the A/E's comments into its Contractor Payment Request prior to submitting multiple copies for payment.

9.4.1.7 The Contractor shall clearly indicate on the Contractor Payment Request, the amount(s) requested for each EDGE-certified Business used in the performance of the Contract. The amount(s) shall indicate labor and materials, as appropriate.

9.4.1.8 The Contractor shall submit an electronic copy of the Contractor Payment Request to the A/E with its paper copies of the Contractor Payment Request for collection and reporting of information used for contract compliance evaluation and statistical purposes. The Contractor may issue the copy in any electronic media acceptable to the Contracting Authority.

9.4.2 Payments, except for lump sum items, in Unit Price Contracts shall be made to the Contractor only for the authorized actual quantities of Work performed or materials furnished in accordance with the Contract Documents.

9.4.3 Subject to **Section 9.8**, the Owner shall pay an approved Contractor Payment Request within 30 days from the date the A/E recommends acceptance of the Contractor Payment Request.

9.4.3.1 Payments due and not paid to the Contractor, through no fault of the Contractor, within the 30 day period shall, from the date payment is due, bear simple interest at the applicable statutory rate.

9.4.4 Notwithstanding any other provision of the Contract Documents, partial payments made pursuant to this **Section 9.4** constitutes neither acceptance of any Defective Work, nor a waiver of any rights set forth in the Contract Documents or otherwise provided by Applicable Law.

9.4.5 The Contracting Authority and Owner may audit Contractor Payment Requests as described under **Section 7.9**.

9.4.6 If the Project is administered using the State's web-based project management software, the Contractor shall submit its Contractor Payment Request, using the "Contractor Pay Request" or "Applications for Payment" business process.

9.5 Labor Payments

9.5.1 Partial payments to the Contractor 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 Contractor Payment Request that shows the Work is 50 percent complete.

9.5.2 After the Work is 50 percent complete, as evidenced by payments of at least 50 percent of the Contract Sum including approved Change Orders to date, no additional funds shall be retained from payments for labor.

9.6 Material Payments

9.6.1 The Owner shall pay the Contractor at the rate of 100 percent of the scheduled value for materials incorporated into the Project.

9.6.2 The Owner shall pay the Contractor at the rate of 92 percent of the invoice cost, not to exceed the scheduled value in a Unit Price or lump sum Contract, for materials delivered to the Site, or other off-site storage location approved by the A/E, provided the Contractor provides the following information with the Contractor Payment Request:

9.6.2.1 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

9.6.2.2 a certification of materials stored off-site, prepared by the Contractor and signed by the A/E to evidence that the materials are in conformity with the Specifications and have been tagged with the Project name and number for delivery to the Project. The Contractor shall directly reimburse the A/E for all costs incurred to visit a storage site, other than the areas adjacent to the Project.

9.6.2.3 The Owner shall pay the balance of the scheduled value when the materials are incorporated into and become a part of the Project.

9.6.3 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.

9.6.3.1 The Owner may, at its sole discretion, retain any material not ultimately incorporated into the Project or return it to the Contractor for credit of an amount proportionate to the value of the extra materials.

9.7 Retainage

9.7.1 If the total Contract Sum is $15,000 or more, when the Contract is 50 percent complete, all funds retained for faithful performance of the Work, in accordance with **Section 9.5.1**, 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 Contractor, Contracting Authority, and applicable bank.

9.7.2 When the major portion of the Work is occupied or in use, and there is no other reason to retain funds; upon request of the Contractor, the funds retained in connection with that Work shall be released from escrow and paid to the Contractor, 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 6.26.2**.

9.7.3 Upon consent by the Contractor'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 Contractor's Surety remains responsible for all damages that may be caused due to default by the Contractor, including, but not limited to, the following:

9.7.3.1 completion of the Work;

9.7.3.2 all interference, disruption, hindrance and delay claims;

9.7.3.3 all Liquidated Damages; and

9.7.3.4 all additional expenses incurred by the State.

9.8 Payments Withheld

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

9.8.2 The Contracting Authority may decline to approve any Contractor Payment Request or part thereof, or nullify any previous Contractor 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:

9.8.2.1 Defective Work not remedied;

9.8.2.2 damage caused by the Contractor;

9.8.2.3 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

9.8.2.4 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;

9.8.2.5 failure to comply with Applicable Law including, but not limited to, the requirements of ORC Chapter 4115;

9.8.2.6 failure to timely submit EDGE Participation Reports in accordance with **Section 1.8.2**;

9.8.2.7 failure to timely identify the Contractor's proposed Subcontractors in accordance with **Section 4.1**;

9.8.2.8 failure to timely approve a Construction Progress Schedule in accordance with **Section 6.6**;

9.8.2.9 failure to carry out the Work in accordance with the Contract Documents; or

9.8.2.10 that which is permitted under other provisions of the Contract Documents.

9.8.3 If the Contractor remedies the basis for withholding payment under **Section 9.8.2** to the Contracting Authority's satisfaction, the Owner shall pay the amounts withheld.

9.9 Final Contractor Payment Request

9.9.1 The Contractor, as a condition precedent to execution of the Certificate of Contract Completion and to final payment, shall complete all requirements of the Contract Documents.

9.9.1.1 The Contractor and each of its Subcontractors, regardless of tier, shall execute a Payment Release Affidavit to certify that the Contractor 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.

9.9.2 The Owner shall pay the final Contractor Payment Request within 30 days from the date the A/E recommends acceptance of the final Contractor Payment Request.

9.9.2.1 Payments due and not paid to the Contractor within the 30 day period shall bear interest from the date payment is due under the Contract Documents at the applicable statutory rate.

9.9.3 Acceptance of final payment by the Contractor 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 Contractor Payment Request.

9.9.4 If the Project is administered using the State's web-based project management software, the Contractor shall submit its final Contractor Payment Request, using the "Contractor Pay Request" or "Applications for Payment" business process.

ARTICLE 10 - BONDS, INSURANCE, AND INDEMNIFICATION

10.1 Payment and Performance Bonds

10.1.1 Before signing the Agreement, the Contractor shall provide the Bond required under Applicable Law and below:

10.1.1.1 If the Contractor provided **Document 00 43 13 - Bid Security Form** as its Bid Guaranty then that form shall be the Bond.

10.1.1.2 If the Contractor provided another form of Bid Guaranty, then **Document 00 61 13 - Performance and Payment Bond Form** shall be the Bond.

10.1.1.3 Each Surety under the Bond 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 the Bond, each of them shall be jointly and severally liable as surety under the Bond.

10.1.1.5 The penal sum of the Bond, when initially submitted, shall be equal to one-hundred percent of the Contract Sum.

10.1.2 The Contractor shall submit with the 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 Contract Sum increases at any time such that it exceeds the penal sum of the Bond, the Contractor shall cause the penal sum of the Bond to be increased such that the penal sum equals one-hundred percent of the increased Contract Sum.

10.1.4 Any time the Contractor increases the penal sum of the Bond under **Section 10.1.3**, the Contractor shall deliver to the Contracting Authority written consent of the affected Surety or Sureties confirming the increased penal sum. The Contracting Authority's receipt of that written consent is a condition precedent to the Owner's obligation to pay the Contractor for any portion of the Work associated with the increase.

10.1.5 If notice of any change affecting the Contract is required by any Surety or by the provision of any Bond, the Contractor shall provide that notice.

10.2 Contractor's General Insurance Requirements

10.2.1 Throughout the performance of the Work or longer as may be described below, the Contractor 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 Contractor.

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 Contractor shall submit to the Contracting Authority **(1)** a certificate of insurance evidencing the insurance the Subcontractor will carry without additional compensation and **(2)** if the Contracting Authority requests, a written proposal from the Subcontractor to provide coverage that meets the minimum coverage requirements. The Contracting Authority will decide whether to accept the non-conforming insurance coverage or the proposal to provide conforming coverage.

10.2.1.3 On a case-by-case basis, the Contracting Authority and Contractor 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 Contractor shall deliver to the Contracting Authority certificates evidencing that the required insurance is in force.

10.2.3 With the exception of government-controlled workers compensation coverage:

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

10.2.3.2 the policies shall be endorsed to require the Contractor's insurance carrier to **(1)** provide 30-days' written notice to the Contracting Authority (as certificate holder) of the cancellation or non-renewal of the insurance and **(2)** provide at least 10-days' written notice to the Contracting Authority (as certificate holder) of the cancellation of the insurance for non-payment of premium; and

10.2.3.3 within 30 days of the Contracting Authority's request, the Contractor shall submit insurance-company certified copies of the policies, the policy endorsements, loss-run reports, or all three.

10.2.4 The Contractor shall pay all deductibles, or self-insured retentions, or both contained in the Contractor'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 Contractor may use to comply with any insurance requirement.

10.2.5 The Contractor 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 Contractor's proportionate share will derive from the percentage of the associated claim or loss attributable to the alleged or actual negligence of the Contractor or a Subcontractor.

10.2.6 The Contracting Authority and Owner do not represent that required coverage or limits are adequate to protect the Contractor.

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 Contractor's obligation to maintain the required insurance.

10.2.8 The Contracting Authority may terminate the Contract for cause on account of the Contractor's failure to maintain required insurance.

10.3 Contractor's Minimum Coverage Requirements

10.3.1 Workers Compensation. The Contractor shall maintain workers compensation coverage meeting the requirements of Applicable Law.

10.3.2 Employers Liability Coverage. The Contractor 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 Contractor shall maintain commercial general liability ("CGL") coverage that provides **(1)** an each-occurrence limit of not less than $1,000,000, **(2)** a general-aggregate limit of not less than $2,000,000, and **(3)** a products and completed-operations aggregate limit of not less than $2,000,000.

10.3.3.1 The CGL insurance shall be written on ISO occurrence form CG 00 01 10 01 or a substitute form, providing at least equivalent coverage for liability arising from premises, operations, independent contractors, products/completed-operations, personal and advertising injury, and liability assumed under an insured contract.

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

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

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

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

10.3.3.6 The Contractor shall maintain the CGL insurance in effect for no less than 5 years after the earlier of the termination the Contract or Substantial Completion of all Work.

10.3.4 Business Automobile Liability. The Contractor 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 Contractor shall include the State, Contracting Authority, Owner, and A/E as additional insureds under the BA policy.

10.3.5 Umbrella/Excess Liability. The Contractor may employ an umbrella/excess liability policy to achieve the above-required minimum coverage.

10.3.5.1 The Contractor 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.

10.3.5.2 The Contractor 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 Contractor shall maintain a contractor's pollution liability ("CPL") policy with **(1)** a per-claim limit of not less than $1,000,000 and **(2)** an annual-aggregate limit of not less than $1,000,000, covering the acts, errors and/or omissions of the Contractor for damages (including from mold) sustained by the Owner by reason of the Contractor's performance of the Work.

10.3.6.1 The CPL policy shall have an effective date, which is on or before the date that the Contractor 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 Contractor shall advise the Contracting Authority in writing of any actual or alleged claims that may erode the CPL policy's limits.

10.3.6.3 The Contractor shall maintain the CPL insurance in effect for no less than 5 years after the earlier of the termination of the Contract or Substantial Completion of all Work.

10.3.7 Professional Liability—Contractor. The Contractor shall maintain professional liability insurance (including without limitation for sprinkler and/or fire protection and other design-build work included in the Work) without design-build exclusions with limits not less than as identified in the following table:

Contract Sum	Each Claim	Annual Aggregate
Up to $50,000,000	$1,000,000	$2,000,000
More than $50,000,000	$2,000,000	$4,000,000

10.3.7.1 The professional liability policy shall have an effective date on or before the date that the Contractor 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 Contractor shall advise the Contracting Authority in writing of any actual or alleged claims that may erode the professional liability policy's limits.

10.3.7.3 The Contractor shall maintain the professional liability insurance in effect for no less than 5 years after the earlier of the termination of the Contract or Substantial Completion of all Work.

10.3.7.4 If the Contractor is not authorized under Applicable Law to directly provide professional design services, the Contractor may satisfy the requirements of this **Section 10.3.7** by providing a contractor's professional liability insurance policy.

10.3.7.5 If the Contractor is a joint venture:

.1 the Contractor may meet the requirements of this **Section 10.3.7** by providing a PL policy under which each joint venturer is the insured; or

.2 each joint venturer shall individually meet the requirements of this **Section 10.3.7** by providing a PL policy **(1)** under which the individual joint venturer is the insured and **(2)** that covers that joint venturer's interests in the joint venture by endorsement or otherwise. The certificate of insurance shall reflect that the PL policy covers the joint venturer's interest in the joint venture.

Example: Assume that the Contractor **(1)** is the "XY joint venture" of company "X" and company "Y"; and **(2)** is required under **Section 10.3.7** to maintain PL insurance limits of $1M/$2M. In order to comply with **Section 10.3.7.5.2**, "X" must maintain PL insurance limits of $1M/$2M and "Y" must maintain PL insurance limits of $1M/$2M.

10.3.7.6 If the Contractor is a limited-liability company, which members consist of two or more separate firms:

.1 the Contractor may meet the requirements of this **Section 10.3.7** by providing a PL policy under which the limited-liability company is the insured; or

.2 each member of the limited-liability company shall individually meet the requirements of this **Section 10.3.7** by providing a PL policy **(1)** under which the individual member is the insured and **(2)** that covers that member's interests in the limited-liability company by endorsement or otherwise. The certificate of insurance shall reflect that the PL policy covers the member's interest in the limited-liability company.

Example: Assume that the Contractor **(1)** is the "XY limited-liability company," the members of which are "X" and "Y"; and **(2)** is required under **Section 10.3.7** to maintain PL insurance limits of

$1M/$2M. In order to comply with **Section 10.3.7.6.2**, "X" must maintain PL insurance limits of $1M/$2M and "Y" must maintain PL insurance limits of $1M/$2M.

10.3.8 Professional Liability—Subcontractors. If the Work to be performed by a Subcontractor includes any professional design services (including without limitation sprinkler and/or fire protection and other design-build work) the Subcontractor shall maintain professional liability insurance without design-build exclusions with limits not less than as identified in the following table:

Subcontract Sum	Each Claim	Annual Aggregate
Up to $50,000,000	$1,000,000	$2,000,000
More than $50,000,000	$2,000,000	$4,000,000

10.3.8.1 The professional liability policy shall have an effective date on or before the date that the Subcontractor first started to provide any Project-related services.

10.3.8.2 Upon submission of the associated certificate of insurance and at each policy renewal, the Contractor shall advise the Contracting Authority in writing of any actual or alleged claims that may erode the Subcontractor's professional liability policy's limits.

10.3.8.3 The Subcontractor shall maintain the professional liability insurance in effect for no less than 5 years after the earlier of the termination of the Contract or Substantial Completion of all Work.

10.3.8.4 If the Subcontractor is not authorized under Applicable Law to directly provide professional design services, the Subcontractor may satisfy the requirements of this **Section 10.3.7.5** by providing a contractor's professional liability insurance policy.

10.3.9 Aviation Liability. If the Contractor or a Subcontractor uses aircraft, including helicopters, in performance of the Work, the Contractor 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 Contractor or a Subcontractor.

10.3.10 Watercraft Liability. If the Contractor or a Subcontractor uses watercraft in performance of the Work, the Contractor 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 Contractor or Subcontractor.

10.3.11 Equipment Coverage. The Contracting Authority and Owner will not insure or be liable for damage to any Contractor or Subcontractor owned, leased, rented, or borrowed tools, equipment, or vehicles. The Contractor and Subcontractors are solely responsible for maintaining all insurance necessary to cover their tools, equipment, and vehicles.

10.3.12 Ocean Marine Insurance. If the shipment of equipment or materials for the Work will not be covered by the builder's risk insurance required under **Section 10.4**, the Contractor shall maintain ocean marine insurance to the Site including cost, insurance, and freight with limits of not less than an amount equal to the full replacement cost of equipment/materials shipped to final destination point. The insurance shall include the following minimum requirements:

10.3.12.1 all-risk basis including war risk and all forms of terrorism;

10.3.12.2 coverage for general average and salvage charges;

10.3.12.3 "on deck" coverage;

10.3.12.4 warehouse-to-warehouse coverage;

10.3.12.5 coverage to include losses from strikes, riots, and civil commotions ("SR&CC coverage");

10.3.12.6 coverage to include losses from free of capture and seizure warranty ("FC&S Warranty coverage");

10.3.12.7 "Inchmaree" clause;

10.3.12.8 sue and labor;

10.3.12.9 "both-to-blame" coverage;

10.3.12.10 free of particular average;

10.3.12.11 inland coverage including on-land shipment, port storage, and barge transit upon inland waterways; and

10.3.12.12 damage by saltwater and rainwater perils and cargo sweat.

10.3.13 Additional Property Insurance. For any demolition, blasting, excavating, tunneling, shoring, or similar operations, the Contractor 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 Lead Contractor shall provide and maintain, during the progress of the Work and until Contract Completion, a builder's risk insurance policy to cover all Work in the course of construction including false-work, temporary buildings and structures, and materials used in the construction process, stored on or off-site, or while in transit. This insurance shall be on a special cause of loss form that provides coverage on an open perils basis insuring against the direct physical loss of, or damage to, covered property including, but not limited to, theft, vandalism, malicious mischief, earthquake, tornado, lightning, explosion, breakage of glass, flood, collapse, water damage, and hot and cold testing. This insurance shall be written on a replacement cost basis and shall also include debris removal, and/or demolition occasioned by enforcement of Applicable Law.

10.4.1.1 The amount of coverage shall be not less than the total completed value of the Project, including the value of permanent fixtures and decorations, with a deductible of not more than $25,000 per occurrence. Any deductible over the amount specified shall be authorized in writing by the Owner and Contracting Authority.

10.4.1.2 Coverage shall include a provision to pay the reasonable extra costs of acceleration and expediting temporary and permanent repairs to, or permanent replacement of, damaged property. This shall include overtime wages and the extra cost of "express" or other means for rapidly transporting materials and supplies necessary to the repair or replacement.

10.4.1.3 Coverage shall include "soft cost endorsement" including, but not limited to, the reasonable extra costs of the A/E and reasonable Contractor extension or acceleration costs.

10.4.1.4 Coverage shall include material in transit or stored off-site and identified for the Project.

10.4.1.5 Coverage shall waive all rights between the Owner, Contracting Authority, Contractor, and Subcontractors at any tier, for damages caused by fire or any other perils to the extent of actual recovery of any insurance proceeds under the policy.

10.4.1.6 Coverage shall include appropriate sub-limits for installation coverage.

10.4.1.7 Coverage shall include provisions for mechanical or electrical breakdown, or boiler system testing.

10.4.1.8 Coverage shall include temporary structures and scaffolding, along with collapse coverage.

10.4.1.9 Coverage shall be primary to all other applicable insurance.

10.4.1.10 The builder's risk policy shall specifically permit and allow for Partial Occupancy by the Owner prior to Contract Completion and coverage shall remain in effect until all punch list items are completed.

10.4.1.11 The Contractor's tools and equipment shall not be covered under the builder's risk policy. It is the Contractor's sole responsibility to maintain such coverage, which shall be included in its Overhead and not included as a separate item in the Contractor's Schedule of Values.

10.4.2 If the Contractor is involved solely in the installation of material and equipment and not in new building construction, the Contractor shall purchase and maintain a builder's risk, builder's risk-renovations, or installation floater insurance policy. The policy shall comply with the provisions of **Section 10.4.1**.

10.5 Waivers of Subrogation

10.5.1 To the fullest extent permitted by Applicable Law, the Contractor waives all rights against the Owner, Contracting Authority, and their agents and employees for damages to the extent covered by any insurance, except rights to the proceeds of that insurance. All policies shall accomplish the waiver of subrogation by endorsement or otherwise.

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

10.6 Indemnification for Injury or Damage

10.6.1 To the fullest extent permitted by Applicable Law, the Contractor 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 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 Contractor or a person or entity for whom the Contractor may be liable;

10.6.1.2 infringement of patent rights or copyrights by the Contractor or a person or entity for whom the Contractor may be liable; or

10.6.1.3 a violation of Applicable Law but only to the extent attributable to the Contractor or a person or entity for whom the Contractor may be liable.

10.6.2 The Contractor'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 indemnified under **Section 10.6**. But nothing in **Section 10.6** obligates the Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

10.6.3 The Contractor's obligations under **Section 10.6** shall not extend to the liability of the A/E, A/E's consultants, agents, representatives, or employees for negligent preparation or approval of Drawings, Specifications, Change Orders, opinions, and any other responsibility of the A/E, except to the extent covered by the Contractor's insurance.

10.6.4 In claims against an Indemnified Party by any direct or indirect employee (or the survivor or personal representative of that employee) of the Contractor or a person or entity for whom the Contractor may be liable, the indemnification obligation under **Section 10.6** will not be limited by a limitation on the amount or type of damages, compensation, or benefits payable under workers' compensation acts, disability benefit acts, or other employee benefit acts.

10.6.5 The Contractor's indemnification obligation under **Section 10.6** will not be limited by any insurance policy provided or required in connection with the Project.

10.6.6 The Contractor's obligations under **Section 10.6** shall not negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to an Indemnified Party.

10.6.7 The Contractor's indemnification obligation under **Section 10.6** will survive termination of the Contract and Contract Completion.

10.6.8 The Contracting Authority may deduct from the Contract Sum the claims, damages, losses, fines, penalties, and expenses for which the Contractor is liable under **Section 10.6**. If those claims, damages, losses, fines, penalties, and expenses exceed the unpaid balance of the Contract Sum, the Contractor shall immediately pay the difference to the Owner.

ARTICLE 11 - SUSPENSION AND TERMINATION

11.1 Suspension of the Work

11.1.1 The Contracting Authority, without cause and without prejudice to any other right or remedy it may have, may order the Contractor in writing to suspend, delay, or interrupt performance of the Work in whole or in part for such period as the Contracting Authority may determine.

11.1.1.1 If the Contracting Authority suspends the Work under this **Section 11.1.1** and the Contractor complies with **Article 8**, the Contract Sum and Contract Times shall be adjusted for increases in the cost and time caused by the suspension, delay, or interruption. The adjustment of the Contract Sum, however, shall not include profit.

11.1.1.2 Notwithstanding the foregoing, no adjustment shall be made to the 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 Contractor 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 Contractor submits a proper Contractor Payment Request, subject to all other provisions of the Contract Documents, the Contractor shall be entitled to payment of compensation due under the Contract Documents for Work performed before the suspension based upon the Schedule of Values.

11.1.2 The Contracting Authority, without prejudice to any other right or remedy it may have, may order the Contractor in writing to suspend, delay, or interrupt the performance of the Work in whole or in part for such period as the Contracting Authority may determine for any of the following reasons: **(1)** Defective Work; **(2)** the Contractor is causing undue risk of damage to any part of the Project or adjacent area; **(3)** the Contractor 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 Contractor to any adjustment of the Contract Sum, Contract Times, or both.

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 suspension under **Section 11.1.1**.

11.1.3 Upon receipt of notice of suspension under this **Section 11.1**, the Contractor shall cease Work on the suspended activities and take all necessary or appropriate steps to limit disbursements and minimize respective costs. The Contractor 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 Contractor or any other party, and the Contracting Authority's exercise or failure to exercise the right shall not prejudice any of the Contracting Authority's other rights.

11.2 Termination for Convenience

11.2.1 The Contracting Authority may, at any time, terminate the Contract in whole or in part for the Owner's convenience and without cause, at any time upon 10 days' written notice to the Contractor.

11.2.2 Upon receipt of the notice of termination for convenience, the Contractor 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 Upon termination, the Contracting Authority shall pay the Contractor 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 Contractor may receive for them.

11.2.3.1 All materials, equipment, facilities, and supplies at the Site or stored off-site, for which the Contractor has received payment, shall become the property of the Owner.

11.2.3.2 The Contractor is entitled to a fair and reasonable profit for Work performed and reasonable expenses directly attributable to termination of the Contract. In no event shall the Contractor be entitled to **(1)** Contractor's Fee on Work not performed or **(2)** compensation in excess of the total Contract Sum.

11.2.4 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 Contractor then existing or which may thereafter accrue.

11.2.5 Notwithstanding **Section 11.2.3**, if the Contracting Authority terminates the Work under this **Section 11.2**, but there exists an event of the Contractor's default, the Contractor shall be entitled to receive only such amounts as it would be entitled to receive following the occurrence of an event of default as provided in **Section 11.3**.

11.3 Termination for Cause

11.3.1 The Contracting Authority may terminate all or a portion of the Contract if the Contractor 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 Contractor and the Contractor'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 6.24.1** 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 6.24.1** will not prejudice the Contracting Authority's rights under **Section 11.3**.

11.3.3 If the Contractor 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 Contractor 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 Contractor's Surety may perform the Contract. If the Contractor'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 State has paid.

11.3.5 If the Contract is terminated, the Contractor shall not be entitled to further payment. If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including without limitation the fees and charges of engineers, architects, attorneys, and other professionals and court costs, and other damages incurred by the Owner and not expressly waived, the Contractor or Surety shall immediately pay the amount of the insufficiency to the Owner. This obligation for payment shall survive termination of the Contract.

11.3.6 If the Contractor's Surety performs the Work, the provisions of the Contract Documents govern the Surety's performance, with the Surety in place of the Contractor 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 Contractor then existing or which may thereafter accrue. The Contracting Authority's retention or payment of funds due the Contractor shall not release the Contractor or the Contractor'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 Contractor Insolvency

11.4.1 Bankruptcy of Contractor.

11.4.1.1 If the Contractor files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it, the Contractor, the Contractor as the debtor-in-possession, or the trustee of the Contractor'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 limits provided by this **Section 11.4** shall constitute a material breach of the Contract as time is of the essence with respect to Contractor's performance of all terms of this Contract. The Contractor 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 Contractor makes a general assignment for the benefit of creditors or if a receiver is appointed for all or a substantial part of the Contractor's business or property, the Contracting Authority shall serve written notice on the Contractor and Contractor's Surety stating that any failure of the Contractor 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 Contractor's Documents and Contract Documents

12.1.1 Ownership.

12.1.1.1 The Owner alone owns the Contractor's Documents and the Contract Documents and every right, title, and interest therein.

.1 The Contractor must execute and deliver and cause its employees and agents and all Subcontractors and Consultants to execute and deliver, to the Owner any transfers, assignments, documents, or other instruments (if any) necessary to vest in the Owner complete right, title, interest in and ownership of the Contractor's Documents and the Contract Documents.

12.1.1.2 The Contractor may retain copies, including reproducible copies, of the Contractor's Documents and the Contract Documents for information, reference, and performance of the Work.

12.1.1.3 The submission or distribution of the Contractor's Documents or the Contract Documents to meet official regulatory requirements or for similar purposes in connection with the Project is not a waiver of the Owner's reserved rights in the Contractor's Documents and the Contract Documents. Any unauthorized use of the Contractor's Documents or the Contract Documents shall be at the sole risk of the entity making the unauthorized use.

12.1.1.4 The Contractor shall provide Electronic Files (in native format) to Separate Consultants and Separate Contractors for their use in connection with the Project. The Contractor 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 Contractor.

12.1.2.2 The Contract Documents are complementary, and what is required by one is binding as if required by all.

12.1.2.3 The Contractor shall provide all 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 Contractor 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 Contractor 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.

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

12.1.3.2 The Owner, Contracting Authority, A/E, and Contractor acknowledge that the use of Electronic Files involves risks not generally associated with the use of paper documents. Those risks include, for example and without limitation, alteration (inadvertent or intentional) and deterioration, both of which may not be readily apparent through casual observation.

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

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

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

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

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 Contractor of its responsibility for the preparation, completeness, or accuracy of the Contractor'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 Contractor may exercise reasonable public relations and marketing efforts related to the Project, provided the Contractor properly identifies the Owner and Contracting Authority, and their participation in the Project.

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

12.2.4 Craft Awards and Other Recognition. If the Contractor submits the Project for craft awards or other similar venues for recognition of the Project, the Contractor shall properly identify the Owner and Contracting Authority, and their participation in the Project. In addition, if the Project receives any craft award or other recognition, the Contractor shall provide duplicate copies of the award plaque or other memento of the award to the Owner and 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 Contractor 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 Contractor, A/E, Contracting Authority, and 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 Contractor shall furnish the Notice of Commencement to Subcontractors or any other member of the public.

12.6 Written Notice

12.6.1 Notice under the Contract Documents shall be validly given if:

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

12.6.1.2 delivered, or sent by registered or certified mail, to the last known business address of the organization; or

12.6.1.3 sent by facsimile, email, or web-based project management software, provided the original, signed document is delivered within 3 business days after the date of the electronic transmission.

12.6.2 When the Owner, Contracting Authority, A/E, or Contractor gives notice to one of the other 3, it shall also simultaneously send a copy of that notice to the others.

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

12.6.4 In the event of an emergency involving the Project, including, but not limited to, a fatality, serious injury, fire, collapse, flood, utility, or power loss to occupied facilities, explosion, or environmental damage, the Contractor shall immediately notify the A/E, Contracting Authority, and Owner by telephone.

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

12.7 Taxes

12.7.1 Only those materials that ultimately become a part of the completed structure or improvement that constitutes the Project shall be exempt from state sales tax and state use tax.

12.7.2 The purchase, lease, or rental of material, equipment, parts, or expendable items as concrete form lumber, tools, oils, greases, and fuels, which are used in connection with the Work, are subject to the application of state sales tax and state use tax.

12.8 Computing Time

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

12.8.2 Except as excluded under **Section 12.8.1**, the Contract Times and all other periods referred to in the Contract Documents includes Saturdays, Sundays, and all days defined as legal holidays by **Section 12.8.4**.

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

12.8.4 Legal holidays are as follows:

12.8.4.1 New Year's Day – First Day in January;

12.8.4.2 Martin Luther King Jr. Day – Third Monday in January;

12.8.4.3 Washington-Lincoln (President's) Day – Third Monday in February;

12.8.4.4 Memorial Day – Last Monday in May;

12.8.4.5 Independence Day – Fourth day of July;

12.8.4.6 Labor Day – First Monday in September;

12.8.4.7 Columbus Day – Second Monday in October;

12.8.4.8 Veterans' Day – Eleventh Day of November;

12.8.4.9 Thanksgiving Day – Fourth Thursday of November; and

12.8.4.10 Christmas Day – Twenty-fifth day of December.

12.8.5 If a legal holiday falls on a Saturday, it is observed on the preceding Friday. If a legal holiday falls on a Sunday, it is observed on the following Monday.

12.9 Time of the Essence

12.9.1 Time limits stated in the Contract Documents are of the essence of the Contract and all obligations under the Contract. By signing the Agreement, the Contractor 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 Schedule, the Contractor 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 Notice to Proceed establishes the date for commencement of the Work.

12.9.1.2 The Contractor 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 Contractor achieving Contract Completion within the associated Contract Time.

12.9.1.3 The Contractor shall perform the Work in a reasonable, efficient, and economical sequence, and in the order and time as provided in the Construction Progress Schedule.

12.9.1.4 The Contractor acknowledges that it may be subject to interference, disruption, hindrance, or delay in the progress of the Work from any cause. The sole remedy for such interference, disruption, hindrance, or delay shall be an extension of the Contract Times under **Article 8**, unless otherwise required by ORC Section 4113.62.

12.10 Successors and Assigns

12.10.1 The Contracting Authority and Contractor 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 Contractor each acknowledge that the Owner is an intended third-party beneficiary of this Contract.

12.10.3 The Contractor shall not assign, or transfer any right, title, or interest in this Contract without the Contracting Authority's prior written consent.

12.11 Extent of Contract

12.11.1 Entire Contract. The Contract Documents represent the entire and integrated agreement between the Contracting Authority and Contractor 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 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 Electronic and Facsimile Signatures

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

12.14 No Third-Party Interest

12.14.1 Except as expressly provided under **Sections 6.2.3** through **6.2.5** and **Section 12.10.2**, **(1)** no person or entity, other than the Contracting Authority and Contractor, 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 Contractor.

12.15 Ohio Retirement System

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

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

12.16 No Waiver

12.16.1 The failure of the Contracting Authority or Contractor 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.

12.17 Rights and Remedies

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

12.18 Survival of Obligations

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

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