Construction Management Agreement (CM LEED Project)

State of Ohio Professional Services Agreements
for Public Facility Construction - State Agency, Board, or Commission

Instructions to the Contracting Authority: Replace the text enclosed by square brackets with information relevant to the project and delete the square brackets and these instructions in yellow boxes. Insert the name of the Contracting Authority and CM in the following paragraph as appropriate for the project, and change the text color to black. If there is no independent commissioning agent, delete that provision.

This version of the CM Agreement may be used with the Construction Manager (Multiple-Prime) version of the Standard Requirements, when the Owner has established a LEED certification goal for the Project. A version of the CM Agreement for non-LEED projects is also available.

This agreement must be used in conjunction with Exhibit #1 - Scope of Construction Management Agreement, which consists of two components. The first is an Excel spreadsheet (F120-09-CM_Exhibit_1.xls), including a breakdown of the fee, completed by the prospective CM. The second is a Word document (F120-09-CM_Exhibit_1-Part2+.doc), including a description of the project, names and addresses of each consultant proposed for the agreement, and any modifications to the terms and conditions of the agreement. Together, these three components form a complete CM Agreement.

This Construction Management Agreement ("Agreement") is made by and between the state of Ohio ("State") by [the **Ohio Department of Administrative Services**] ("Contracting Authority"), whose contact person shall be the Project Manager designated below or successor, and **[Insert Name of CM]** ("Construction Manager" or "CM"), whose contact person and address are set forth below. The Contracting Authority has executed or will execute a separate agreement with an Architect/Engineer ("A/E") for professional design services (the "Architect/Engineer Agreement") [and a Commissioning Agent ("CxA") for independent commissioning services]for this Project.

WHEREAS, the Contracting Authority is operating under Ohio Revised Code ("O.R.C.") Chapters 123 and 153 and it is the intention of the Contracting Authority, in the exercise of its powers as set forth in O.R.C. Sections 9.33 through 9.333, both inclusive, to obtain professional construction management services on behalf of the state agency or instrumentality named below ("Owner") for the following project ("Project"):

Revise the following text with information, as appropriate for the project, and change the text color to black.

Project:	**[Insert Project Number]**
Project Name:	**[Insert Project Name1]**
	[Insert Project Name2]
Owner:	**[Insert Agency/Institution Name]**
Owner's Representative:	[Insert Agency/Institution Contact]
Address:	[Insert Address]
	[Insert City, State and Zip Code]
Contracting Authority:	**[Ohio Department of Administrative Services]**
Project Manager:	[Insert Project Manager's Name]
Address:	[4200 Surface Road]
	[Columbus, Ohio 43228-1395]
Construction Manager:	**[Insert CM Name]**
CM Principal Contact:	[Insert CM Contact]
Address:	[Insert Address]
	[Insert City, State and Zip Code]

Insert the total amount of fees and reimbursable expenses in the following paragraph, as appropriate for the project, and change the text color to black.

WHEREAS, unless adjusted as provided herein, all fees and reimbursable expenses payable to the Construction Manager under this Agreement shall not exceed **$[Insert Amount]**; and

WHEREAS, the Construction Manager desires, and is capable, to provide construction management services for the Project;

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

NOW, THEREFORE, in consideration of the mutual promises herein contained, the Contracting Authority and the Construction Manager agree as follows:

ARTICLE 1 - THE CONSTRUCTION MANAGER

1.1 Construction Manager's Services

1.1.1 Scope of Services; Applicable Law

1.1.1.1 The CM shall provide construction management services for the Project, including, but not limited to, services required to plan, schedule, coordinate, manage, and administer the Project, in accordance with the terms of this Agreement, including, but not limited to, the provisions set forth in the attached Scope of Construction Management Agreement labeled Exhibit #1.

1.1.1.2 The CM shall provide such services in accordance with Applicable Law and the applicable Announcement issued pursuant to O.R.C. Section 9.331 ("Announcement").

1.1.2 Standard of Care

1.1.2.1 The CM shall perform its services consistent with the professional standards of skill and care ordinarily provided by construction managers in the same or similar locality under the same or similar circumstances.

1.1.2.2 The CM shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

1.1.3 Construction Budget

Enter the construction budget in the subparagraph below as appropriate for the project, and change the text color to black.

1.1.3.1 The total amount available for the construction of the Project is **$[Insert Construction Budget]** ("Construction Budget").

1.1.3.2 The Owner shall provide written notice to the Contracting Authority and the CM of any change in the Construction Budget.

1.1.3.3 The CM shall perform its services so that the Project is completed within the Construction Budget.

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

1.1.4 Management Schedule

1.1.4.1 Within 30 days after the execution of this Agreement, the CM shall submit, for approval by the Contracting Authority and the Owner, a Management Schedule for the performance of the CM's services.

1.1.4.2 The Management Schedule shall include allowances for reasonable periods required for the review and approval of items by the Contracting Authority and the Owner, and for approvals of governmental authorities having jurisdiction over the Project.

1.1.4.3 Unless the Contracting Authority or the Owner notify the CM of objections to the Management Schedule within 30 days of receipt thereof, the Contracting Authority and the Owner shall be deemed to have approved the Management Schedule.

1.1.4.4 The CM shall coordinate the Management Schedule with the Project Schedule, and upon receipt of the Design Schedule from the A/E, the CM shall incorporate the Design Schedule into the Project Schedule with the assistance of the A/E.

1.1.4.5 The CM shall not exceed, nor make any adjustment to, the Management Schedule after its initial approval without the prior written consent of the Contracting Authority and the Owner.

1.1.4.6 The CM shall perform its services in a timely manner consistent with the Project Schedule.

1.1.5 Personnel

1.1.5.1 The identities of the principal persons, and the extent of their participation in performing the CM's services, shall not be altered without the Contracting Authority's prior written consent.

1.1.5.2 The CM shall dismiss, from performing services under this Agreement, any individual employed by the CM, or the CM's subcontractors or Consultants, who the Contracting Authority finds, in its sole discretion, to be incompetent, guilty of misconduct, or detrimental to the services being performed under this Agreement.

1.1.6 Consultants

1.1.6.1 The CM may provide services through one or more consultants employed by the CM ("Consultants"), provided, however, that the CM shall remain responsible to the Contracting Authority and the Owner for all of the CM's duties and obligations under this Agreement.

1.1.6.2 No Consultant shall be retained upon terms inconsistent with this Agreement.

1.1.6.3 The identity of any Consultant and the extent of such Consultant's participation in performing the CM's services as set forth in the attached Scope of Construction Management Agreement labeled Exhibit #1 shall not be altered without the Contracting Authority's prior written consent.

1.1.6.4 The Contracting Authority's approval of any Consultant shall not relieve the CM of any liability for all acts and omissions of such Consultant. The CM shall be fully responsible and liable for any such acts or omissions of the Consultant.

1.1.7 Partnering Process and Meetings

1.1.7.1 The CM shall, prior to construction of the Project, participate in the creation and implementation of a partnering agreement, and shall participate in partnering meetings with the Contracting Authority, Owner, appropriate Consultants, CM's field representatives, A/E, CxA if applicable, Contractors, and other parties involved in the Project. Partnering meetings may be conducted during both the design and construction stages of the Project.

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

.1 Contracting Authority – Project Manager

.2 Owner – Primary representative

.3 A/E – Principal-in-charge, project manager, field representative, major consultants

.4 CM – Principal-in-charge, project manager, project engineer, superintendent, and major consultants.

.5 CxA – Principal project representative and major consultants if applicable.

.6 Contractor – Principal-in-charge, project manager, and superintendent

.7 Separate Contractors – Principal-in-charge, project manager, and superintendent

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

.9 CxA, if applicable

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

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

1.1.7.5 Formal contractual relations, responsibilities, and liabilities are not affected by any partnering agreement. The cost associated with establishing this partnership, including the partnering facilitator and neutral location, shall be included as a Reimbursable Expense pursuant to subparagraph 5.4. The CM shall include in its Basic Fee the resources necessary to participate in the partnering meetings.

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

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

1.1.8 Non-Discrimination

1.1.8.1 The CM shall comply with all Applicable Law regarding equal employment opportunity, including O.R.C. Section 153.59 and all related Executive Orders.

1.1.8.2 The CM agrees that the CM, any Consultant or subcontractor to the CM, and any person acting on behalf of the CM or a Consultant or subcontractor to the CM, shall not discriminate, by reason of race, creed, sex, disability, military status, or color, against any citizen of the state of Ohio in the employment of any person qualified and available to perform the services under this Agreement.

1.1.8.3 The CM further agrees that the CM, any Consultant or subcontractor to the CM, and any person acting on behalf of the CM or a Consultant or subcontractor to the CM shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of services under this Agreement on account of race, creed, sex, disability, military status, or color.

1.1.8.4 The CM shall cooperate fully with the State Equal Opportunity Coordinator, with any other official or agency of the state or federal government, which seeks to eliminate unlawful employment discrimination, and with all other state and federal efforts to assure equal employment practices under this Agreement.

1.1.9 Drug Free Safety Program

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

1.1.10 Campaign Contributions

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

1.1.11 Ethics Compliance

1.1.11.1 In accordance with Executive Order 2007-01S, the CM hereby certifies that it: (1) has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands the Ohio ethics and conflict of interest laws, and (3) shall take no action inconsistent with those laws and this order.

1.1.11.2 The CM understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this Agreement and may result in the loss of other contracts with the State.

1.1.11.3 The CM certifies that it is currently in compliance with, and will continue to adhere to, the requirements of Ohio ethics laws.

1.1.12 Ohio Services and Offshore Services

1.1.12.1 The CM's services shall not be performed outside the state of Ohio without the Contracting Authority's prior written consent.

1.1.12.2 In accordance with Executive Order 2010-09S, the CM hereby certifies, by its signature on this Agreement, that it: (1) has reviewed and understands Executive Order 2010-09S, (2) shall abide by those requirements in the performance of this Agreement, (3) shall perform no services required under this Agreement outside of the United States, (4) shall immediately notify the State of any change or shift in the location of services performed by the CM or its Consultants under this Agreement, and (5) no services shall be changed or shifted to one or more locations that are outside of the United States.

1.1.12.3 If the CM or any of its Consultants perform services under this Agreement outside of the United States, the performance of such services shall be treated as a material breach of the Agreement. The State is not obligated to pay and shall not pay for such services. If CM or any of its Consultants perform any such services, the CM shall immediately return to the State all funds paid for those services. The State may also recover from the CM all costs associated with any corrective action the State may undertake, including but not limited to an audit or a risk analysis, as a result of the CM performing services outside the United States.

1.1.12.4 The State may, at any time after the breach, terminate the Agreement, upon written notice to the CM in accordance with paragraph 8.1. The State may recover all accounting, administrative, legal and other expenses reasonably necessary for the preparation of the termination of the Agreement and costs associated with the acquisition of substitute services from a third party.

1.1.12.5 If the State determines that actual and direct damages are uncertain or difficult to ascertain, the State in its sole discretion may recover a payment of liquidated damages in the amount of 1 percent of the value of the Basic Fee.

1.1.12.6 The State, in its sole discretion, may provide written notice to the CM of a breach and permit the CM to cure the breach. Such cure period shall be no longer than 21 calendar days. During the cure period, the State may buy substitute services from a third party and recover from the CM any costs associated with acquiring those substitute services.

1.1.12.7 Notwithstanding the State permitting a period of time to cure the breach or the CM's cure of the breach, the State does not waive any of its rights and remedies provided the State in this Agreement, including but not limited to recovery of funds paid for services the CM performed outside of the United States, costs associated with corrective action, or liquidated damages.

1.1.12.8 The CM shall not assign any of its rights, nor delegate any of its duties and responsibilities under this Agreement, without prior written consent of the State. Any assignment or delegation not consented to may be deemed void by the State.

1.1.13 Royalties and Patents

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

1.1.14 Use of Domestic Steel

1.1.14.1 The CM shall comply with the Department's policy regarding the specification and use of domestically produced steel products, including furnishing the required certifications. This policy is available on the Department's Web site at http://das.ohio.gov (click on "DAS Statewide Policies" under the Hot Links menu). Scroll down and then click on Directive GS-D-07 "Required Use of Domestic Steel."

1.1.15 Limitation of Authority

1.1.15.1 The CM shall not have any authority to bind the Contracting Authority or the Owner for the payment of any costs or expenses without the prior express written approval of the Contracting Authority or the Owner, as applicable.

1.1.15.2 The CM shall have authority to act on behalf of the Contracting Authority and the Owner only to the extent provided herein.

1.1.15.3 The CM's authority to act on behalf of the Contracting Authority and the Owner may be modified only by an amendment to this Agreement in accordance with subparagraph 9.6.2.

1.1.16 Approval or Disapproval of CM's Services

1.1.16.1 The Contracting Authority and the Owner shall have the right to disapprove any portion of the CM's services on the Project.

1.1.16.2 In the event that any of the CM's services are disapproved by the Contracting Authority or the Owner, the CM shall proceed, when requested by the Contracting Authority, with revisions to the services to satisfy the objections.

1.1.16.3 The CM acknowledges that any review or approval by the Contracting Authority and the Owner of any services performed by the CM pursuant to this Agreement shall not relieve the CM of the CM's responsibility to properly and timely perform such services.

1.1.17 EDGE Business Development Program Participation

1.1.17.1 The CM shall participate in the "Encouraging Diversity Growth and Equity" Program ("EDGE") by contracting with, and using one or more, businesses certified as an EDGE Business Enterprise ("EDGE-certified business") by the Ohio Department of Administrative Services, Equal Opportunity Division ("EOD") as proposed for this Agreement by the CM and as approved by the Contracting Authority.

.1 If the CM is an EDGE-certified business, the CM may include this Agreement amount in the reporting.

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

1.1.17.2 The CM shall provide an EDGE Participation Report with each Construction Manager Pay Request.

.1 The CM shall provide status reports, produced by the CM and each applicable EDGE-certified business for the Agreement, indicating: (1) The name of each EDGE-certified business; (2) The federal tax identification number of each EDGE-certified business; (3) The date of the EDGE-certified business contract, subcontract, or purchase order; (4) The projected and actual start and end dates of the EDGE-certified business contract, subcontract, or purchase order; (5) The original amount of the EDGE-certified business contract or purchase order with the CM; (6) The current amount of the EDGE-certified business contract or purchase order; (7) The amount invoiced to date; (8) The amount paid to date; (9) The status of the EDGE-certified business

contract or purchase order (active, complete, or void); and (10) A statement describing any substantive product or performance deficiencies.

.2 The CM shall provide reports for each EDGE-certified business; however, the reports may be consolidated and submitted as a singular document.

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

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

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

.1 Failure to timely submit EDGE Participation Reports may result in withholding payment.

1.1.17.5 If the Project is administered using OAKS CI, the CM shall submit its EDGE Participation Reports, using the OAKS CI "Professional Services Pay Requests" business process.

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

1.1.18 Declaration Regarding Material Assistance/Non-Assistance to a Terrorist Organization ("DMA")

1.1.18.1 The CM represents and warrants that it has not provided any material assistance, as that term is defined in O.R.C. Section 2909.33(C), to an organization that is identified by, and included on, the United States Department of State Terrorist Exclusion List and that it has truthfully answered "no" to every question on the DMA. The CM further represents and warrants that it has provided or shall provide such to the Contracting Authority and/or the Ohio Business Gateway prior to execution of this Agreement at https://ohiobusinessgateway.ohio.gov/OBG/Membership/Security.mvc. If these representations and warranties are found to be false, this Agreement shall be void and the CM shall immediately repay to the Owner any funds paid under this Agreement.

1.1.19 Findings for Recovery

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

ARTICLE 2 - SCOPE OF BASIC SERVICES

2.1 General

2.1.1 Basic Services to be provided by the CM shall consist of the 6 stages set forth in paragraphs 2.2 through 2.7, inclusive, and include, but are not limited to, normal construction management services for the Project, and any services necessary to comply with the O.R.C. Section 3379.10 Percent for Arts Program. The CM's services shall be provided according to an Implementation Plan approved by the Contracting Authority.

2.1.2 Sustainability Requirements

2.1.2.1 The Project shall be designed and constructed in accordance with the requirements of Am. Sub. H.B. 251 of the 126th General Assembly, Governor's Executive order 2007-02S, and the resulting rules, policy, and procedures adopted by the Department establishing Sustainability Requirements for Capital Improvements Projects.

2.1.2.2 The sustainability goals established for this Project by the Owner are (1) to obtain LEED Silver Certification with an emphasis in Energy and Atmosphere (EA) credits, and (2) to comply with LEED New Construction Energy and Atmosphere credit 3 (EAcr3) for Enhanced Commissioning in addition to the fundamental commissioning prerequisite for LEED certification.

.1 The CM shall cooperate with the CxA in the performance of its duties to provide independent commissioning services for the Project.

2.1.2.3 The CM shall provide a Leadership in Environmental and Energy Design ("LEED") Accredited Professional to actively participate in the Project through all stages identified in the Agreement.

2.1.2.4 The CM shall assist the A/E to apply the Whole Systems Integrated Process Guide (ANSI/MTS 1.0 WSIP 2007) to all charrettes and the resulting design process.

2.1.2.5 The CM, with the assistance of the A/E, shall administer construction of the Project in accordance with the current version of the LEED rating system for the purpose of achieving the certification goal established for the Project by the Owner.

2.1.2.6 Unless otherwise stipulated in this agreement, the CM shall assist the A/E to register the Project with the Green Building Certification Institute ("GBCI"), specify, collect, and review the required submittals, certifications, reports, and other documentation, and submit the collected submittals, certifications, reports, and other documentation to the GBCI for the purpose of achieving the LEED certification goal established by the Owner.

2.1.2.7 The CM shall assist the A/E to summarize and maintain the targeted credits in a LEED checklist.

2.1.2.8 LEED registration and certification fees for the Project shall be directly paid by the Contracting Authority to the GBCI, unless included in this Agreement as an allowance set forth in the attached Scope of Construction Management Agreement labeled Exhibit #1 or in the Architect/Engineer Agreement.

2.1.2.9 The costs for the CM's participation in the LEED certification process shall be included in its Basic Services and additional compensation shall not be permitted.

2.1.2.10 If the CM's staff or its Consultants are unfamiliar with the LEED certification process, the CM shall arrange, pay the costs, and provide its staff and Consultants for LEED training without additional compensation under this Agreement.

2.1.3 Use of the State's Web-based Project Management System

2.1.3.1 If the Contracting Authority decides, in its sole discretion, to utilize the State's Web-based project management system, known as the OAKS Capital Improvements module ("OAKS CI"), for the Project, the CM shall use OAKS CI for all compatible services required under this Agreement.

2.1.3.2 All costs for the CM's use of OAKS CI for the Project shall be included in its Basic Services, and additional compensation shall not be permitted.

2.1.3.3 If the CM's staff or its Consultants are unfamiliar with the proper use of OAKS CI, the CM shall provide its staff and Consultants for training without additional compensation under this Agreement.

2.2 Predesign Stage

2.2.1 Program of Requirements

2.2.1.1 The CM shall review and provide comments to the A/E's preliminary evaluation of the Owner's Program of Requirements and schedule and budget requirements, including the Construction Budget, each in terms of the other and in terms of the applicable provisions set forth in the attached Scope of Construction Management Agreement labeled Exhibit #1, to the A/E, the Contracting Authority, and the Owner.

2.2.2 Approved Program of Requirements and Revisions

2.2.2.1 The CM shall assist the A/E to obtain the Owner's approval and signature on the revised Program of Requirements, and deliver a copy of the signed, approved revised Program of Requirements to the Contracting Authority ("Approved Program of Requirements").

2.2.2.2 If, at any time after such delivery, any changes or adjustments to the Approved Program of Requirements are desired, the CM shall assist the A/E to obtain the Owner's approval and signature on

the revised Program of Requirements, and deliver the amendment to the Contracting Authority for review and consent.

2.2.2.3 If the Project is administered using OAKS CI, the CM shall receive, review, and submit the revised Program of Requirements to the Owner, and the Contracting Authority for approval through the OAKS CI "Program of Requirements" business process.

2.2.2.4 The Approved Program of Requirements, as amended from time to time, shall determine the scope of the Project.

2.2.3 Sustainability Requirements

2.2.3.1 Eco-Charrette

.1 The CM shall assist the A/E to conduct an Eco-Charrette during the Predesign Stage to establish the sustainability goals for the Project.

.2 Eco-Charrette participants shall include representatives of the future occupants, maintenance and custodial staff, the Owner's Representative, the Contracting Authority's Project Manager, the CM, the CxA, the A/E's project architect, landscape architect, cost consultant, mechanical engineer, lighting designer, electrical engineer, structural engineer, civil engineer, and LEED Consultant as applicable.

.3 The major LEED categories shall guide the Eco-Charrette and the CM shall assist the A/E and the CxA to utilize the LEED Checklist to document the Owner's Project Requirements ("OPR").

.4 The OPR shall guide the design process and shall be used by the CxA to complete its duties.

2.3 Schematic Design Stage

2.3.1 Review and Consultation

2.3.1.1 The CM shall review and provide comments to the A/E's further evaluation or refinement of the Approved Program of Requirements and the schedule and budget requirements to the CM, the Contracting Authority, and the Owner; shall assist the A/E to identify and analyze requirements of governmental authorities having jurisdiction to approve the Project design; and shall participate in consultations with such authorities.

2.3.1.2 For renovation or remodeling, the CM shall review and provide comments to the A/E's investigation of existing conditions and verification of the accuracy of information provided by the Owner about existing conditions, as necessary.

2.3.2 Recommendations and Costs

2.3.2.1 The CM and A/E shall review, with the Owner, Site use and improvements and alternative approaches to selection of materials, building systems, and equipment.

2.3.2.2 The CM, with the assistance of the A/E, shall provide general recommendations on construction feasibility, availability of materials and labor, time requirements for construction, and factors related to Project cost, including costs of alternative designs or materials, preliminary budgets, and possible economies of scale.

2.3.3 Sustainability Requirements

2.3.3.1 The CM shall assist the A/E to conduct an Integrated Design Charrette at the beginning of the Schematic Design Stage with the Owner, the Project Manager, the CxA, and the A/E's Consultants, including, but not limited to, the Project architect, mechanical engineer, electrical engineer, lighting designer, civil engineer, structural engineer, and the Commissioning Agent.

2.3.3.2 The CM shall assist the A/E to select appropriate credits to achieve LEED Silver certification with an emphasis on Energy and Atmosphere credits, including but not limited to providing data related to cost impact, schedule impact, feasibility, and local availability of the proposed sustainable strategies, materials, and systems.

2.3.3.3 The CM shall assist the A/E to complete the LEED checklist indicating the credits that have been identified as “Yes,” “Possible,” and “No” for the Project, and shall submit the LEED checklist to the Owner.

2.3.3.4 The CM shall receive energy modeling reports run during this Schematic Design Stage from the A/E, and review and submit them to the Owner through the Contracting Authority.

2.3.4 Preliminary Life Cycle Cost Analysis

2.3.4.1 The CM shall receive and submit the A/E’s design concepts for a preliminary Life Cycle Cost Analysis (“LCCA”) and the preliminary LCCA for each concept to the Owner through the Contracting Authority.

2.3.5 Schematic Design Documents

2.3.5.1 Upon completion of the Schematic Design Stage for each Project phase, the A/E shall complete a Design Review Acceptance form, and submit 4 copies of the Schematic Design documents to the CM.

2.3.6 Preliminary Cost Estimate and Schedule

2.3.6.1 The CM, with the assistance of the A/E, shall prepare and submit to the Contracting Authority and the Owner, for review and approval, a Statement of Probable Construction Cost, based on current area, volume, and other unit costs, and a Preliminary Project Schedule, which shall incorporate the Management Schedule and the Design Schedule.

2.3.6.2 The A/E and the CM shall review any difference between the Construction Budget and the Statement of Probable Construction Cost, identify reasons for any difference, and recommend means to eliminate the difference.

2.3.6.3 The A/E, the CM, and the Owner shall agree upon the means to eliminate any difference between the Construction Budget and the Statement of Probable Construction Cost, and the CM shall prepare a written report describing the agreed upon means.

2.3.7 Submittal to Contracting Authority

2.3.7.1 The CM shall receive the Design Review Acceptance form and the Schematic Design documents from the A/E, and retain and review one copy of the Schematic Design Documents.

2.3.7.2 The CM shall attach a copy of the Preliminary Project Schedule, the Statement of Probable Construction Cost, and any report prepared pursuant to subparagraph 2.3.6 to 3 copies of the Schematic Design documents and submit them to the Owner, who shall retain 1 copy of the attachments, for review and approval.

2.3.7.3 The CM shall obtain the Owner’s approval of the Design Review Acceptance form and attachments, in addition to obtaining the Owner’s signature on the form, and deliver the form and 2 copies of the attachments to the Contracting Authority for approval.

2.3.7.4 If the Project is administered using OAKS CI, the CM shall receive the Schematic Design documents and any changes or revisions from the A/E, attach the Preliminary Cost Estimate and Schedule, and submit them to the Owner, and the Contracting Authority for approval through the OAKS CI “Design Review” business process.

2.3.7.5 The Contracting Authority shall approve or reject the submittals, return the Design Review Acceptance form and 1 copy of the attachments with comments to the A/E through the CM.

2.3.7.6 The CM shall revise the Preliminary Cost Estimate and Schedule to incorporate the comments from the Owner and the Contracting Authority.

2.4 Design Development Stage

2.4.1 Sustainability Requirements

2.4.1.1 The CM shall assist the A/E to update the LEED checklist indicating the credits that have been identified as “Yes,” “Possible,” and “No” for the Project, and shall submit the updated LEED checklist to the Owner through the Contracting Authority.

2.4.1.2 The CM shall receive revisions made by the A/E to the Target Finder Data Sheet and submit them to the Owner through the Contracting Authority.

2.4.1.3 The CM shall receive revised parametric energy modeling reports run by the A/E during this stage and submit them to the Owner through the Contracting Authority.

2.4.2 Life Cycle Cost Analysis

2.4.2.1 The CM shall receive and submit 3 copies of the revised LCCA for the selected design concept to the Owner through the Contracting Authority.

2.4.2.2 If the Project creates or renovates an area greater than 5,000 square feet, the A/E shall also submit the revised LCCA to the Department’s Office of Energy Services.

2.4.3 Design Development Documents

2.4.3.1 Upon completion of the Design Development Stage for each Project phase, the A/E shall complete a Design Review Acceptance form, and provide 4 copies of the Design Development documents to the CM.

2.4.3.2 The A/E shall revise the Design Development documents to incorporate comments from the Owner and the Contracting Authority, and comments from the CM, which have been reviewed and approved by the Owner.

2.4.4 Cost Estimate and Project Schedule

2.4.4.1 The CM, with the assistance of the A/E, shall prepare and submit to the Contracting Authority and the Owner, for review and approval, a Detailed Estimate of Construction Cost, based on current area, volume, and other unit costs, and a Project Schedule indicating Milestone completion dates.

2.4.4.2 In establishing the Detailed Estimate of Construction Cost, the CM, with the assistance of the A/E, shall include reasonable contingencies for design, bidding, and price escalation and determine, in conjunction with the Owner, the materials, equipment, component systems, and types of construction to be included in the Contract Documents.

2.4.4.3 The A/E and CM shall review any difference between the Construction Budget or the Statement of Probable Construction Cost and the Detailed Estimate of Construction Cost, identify reasons for any difference, and recommend means to eliminate the difference.

2.4.4.4 The A/E, the CM, and the Owner shall agree upon the means to eliminate any difference between the Construction Budget and the Detailed Estimate of Construction Cost, and the CM shall prepare a written report describing the agreed upon means.

2.4.4.5 The A/E and the CM shall review any differences between the Preliminary Project Schedule and the Project Schedule, identify reasons for the differences, and recommend whether the differences should be eliminated and means to eliminate the differences.

2.4.4.6 If the A/E, the CM, and the Owner agree to eliminate any such differences between the Preliminary Project Schedule and the Project Schedule, the CM shall prepare a written report describing the agreed upon means.

2.4.4.7 The A/E, the CM, and the Owner shall make any necessary amendments to the Approved Program of Requirements in accordance with subparagraph 2.2.2.

2.4.5 Submittal to the Contracting Authority

2.4.5.1 The CM shall receive the Design Review Acceptance form and the Design Development documents from the A/E, and retain and review one copy of the Design Development Documents.

2.4.5.2 The CM shall attach a copy of the Project Schedule, the Detailed Estimate of Construction Cost, and any report prepared pursuant to subparagraph 2.4.4, to 3 copies of the Design Development documents and submit them to the Owner, who shall retain 1 copy of the attachments, for review and approval.

2.4.5.3 The CM shall review the Design Development documents for constructability and general coordination and provide its written comments to the A/E, the Owner, and the Contracting Authority.

2.4.5.4 The CM shall obtain the Owner's approval of the Design Review Acceptance form and attachments, in addition to obtaining the Owner's signature on the form, and deliver the form and 2 copies of the attachments to the Contracting Authority for approval.

2.4.5.5 The Contracting Authority shall approve or reject the submittals, return the Design Review Acceptance form and 1 copy of the attachments with comments to the A/E through the CM.

2.4.5.6 If the Project is administered using OAKS CI, the CM shall receive the A/E's Design Development documents and any changes or revisions, attach a copy of the Project Schedule, the Detailed Estimate of Construction Cost, and any report prepared pursuant to subparagraph 2.4.4, and forward them to the Owner and the Contracting Authority for approval through the OAKS CI "Design Review" business process.

2.4.5.7 The CM shall revise the Detailed Estimate of Construction Cost and Project Schedule to incorporate comments from the Owner and the Contracting Authority.

2.5 Construction Documents Stage

2.5.1 Sustainability Requirements

2.5.1.1 The CM shall assist the A/E to update the LEED checklist indicating the credits that have been identified as "Yes," "Possible," and "No" for the Project, and shall submit the updated LEED checklist to the Owner and the Contracting Authority.

2.5.1.2 The CM shall receive revisions made by the A/E to the Target Finder Data Sheet and submit them to the Owner and the Contracting Authority.

2.5.1.3 The CM shall receive revised parametric energy modeling reports run by the A/E during this stage and submit them to the Owner and the Contracting Authority.

2.5.1.4 The CM shall receive, from the A/E, a copy of the Design Review Comments from the Green Building Certification Institute ("GBCI") and forward them to the Owner through the Contracting Authority.

2.5.2 Drawings and Specifications

2.5.2.1 Based on the Scope of Work prepared by the CM, the current, approved Design Development documents, approved Detailed Estimate of Construction Cost, approved Project Schedule, any further revisions to the Approved Program of Requirements, and the written report developed during the Design Development Stage describing the agreed upon means to reconcile differences between the budget and estimate, the A/E shall prepare, for approval by the Owner and the Contracting Authority, Drawings and Specifications setting forth in detail the requirements for Project construction.

2.5.2.2 With the prior written consent of the Owner, the CM shall assist the A/E to develop and include Alternates in the Contract Documents.

2.5.2.3 The CM shall develop and provide an analysis of general market conditions and labor to the A/E for its use in preparing the Drawings and Specifications.

2.5.3 Cost Estimate and Project Schedule

2.5.3.1 As the Drawings and Specifications are developed, the A/E shall inform the CM, the Owner, and the Contracting Authority of the need for any changes in Project requirements or in construction

materials, systems, or equipment and of the need for any adjustments in the Detailed Estimate of Construction Cost and the Project Schedule.

2.5.3.2 Upon prior written approval of the Owner and the Contracting Authority of any such changes or adjustments in Project requirements or in construction materials, systems, or equipment, the CM, with the assistance of the A/E, shall revise the Detailed Estimate of Construction Cost and Project Schedule, as applicable, incorporating such changes or adjustments.

2.5.4 Submittal to the Contracting Authority

2.5.4.1 Upon completion of the Construction Documents stage for each phase of the Project, the A/E shall complete a Design Review Acceptance form and provide 6 copies of the Drawings and Specifications to the CM.

2.5.4.2 The CM shall receive the Design Review Acceptance form and the Construction Documents from the A/E, and shall retain and review one copy of the Construction Documents.

2.5.4.3 The CM shall attach a copy of the revised Detailed Estimate of Construction Cost or the revised Project Schedule, as applicable, and forward 3 copies to the Owner, and 2 copies of the Drawings and Specifications to the Contracting Authority for review and approval.

2.5.4.4 The CM shall review the Construction Documents for constructability and general coordination and provide its written comments to the A/E, the Owner, and the Contracting Authority.

2.5.4.5 The CM shall obtain the Owner's signature on the Design Review Acceptance form and deliver the form and attachments to the Contracting Authority.

2.5.4.6 If the Project is administered using OAKS CI, the CM shall receive the A/E's Design Development Documents and any changes or revisions, attach a copy of the revised Project Schedule or the revised Detailed Estimate of Construction Cost, as applicable, and any report prepared pursuant to subparagraph 2.4.4, and forward them to the Owner, and the Contracting Authority for approval through the OAKS CI "Design Review" business process.

2.5.4.7 The Contracting Authority shall approve or reject the submittals, return the Design Review Acceptance form and 1 copy of the attachments with comments to the A/E through the CM.

2.5.4.8 The CM shall revise the Project Schedule or the Detailed Estimate of Construction Cost, as applicable, to incorporate comments from the Owner and the Contracting Authority.

2.5.5 Bidding Documents

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

2.5.6 Government Approvals

2.5.6.1 The CM shall assist the A/E secure any necessary National Pollution Discharge Elimination System Storm Water General Permit.

2.5.6.2 The CM shall assist the A/E secure the required structural, plumbing, HVAC, and electrical plan approvals from the Division of Industrial Compliance of the Ohio Department of Commerce (the "Division") or, if the Project is not on State property, from the local certified building department with jurisdiction.

2.5.7 Additional Filings

2.5.7.1 The CM shall assist the A/E to file any additional Drawings and Specifications as required under Applicable Law.

2.5.7.2 Upon the Division's approval of the Drawings and Specifications, the A/E shall obtain 4 sets of corrected copies of the Drawings and Specifications bearing the Division's approval stamps. The A/E shall distribute such corrected copies as follows:

.1 One set to the Owner,

.2 One set to the CM,

.3 One set retained by the A/E, and

.4 One set to the Contracting Authority through the CM, attached to a completed Design Review Acceptance form with the Owner's approval of the form and signature thereon.

2.5.7.3 If the Project is administered using OAKS CI, the A/E shall document transmission of its approved Construction Documents and any changes or revisions to the CM and the Contracting Authority through the OAKS CI "Transmittal" business process, with physical copies sent to their offices.

2.6 Bidding and Award Stage

2.6.1 Obtaining Bids

2.6.1.1 The CM shall assist the A/E to develop and make recommendations for bidding criteria, bidding schedules, and bidding information and shall develop Bidders' interest in the Project.

2.6.2 Pre-bid Conference

2.6.2.1 The CM, with the assistance of the A/E, shall conduct pre-bid conference(s) with prospective Bidders to familiarize Bidders with the Contract Documents, including any special requirements of the Contract Documents.

2.6.2.2 At the pre-bid conference(s), the CM, with the assistance of the A/E, shall also familiarize prospective Bidders with requirements of equal employment opportunity, prevailing wage, EDGE, Drug Free Workplace, campaign contribution limits, ethics compliance, Sustainability Requirements including LEED documentation and implementation requirements if applicable, an overview of OAKS CI if applicable, and other requirements, as necessary.

2.6.2.3 The A/E shall respond to questions from the pre-bid conference(s), and the CM shall prepare and issue pre-bid conference minutes, attached to one or more written Addenda issued by the A/E, with the assistance of the CM, within 5 days of the conference.

2.6.3 Bid Packages

2.6.3.1 The CM or its designee (e.g., its reprographer), with the assistance of the A/E, shall assemble the Contract Documents into appropriate packages and distribute the packages to prospective Bidders, the Contracting Authority, the Owner, and other appropriate persons, including, but not limited to, any applicable local or regional plan room organizations.

2.6.4 Bid Review

2.6.4.1 The CM, with the assistance of the A/E and in accordance with Applicable Law, shall review all Bids received for responsiveness, lead the investigation of the responsibility of Bidders, and deliver a written recommendation to the Contracting Authority about the award, or rejection, of any Bid or Bids for each contract for the Project.

2.6.4.2 In making the recommendation, the CM, with the assistance of the A/E, shall evaluate all applicable Alternates referenced in the Contract Documents.

2.6.5 Bid Substitutions

2.6.5.1 Substitutions contained in the bid of any Bidder shall not be considered by the CM in recommending the award of any Contract.

2.6.6 Pre-award Conferences

2.6.6.1 The CM, with the assistance of the A/E, shall conduct pre-award conferences with apparent successful Bidders and shall assist the Contracting Authority to gather documentation for contract execution from such Bidders.

2.6.6.2 Upon the failure of a Bidder to provide such documentation in a timely manner, the CM, in conjunction with the A/E, shall assist the Contracting Authority in considering whether an extension of time for submitting such documentation is appropriate.

2.6.7 Subcontractor and Material Supplier Review

2.6.7.1 The CM, in conjunction with the A/E, based upon review of the Contract Documents, any past experience, and reasonable inquiry, shall participate in investigating any Subcontractor or Material Supplier proposed by any Contractor and recommend approval or disapproval.

2.6.7.2 Within 3 business days after receiving original or amended Subcontractor and Material Supplier Declaration forms from a Contractor, the CM shall verify that the forms are complete and deliver them to the A/E and the Contracting Authority.

2.6.7.3 If the CM finds the forms are incomplete, the CM shall return them to the Contractor with no action and identify corrective action the Contractor shall perform prior to resubmitting the forms. If the CM returns such incomplete forms to the Contractor, the Contractor, within 10 days of receipt thereof, shall resubmit the forms with revisions complying with the corrective action identified by the CM.

2.6.7.4 Upon the Contracting Authority's receipt of the forms, the CM, in conjunction with the A/E, and the Owner shall consult with the Contracting Authority in performing an initial review of each Subcontractor and Material Supplier listed.

2.6.7.5 If the Project is administered using OAKS CI, the CM shall review and recommend approval or disapproval to the Contracting Authority of each Subcontractor and Material Supplier through the OAKS CI "Subcontractor Supplier Declaration" business process.

2.6.8 Over Budget Options

2.6.8.1 If the Construction Budget is exceeded by the total of the lowest responsive and responsible Bids and any legally negotiated prices for the Project, the Contracting Authority and the Owner shall, at their option:

.1 Approve in writing an increase in the Construction Budget and rebid the Project;

.2 Authorize rebidding or renegotiation for some or all parts of the Project within a reasonable time without an increase in the Construction Budget;

.3 Abandon the Project, in whole or in part, and terminate this Agreement in accordance with subparagraph 8.1.2 or 8.1.4, as applicable; or

.4 Cooperate in the revision of the Project Scope as defined in subparagraph 2.2.2 to reduce the actual cost of construction to the Construction Budget

2.6.8.2 If the Contracting Authority and the Owner adopt the option in subparagraph 2.6.8.1.1 above and such increase in the Construction Budget is more than 10 percent, the CM may request, in writing, an adjustment to the Basic Fee in accordance with subparagraph 5.5.6.

2.6.8.3 If the Contracting Authority and the Owner adopt the option in subparagraph 2.6.8.1.4 above, the CM shall assist the A/E to appropriately modify the Approved Program of Requirements, the Project Schedule, and the Contract Documents and cooperate in any necessary bidding or negotiation without additional charge.

2.6.9 Further Revisions to Cost Estimate and Project Schedule

2.6.9.1 If necessary, the CM shall inform the A/E, the Contracting Authority, and the Owner of the need for any adjustments in the Detailed Estimate of Construction Cost and the Project Schedule.

2.6.9.2 Upon approval of the Contracting Authority and the Owner of any such adjustments, the CM, with assistance of the A/E, shall prepare a revised Detailed Estimate of Construction Cost or a revised Project Schedule, as applicable, incorporating such adjustments, obtain the Owner's signature thereon, and deliver the signed, revised Detailed Estimate of Construction Cost or Project Schedule to the Contracting Authority.

2.6.10 Conformed Documents

2.6.10.1 During the entire bidding and award Stage, the A/E shall incorporate all Addenda information into the Contract Documents; and, between the date that the Contracting Authority issues a Notice of Intent to Award for the first construction contract for the Project and the effective date of the first construction contract Notice to Proceed, the A/E shall provide updated Contract Documents that conform in every regard to the documents originally issued for bidding purposes plus all of the information in all Project Addenda ("Conformed Documents").

2.6.10.2 The A/E shall issue the Conformed Documents to the successful Bidder(s) through the CM, upon award of their respective contracts.

2.6.10.3 The A/E shall issue 1 set of Conformed Documents to the CM.

2.6.10.4 Contractors shall remain responsible to provide all labor, materials, and services for which they are responsible under the Contract Documents and all Addenda.

2.7 Construction Stage

2.7.1 Duration; Extent, Access

2.7.1.1 The Construction Stage will commence with the award of a contract for the Project to a Contractor and will terminate upon Final Acceptance of the Project by the Contracting Authority.

2.7.1.2 The CM shall have access, at all times, to the Project whenever any Work is in preparation or in progress.

2.7.2 Interpretations

2.7.2.1 The CM shall receive, review for completeness, and refer all valid Contractor's Requests for Interpretation ("RFI") to the A/E. Incomplete RFIs shall be returned by the CM to the Contractor with a request to clarify the question or provide additional information.

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

2.7.2.3 The CM shall forward or return a Contractor's RFI within 1 day of receiving the RFI.

2.7.2.4 The A/E shall deliver all interpretations to the Contracting Authority, the Owner, the CM, and each Contractor.

2.7.2.5 The CM shall keep a log of all RFIs and their respective responses.

2.7.2.6 If the Project is administered using OAKS CI, the CM shall receive and forward Requests for Interpretation to the A/E, the Contracting Authority, the Owner, and each Contractor through the OAKS CI "Request for Interpretations" business process.

2.7.3 Investigation of Conditions for Renovation or Remodeling

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

2.7.4 Differing Site Condition Investigation

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

2.7.4.2 The CM shall give written notice of its determination to the Contracting Authority, the A/E, and the Contractor within 10 days after completing the investigation.

2.7.4.3 If the CM determines that the Contractor has encountered a Differing Site Condition, the A/E shall process an appropriate Change Order.

2.7.5 General Construction Management Duties

2.7.5.1 The CM shall notify, advise, and consult with the A/E, the Contracting Authority, and the Owner and protect the State against Defective Work throughout the completion of the Project, which includes a Correction Period of 1 year after Final Acceptance.

2.7.5.2 The CM shall provide administration of the Project, scheduling of the Work and coordination of the Contractors and any other persons on the site of the Project.

2.7.5.3 The CM shall assist the prevailing wage coordinator for the Project, including but not limited to posting current wage rates at a convenient location on the Project site.

2.7.5.4 Unless otherwise waived in writing by the Contracting Authority and the Owner, the CM shall maintain a competent, full-time staff at the Project at all times that Work is in preparation or progress on the Project and shall establish and implement on-site organization and authority so that the Work on the Project may be accomplished timely and efficiently.

2.7.5.5 The CM's duties shall not, and shall not be deemed to, require the CM to undertake any of the Contractor's responsibilities as set forth in subparagraph 2.7.22.

2.7.5.6 The CM shall require each Contractor to submit its safety program.

.1 The CM shall review each Contractor's safety program for the purpose of coordinating them with each other.

.2 The CM's responsibilities to coordinate the Contractors' safety programs shall not require the CM to control the acts of Contractors, Subcontractors, or other persons not employed by the CM.

2.7.5.7 The special inspections indicated in the current edition of the Ohio Building Code ("O.B.C.") Chapter 1704 are not included as Basic Services; however, in the event such special inspections are required as a condition of the Plan Approval issued by the Building Authority having jurisdiction for the Project, the CM shall provide coordination and scheduling of special inspection services provided by the A/E, between the A/E and the Contractors, as part of the CM's Basic Services.

2.7.6 Progress and Records

2.7.6.1 The CM, with the assistance of the A/E, shall record the progress of the Project and provide written reports to the Contracting Authority and the Owner on a monthly basis unless otherwise agreed in writing.

.1 Such reports shall include, without limitation, information about variations between actual and budgeted or estimated costs and information on each Contractor's Work, as well as completion status on the entire Project, showing percentages of completion.

2.7.6.2 The CM shall keep a log containing a daily record of weather, number of workers on site for each Contractor, identification of equipment, work accomplished, problems encountered and other similar relevant data.

2.7.6.3 The CM shall provide for the maintenance at the Project site, on a current basis, of records of all Contracts, Drawings, Specifications, Shop Drawings, Product Data, Samples, purchase orders, materials, equipment, maintenance and operating manuals and instructions, and other construction-related documents, including all revisions.

2.7.6.4 The CM shall maintain records of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations to the extent certified by a qualified surveyor or professional engineer and any test results, make all such records available to the A/E, the Contractors, the Contracting Authority, and the Owner at all times and at the completion of the Project deliver all such records to the Owner.

2.7.6.5 If the Project is administered using OAKS CI, the CM shall issue written reports to the Contracting Authority, the Owner, the CM, and each Contractor through the OAKS CI "Field Reports" business process.

2.7.7 Construction Progress Schedule

2.7.7.1 The CM, with the cooperation of the Contractors, shall prepare the Construction Progress Schedule in accordance with the Standard Requirements

2.7.7.2 The CM shall provide copies of the Construction Progress Schedule and schedule of submittals to the A/E, the Contracting Authority, and the Owner, and shall, with the assistance of the A/E, incorporate the approved Construction Progress Schedule and schedule of submittals into the Project Schedule.

2.7.7.3 The CM shall ensure that the Project Schedule includes a Critical Path for the Project and provides for each scope of Work including, but not limited to, phasing of construction, times for commencement and completion required of each Contractor, ordering and delivery of materials requiring long lead-times.

2.7.7.4 The CM shall require each Contractor to provide records for any materials that require long lead-time and to certify to the CM that the Contractor has ordered such materials for timely delivery to the Project.

2.7.7.5 If requested by the Owner, the CM shall provide a priority of occupancy in accordance with the Standard Requirements.

2.7.7.6 The CM shall review the sufficiency of the Contractors' workforce and the number and types of equipment assigned and provided by each Contractor to the Project, and shall make recommendations to the Contracting Authority and the Owner about the adequacy of such workforce and equipment.

2.7.7.7 The CM shall periodically inform the A/E, the Contracting Authority, and the Owner of the need to update the Project Schedule as required to show current conditions, including but not limited to, conforming to the Construction Progress Schedule, as updated from time to time.

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

.2 Whenever the Project Schedule is revised or updated as provided in this subparagraph 2.7.7, the CM, with the assistance of the A/E, shall prepare a revised Project Schedule, obtain the Owner's signature thereon and deliver the revised Project Schedule to the Contracting Authority.

2.7.7.8 The A/E shall review the Construction Progress Schedule for conformance with the Contract Documents, provide a copy of the approved Construction Progress Schedule and schedule of submittals to the CM, the Contracting Authority, and the Owner, and assist the CM to incorporate the approved Construction Progress Schedule and schedule of submittals into the Project Schedule.

2.7.7.9 If the Project is administered using OAKS CI, the CM shall submit original and revised schedules to each Contractor, the A/E, the Contracting Authority, and the Owner through the OAKS CI "Schedule Approvals" business process.

2.7.8 Meetings

2.7.8.1 The CM shall schedule, conduct and participate in preconstruction, progress, coordination, quality control, pre-installation, and special meetings with the A/E, the Contracting Authority, the Owner,

appropriate Consultants, Contractors, and any other parties involved in the Project to discuss such matters as procedures, progress, problems and scheduling.

2.7.8.2 The CM, with assistance of the A/E, shall prepare and distribute written agenda and minutes of all such meetings to the A/E, the Contracting Authority, the Owner, Contractors, and any other parties involved. The CM shall not delegate the duty to prepare such agendas and minutes and shall distribute the written minutes of each meeting within 3 business days after the meeting.

2.7.8.3 The CM shall attach, to the minutes of each weekly progress meeting, each Contractor's weekly written report as submitted to the CM, describing progress on the Contractor's past, current, and upcoming activities.

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

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

2.7.8.6 The CM shall initiate and coordinate partnering meetings with the A/E, the Contracting Authority, the Owner, appropriate Consultants, the Contractors, and other parties involved in the Project.

2.7.8.7 If the Project is administered using OAKS CI, the CM shall distribute meeting agendas and minutes to each Contractor, the A/E, the Contracting Authority, and the Owner through the OAKS CI "Meeting Minutes" business process.

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

2.7.9 Tests and Inspections

2.7.9.1 The CM shall advise and consult with the Contracting Authority during the Construction Phase as to the need for any special testing, inspections, or approval of Work on the Project.

2.7.10 Submittal Review

2.7.10.1 The CM shall receive, review for completeness and responsiveness the Contractors' submittals such as Shop Drawings, Product Data, and Samples and shall deliver them to the A/E for review as provided in the Standard Requirements.

2.7.10.2 If the Project is administered using OAKS CI, the CM shall receive and forward submittals to the A/E and the CxA, and reviewed submittals to the Contractors, through the OAKS CI "Submittals" business process.

2.7.11 Coordination Drawings

2.7.11.1 The CM shall assist the A/E to review the Coordination Drawings to determine whether the Coordination Participants achieved the goals established in the coordination meetings.

2.7.11.2 If the Project is administered using OAKS CI, the CM shall receive and forward Coordination Drawings to the A/E and the CxA, through the OAKS CI "Submittals" business process.

2.7.12 Proposal Requests and Change Orders

2.7.12.1 The CM shall recommend necessary or desirable changes in the Project to the Contracting Authority, the Owner and the A/E, review any Proposal Requests prepared by the A/E prior to their issuance, review Contractor proposals and submit recommendations thereon to the Contracting Authority, the Owner, and the A/E, assist in negotiating Change Orders in accordance with the Standard Requirements for authorization and execution by the Contracting Authority, the Owner, and the A/E.

2.7.12.2 The CM shall keep a log of all Proposal Requests, Contractor Proposals, and Change Orders. The CM's Change Order Log shall contain the following minimum information:

.1 Number of the contract modification;
.2 A brief description of the modification;
.3 Affected trade(s);
.4 Cost of the modification; and
.5 Dates sent to, and received from, the relevant parties.

2.7.12.3 If the Project is administered using OAKS CI, the CM shall recommend Change Orders for approval, using the OAKS CI "Change Order" business process.

2.7.13 Field Work Orders and Orders for Minor Changes in the Work

2.7.13.1 A Field Work Order is a written order prepared by the A/E and signed by the Contracting Authority, Owner, CM, and A/E, directing a change in a Contractor's Work and may, if necessary:

.1 State a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both; or
.2 Limit the scope of the change in the Work by a fixed adjustment of the Contract Sum.

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

2.7.13.3 The A/E may, with the Contracting Authority's prior approval, order minor changes in a Contractor's Work not involving adjustment of the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents.

2.7.13.4 The CM has no authority to authorize a Contractor to perform additional or extra Work for which the Contractor may seek adjustment of the Contract Sum or the Contract Time, or both.

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

2.7.13.6 If the Project is administered using OAKS CI, the CM shall recommend Field Work Orders for approval, using the OAKS CI "Change Order" business process.

2.7.14 Project Costs

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

2.7.15 Contractor Schedule of Values

2.7.15.1 Within 10 days of receipt of the Notice to Proceed, or other period as mutually agreed by the Contractor and the Contracting Authority, a Contractor shall submit a Schedule of Values to the A/E, through the CM, with separate amounts shown for labor and materials for each branch of the Contractor's Work.

2.7.15.2 The CM may approve or return the Schedule of Values to the Contractor for re-submittal if it does not meet the requirements set forth in the Standard Requirements or contains insufficient items or details of the Contractor's Work.

2.7.15.3 If the Project is administered using OAKS CI, the CM shall receive and forward the Contractor's Schedule of Values to the A/E, using the OAKS CI "Contract Schedule of Values" business process.

2.7.16 Contractor Payments

2.7.16.1 The Contractor may submit a Contractor Payment Request for Work performed based upon the Schedule of Values to the A/E, through the CM, each month or upon another interval approved by the Contracting Authority.

.1 If the Project is not administered using OAKS CI, the Contractor shall submit 1 draft copy to the A/E, through the CM, not less than 1 week prior to submitting multiple copies of its Contractor Payment Request.

2.7.16.2 Based upon the CM's review of the applicable Work and evaluations of the applicable Contractor Payment Request, the CM shall review and recommend for approval, modification, or rejection the amounts shown on such Contractor Payment Request as being due to the applicable Contractor in accordance with the Contract Documents.

2.7.16.3 The CM may request, from a Contractor, additional documentation in connection with each payment to the Contractor.

2.7.16.4 Each Contractor Payment Request that the CM determines that it will recommend, shall be signed by the CM and delivered to the A/E.

2.7.16.5 The CM may recommend to the Contracting Authority that payments be withheld from, or Statutory Delay Forfeiture be assessed against, a Contractor Payment Request.

2.7.16.6 If the Project is administered using OAKS CI, the CM shall receive and recommend approval of the Contractor's Pay Request, using the OAKS CI "Contractor Pay Requests" business process.

2.7.17 Contractor Claims

2.7.17.1 The A/E, in consultation with the CM and the Contracting Authority, shall respond to a Contractor's written notice of a claim within a reasonable time of receipt, but not to exceed 10 days.

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

.1 A narrative of the CM's and the A/E's examination of the facts giving rise to the claim;

.2 Identification of relevant Contract Documents and language;

.3 An analysis of whether the Contractor complied with the requirements of the Contract Documents pertaining to claim initiation and substantiation including, but not limited to, the issues of entitlement to, and calculation of, adjustments of the Contract Sum, Contract Time, or both;

.4 An analysis of claimed additional labor, materials, and equipment for the scope of the Work items described;

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

.6 A concluding opinion regarding the Contractor's entitlement to, and the appropriateness and reasonableness of all, or any part of, the claim; and

.7 An appendix containing copies of contemporaneous documentation supporting the concluding opinion.

2.7.17.3 The CM and the A/E shall attend dispute resolution meetings convened by the Contracting Authority related to each claim.

2.7.18 Partial Occupancy

2.7.18.1 The A/E, in coordination with the CM, shall assist the Contracting Authority and the Owner in determining dates of Partial Occupancy of a Contractor's Work or portions thereof designated by the Owner and shall assist in obtaining any certification required by Applicable Law.

2.7.18.2 The CM shall review any lists prepared by the A/E of incomplete or unsatisfactory Work and prepare schedules for the completion or correction of such Work.

2.7.18.3 Before the Owner commences Partial Occupancy, the CM shall receive from the A/E and sign a Certification of Contract Completion for the designated area listing incomplete or Defective Work for

each Contractor's contract and submit the Certification of Contract Completion to the Contracting Authority.

2.7.18.4 If the Project is administered using OAKS CI, the CM shall receive and process the partial Certification of Contract Completion, using the OAKS CI "Closeout - Contractor" business process.

2.7.19 Final Cleaning

2.7.19.1 If a dispute arises among Contractors as to responsibility for final cleaning, the CM may authorize a Contractor, or engage a qualified cleaning company, to perform final cleaning and deduct the cost from amounts due to those Contractors responsible, as the CM recommends and the Contracting Authority determines to be appropriate.

2.7.19.2 If the CM cannot determine the responsible Contractor, the costs shall be shared by the Contractors actively working on the Project as determined in the Contracting Authority's sole discretion.

2.7.20 Contract Closeout

2.7.20.1 Within 3 business days of receipt of a Contractor's Punch List and request for the A/E's Review of the Work, the CM shall provide written notice to the A/E, the Contracting Authority, and the Owner of such receipt and shall notify the Contractor of acceptance or rejection of the request, stating reasons for any rejection.

2.7.20.2 Within 7 days of its acceptance of a Contractor's request, the CM shall assist the A/E conduct the A/E's Review to determine whether the Contractor's Work, or the designated portion, is in conformity with the Contract Documents.

2.7.20.3 The A/E shall notify the CM, Contractor, Contracting Authority, and Owner of the scheduled time of the A/E's Review.

2.7.20.4 Within 3 business days after the A/E's Review, the A/E shall provide to the Contractor, through the CM, a list of Defective, incomplete, or unacceptable Work ("A/E's Punch List").

2.7.20.5 The A/E shall include comments from the CM, Contracting Authority, and Owner in the A/E's Punch List.

2.7.20.6 If the A/E accepts a Contractor's request for the A/E's Review of the Work and subsequently reasonably determines that the Work is not in conformity with the Contract Documents, the CM and the A/E may request compensation for expenses related to excessive Punch List activities.

2.7.20.7 Within 3 business days of receipt of a Contractor's notice that all Punch List items have been completed, the CM shall assist the A/E to complete a Final Inspection of the Work for compliance with the Contract Documents.

2.7.20.8 If multiple inspections of items on the A/E's Punch List are required because of a Contractor's failure to properly and timely complete them, the Contractor shall pay any additional costs incurred by the CM resulting from any attendant delay.

2.7.20.9 When items of Work cannot be completed until a subsequent date, the A/E may recommend that these items be deferred and the Contracting Authority may release payment to the Contractor, as determined in the Contracting Authority's sole discretion.

2.7.20.10 The A/E shall list deferred items on a Partial Certification of Contract Completion with the dates the items are to be completed.

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

2.7.20.12 Upon execution of a Final Certification of Contract Completion, the A/E shall receive, review for conformity with the requirements of the Contract Documents, and transmit any affadavits to the CM, who shall transmit the same to the Contracting Authority.

2.7.20.13 The CM shall transmit any keys, manuals and the originals of any guarantees, warranties, releases, bonds, and waivers to the , who shall transmit the same to the Contracting Authority.

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

2.7.20.15 If the Project is administered using OAKS CI, the CM shall receive and process the final Certification of Contract Completion, using the OAKS CI "Closeout - Contractor" business process.

2.7.21 Record Documents

2.7.21.1 The CM shall receive the As-Built Documents submitted by each Contractor and forward them to the A/E.

2.7.21.2 The A/E shall revise the Conformed Documents and related electronic files with the information contained on the As-Built Documents.

2.7.21.3 The A/E shall label the revised Conformed Documents and related electronic files as "Record Documents" and reflect the date of the A/E's incorporation of the As-Built Documents.

2.7.21.4 The A/E shall furnish to the Owner, through the CM, 1 set of Record Documents in the form of reproducible documents correctly marked to show the Project as completed, 1 set of all other Contract Documents showing the Project as completed in the form of paper documents, and 1 set of all Contract Documents showing the Project as completed in the form of the related electronic files.

2.7.21.5 The Record Documents, to the best of the A/E's knowledge based upon the As-Built Documents delivered to the A/E by the Contractors and the A/E's observations during the progress of the Project, shall detail the actual construction of the Project and contain such annotations by the A/E as may be necessary for someone unfamiliar with the Project to understand the changes that were made to the Conformed Documents.

2.7.22 Contractor Responsibilities

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

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

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

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

2.7.22.5 All of the A/E's decisions are subject to final determination by the Contracting Authority.

2.7.23 Post-Occupancy Inspection

2.7.23.1 The CM shall participate in a walk-through of the Project with the Owner and the A/E 1 month prior to the expiration of the Correction Period. The CM shall consult with the A/E and the Owner to address any issue identified in the walk-through according to the procedures specified in the Standard Requirements. The A/E shall notify the responsible Contractor of such defects in writing with a request that the Contractor correct the deficient work, prior to the end of the Correction Period.

2.7.24 Performance Evaluations

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

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

.2 The Contracting Authority may use the evaluation(s) in determining the qualifications of the CM for future contracts.

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

ARTICLE 3 - ADDITIONAL SERVICES

3.1 General

3.1.1 Services Not Included in Basic Services

3.1.1.1 The CM shall provide the services listed in subparagraphs 3.1.2 through 3.3.5 as Additional Services only when identified in the attached Scope of Construction Management Agreement labeled Exhibit #1 and approved in writing by the Contracting Authority in consultation with the Owner.

3.1.1.2 The services listed in subparagraphs 3.1.2 through 3.3.5 shall be paid as provided in this Agreement, in addition to payment for the Basic Services; however, the CM shall not be compensated for any of the services listed in subparagraphs 3.1.2 through 3.3.5 made necessary by any act or omission of the CM or any of the CM's Consultants.

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

3.1.2 Specialized Services

3.1.2.1 Providing specialized construction management services not included in this Agreement as Basic Services or ordinarily furnished in accordance with customary practice.

3.1.3 Additional On-Site Services

3.1.3.1 Providing administration or observation of construction beyond the Basic Services provided pursuant to subparagraph 2.7.5.

3.1.4 Extensive Change Orders

3.1.4.1 Preparing cost estimates, and other documents and supporting data in connection with Change Orders beyond those services to be reasonably provided as Basic Services, pursuant to subparagraph 2.7.11.2.

3.1.5 Partnering Consultants

3.1.5.1 Serving as a partnering consultant or providing such consulting services.

3.1.6 Reserved

3.1.7 Grant Applications

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

3.1.8 Special Studies

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

3.1.9 Surveys

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

3.1.10 Investigation of Conditions for New Construction

3.1.10.1 Providing services for new construction to investigate existing conditions or facilities, to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the Owner.

3.1.11 Constructability and Cost Analyses

3.1.11.1 Preparing extensive analyses of the construction feasibility of the Project or of owning and operating costs, or preparing detailed quantity surveys or inventories of material, equipment, and labor beyond those services to be reasonably provided as Basic Services in subparagraph 2.3.2.

3.1.12 Off-Site Services

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

3.1.13 Reserved

3.1.14 Replacement Work

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

3.1.15 Contractor Default

3.1.15.1 Providing services made necessary by a Contractor's default.

3.1.16 Reserved

3.2 Special Inspections Required by the Ohio Building Code

3.2.1 The special inspections indicated in the current edition of the Ohio Building Code ("O.B.C.") Chapter 1704 are not included as Basic Services; however, in the event such additional special inspections or reinspections are required after issuance of the Plan Approval issued by the Building Authority having jurisdiction for the Project, the CM shall provide coordination and scheduling of special inspection services provided by the A/E, between the A/E and the Contractors, as an Additional Service.

3.2.2 The CM shall not be compensated for any such Additional Services made necessary by the act or omission of the CM or any Consultant of the CM.

3.3 Quality Assurance Testing

3.3.1 The following Quality Assurance ("QA") Testing services are not included as Basic Services, however, the CM shall assist the A/E to provide such services when identified in the attached Scope of Construction Management Agreement labeled Exhibit #1.

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

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

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

3.3.5 Examples of QA Testing and Reporting:

3.3.5.1 Geotechnical Analysis

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

3.3.5.2 Environmental Testing and Analysis

.1 Sample and analysis of existing conditions or materials for any of a variety of environmental materials, including hazardous materials and suspected hazardous materials, and subsequent reporting.

3.3.5.3 Concrete

.1 Test for general quality, such as: slump, air entrainment, cylinder test, core test, swiss hammer.

3.3.5.4 Masonry

.1 Includes such testing as prism tests, mortar cube, grout tests, water infiltration.

3.3.5.5 Structural Steel, Reinforcing Steel, Welding, Bolts and Connections

.1 Includes any testing and reporting of any type of steel, including those listed above.

3.3.5.6 HVAC Systems and Controls

.1 Includes testing and balancing of any or all HVAC components including controls systems.

3.3.5.7 Plumbing and Piping

.1 Includes testing of water, waste, vent and process piping, and provide associated reporting.

3.3.5.8 Air and Water Testing and Balancing

.1 Includes testing and balancing of various pneumatic and hydronic piping, and provide associated reporting.

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

ARTICLE 4 - THE STATE

4.1 Required Actions

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

4.2 Instructions to Contractors

4.2.1 All instructions of the Contracting Authority or the Owner to Contractors shall be through, or in consultation with, the CM, with notice to the A/E.

4.3 Owner's Requirements

4.3.1 The Owner shall provide, to the CM, full information regarding its requirements for the Project including, but not limited to, the Program of Requirements, design and construction standards, and work rules which shall set forth the Owner's use, design, time, and financial objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, time constraints imposed by fiscal and budgetary considerations, special equipment, systems and Site requirements, and a copy of the A/E's Technical Proposal.

4.4 Owner's Representative

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

4.5 Site Description

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

4.6 Notice to Construction Manager

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

4.7 Legal Representation

4.7.1 The Owner and the Contracting Authority shall not be responsible to provide, or pay for, any legal representation of the CM.

ARTICLE 5 - COMPENSATION

5.1 Direct Personnel Expense

5.1.1 For Direct Personnel Expense provided by the CM and all Consultants, the Owner shall pay the CM a negotiated amount.

5.1.2 Direct Personnel Expense for the CM's employees for such hours of their time as are devoted to performing Basic Services to the Project shall be determined in accordance with the CM's Implementation Plan. Such Direct Personnel Expense shall be evidenced by time records certified by the CM.

Enter the total amount of the DPE, and change the text color to black.

5.1.3 The Construction Manager shall use all reasonable means to minimize Direct Personnel Expense. In all events, total Direct Personnel Expense shall not exceed **$[Insert DPE amount in Numerals]**, without the written approval of the Department and the Owner and an amendment in accordance with subparagraph 9.6.2.

5.2 Basic Fee

Enter the total amount of the Basic Fee as appropriate for the project, and change the text color to black.

5.2.1 For Basic Services provided by the CM and all Consultants, the Owner shall pay the CM a Basic Fee in accordance with subparagraph 5.5.2 in the amount of **$[Insert Basic Fee in Numerals]**.

5.2.2 A change in the Basic Fee may be made only by an amendment to this Agreement in accordance with subparagraph 9.6.2.

5.2.3 Exclusive of Direct Personnel Expense, the CM's Basic Fee includes all compensation for Basic Services, including, but not limited to, markup on salaries or other compensation of the CM's employees at the principal office, branch offices, and the field office, general operating expenses of the CM's principal office, branch offices, and the field office, any part of the CM's capital expenses, including interest on the CM's capital employed for the Project, overhead or expenses of any kind including travel expenses, except Reimbursable Expenses, any costs incurred due to the CM's negligence, the CM's general advertising,

federal, state or local income, sales or other taxes, state franchise taxes and qualification fees, and membership in trade, business or professional organizations.

5.3 Additional Fees

5.3.1 The Owner shall pay the CM the Fees for the respective Additional Services, when such services are performed in accordance with Article 3 and subparagraph 5.5.3, and identified in the attached Scope of Construction Management Agreement labeled Exhibit #1.

5.3.2 Except for the Additional Services and Additional Fees listed above, Additional Services and any Additional Fees shall be approved only by an amendment to this Agreement in accordance with subparagraph 9.6.2.

5.3.2.1 For other Additional Services not included in the original agreement, provided by the CM and any Consultants in accordance with Article 3, the Owner shall pay the CM Additional Fees in an amount negotiated to the mutual reasonable satisfaction of the Contracting Authority, the Owner and the CM, but in all events, such Additional Fees shall not exceed 2.5 times the Direct Personnel Expense incurred by the CM and any applicable Consultant in providing those Additional Services.

5.3.3 The CM, with the prior written consent of the Contracting Authority, may provide Additional Services through one or more Consultants.

5.4 Reimbursable Expenses

5.4.1 The CM shall use its best efforts to minimize Reimbursable Expenses.

Enter the reimbursable expense allowance in the following subparagraph as appropriate for the project, and change the text color to black.

5.4.2 In all events, total Reimbursable Expenses shall not exceed **$[Insert Amount]**, without the prior written approval of the Contracting Authority and the Owner and an amendment to this Agreement in accordance with subparagraph 9.6.2.

5.4.3 Reimbursable Expenses shall only be permitted for the items identified in the attached Scope of Construction Management Agreement labeled Exhibit #1 and shall not exceed the respective amounts.

5.4.4 No mark-up shall be permitted on Reimbursable Expenses.

5.4.5 Limits on Transportation and Living Expenses: The cost for all travel expenses in connection with the Project shall be included in the Basic Fee.

5.4.6 Limits on Tangible Property: The determination of whether to purchase or rent tangible property as Reimbursable Expenses must be approved in advance by the Contracting Authority. The CM shall maintain a current inventory of all such property and any such property, which has been purchased and has a useful life after Project Closeout shall be delivered to the Owner.

5.5 Method and Terms of Payment

5.5.1 Direct Personnel Expense

5.5.1.1 Payments of Direct Personnel Expense in accordance with paragraph 5.1, shall be made monthly based upon services performed, and as shown by a properly completed Construction Manager Pay Request.

5.5.2 Basic Fee

5.5.2.1 Payment of the Basic Fee shall be made monthly in proportion to services performed in each Stage, in accordance with Article 2, paragraph 5.2, and the percentages of the Basic Fee described in the attached Scope of Construction Management Agreement labeled Exhibit #1.

5.5.2.2 Any balance of the final 5 percent of the Basic Fee shall be paid upon Project Closeout as follows: one-half after preparation of all Punch-Lists and one-half after completion of all Punch-List items to the reasonable satisfaction of the Contracting Authority and the Owner and receipt of Project Record Submittals by the Owner, as provided in this Agreement.

5.5.2.3 The Contracting Authority may, in its sole discretion, waive the withholding of any final balance or part thereof, if the CM has performed to the satisfaction of the Contracting Authority and the Owner.

5.5.2.4 Payment of the last 20 percent of the Basic Fee for the Predesign Stage, the Schematic Design Stage, the Design Development Stage, the Construction Documents Stage, and the Bidding or Negotiation Stage shall be made only after all documents required for the respective Stage have been submitted to the Contracting Authority or the Owner, as applicable, in form and substance reasonably satisfactory to the Contracting Authority and the Owner.

5.5.2.5 The Basic Fee, including, but not limited to, the final 5 percent thereof, shall be subject to all setoffs for claims against the CM in favor of the State.

5.5.2.6 Payments for the Basic Fee shall be based upon a properly completed Construction Manager Pay Request and shall be made within the applicable time limits provided by O.R.C. Section 126.30, which requires payment of interest on overdue payments. The interest rate shall be at the rate per calendar month, which equals one-twelfth of the rate per annum, prescribed by O.R.C. Section 5703.47.

5.5.2.7 If the Project is administered using OAKS CI, the CM shall submit its Architect/Engineer Pay Request to the Owner, through the Contracting Authority, for approval and payment through the OAKS CI “Professional Services Pay Request” business process.

5.5.3 Additional Fees and Reimbursable Expenses

5.5.3.1 Payments of Additional Fees for Additional Services in accordance with Article 3 and paragraph 5.3, for Reimbursable Expenses in accordance with paragraph 5.4, shall be made monthly based upon services performed or expenses incurred, as applicable, and as shown by a properly completed Construction Manager Pay Request.

5.5.4 Payments by CM

5.5.4.1 Within 10 business days of receipt of payment made pursuant to this Agreement, the CM shall pay all portions thereof due to Consultants and to persons who provided items, the expenses of which are Reimbursable Expenses.

5.5.5 Compensation for Extension of Project Time

5.5.5.1 If the CM notifies the Contracting Authority, not less than 30 days prior to the time for completion of the Project set by the approved Project Schedule, that such time for completion is reasonably expected to be exceeded by more than 30 days through no fault of the CM, the compensation, if any, for Basic Services to be rendered during such extended period, shall be negotiated to the mutual reasonable satisfaction of the Contracting Authority, the Owner and the CM.

5.5.5.2 If, through such negotiation, the Contracting Authority and Owner agree that the CM shall be paid additional compensation, an amendment to that effect shall be executed in accordance with subparagraph 9.6.2.

5.5.5.3 Such amendment shall be executed before the CM renders any services made necessary by such extension of the time of completion, unless otherwise agreed in writing by the Contracting Authority and the Owner.

5.5.6 Compensation for Change of Scope of Project or Construction Budget

5.5.6.1 The Project Scope is defined by the Approved Program of Requirements, as provided in subparagraph 2.2.2.

5.5.6.2 The Construction Budget is defined in subparagraph 1.1.3.

5.5.6.3 If the Contracting Authority and the Owner, through no fault of the CM, materially change the Project Scope after the Schematic Design Stage or materially change the Construction Budget at any time after the execution of this Agreement, any necessary adjustment in the CM's compensation shall be negotiated to the mutual reasonable satisfaction of the Contracting Authority, the Owner and the CM.

5.5.6.4 If, through such negotiation, the Contracting Authority and the Owner agree that the CM shall be paid additional compensation, an amendment to that effect shall be executed in accordance with subparagraph 9.6.2.

5.5.6.5 Such amendment shall be executed before the CM renders any services made necessary by such change in the Project Scope or the Construction Budget, unless otherwise agreed in writing by the Contracting Authority and the Owner.

ARTICLE 6 - INSURANCE AND INDEMNIFICATION

6.1 Casualty Insurance

6.1.1 Except when a modification is requested in writing by the CM and approved in writing by the Contracting Authority, the CM shall carry, and maintain at the CM's cost, with companies authorized to do business in Ohio, all necessary liability insurance during the term of this Agreement.

6.1.2 Such liability insurance shall include, as a minimum, all of the following requirements:

6.1.2.1 Workers' Compensation and employer's liability insurance, to the fullest extent required by Applicable Law;

6.1.2.2 Commercial general liability coverage for bodily injury and property damage, including limited contractual liability coverage, in not less than the following amounts:

.1 General Aggregate Limit: $2,000,000;

.2 Each Occurrence Limit: $1,000,000; and

6.1.2.3 Commercial automobile liability coverage, including non-owned and hired, in an amount not less than $1,000,000.

6.2 Professional Liability Insurance

6.2.1 If the Contracting Authority does not elect to procure Project-specific Professional Liability Insurance under the Architect/Engineer Agreement, and subject to the Contracting Authority's written waiver or modification of Professional Liability Insurance upon written request of the CM, the CM shall maintain insurance to protect against claims arising from the performance of the CM's services caused by any negligent acts, errors or omissions for which the CM is legally liable ("Professional Liability Insurance").

6.2.1.1 Except when a waiver is approved by the Contracting Authority upon written request of the CM, such Professional Liability Insurance shall be in an amount not less than $1,000,000 per claim and in the annual aggregate.

6.2.1.2 The CM shall keep such insurance in effect throughout the term of this Agreement and for a period of no less than 10 years after Contract Completion, for so long as the CM may be held liable for its performance of services for the Project.

6.2.1.3 If the Professional Liability Insurance is written on a claims-made basis, such insurance shall have a retroactive date no later than the date on which the CM commenced to perform services relating to the Project.

6.2.1.4 The insurance company issuing the Professional Liability Insurance policy must be authorized to do business in Ohio and have a rating of at least A status as noted in the most recent edition of the Best's Insurance Reports.

6.3 Insurance Policy Requirements

6.3.1 The CM shall provide the Contracting Authority with certificates of insurance evidencing the required coverage and amounts, including, but not limited to, any certificates of renewal of insurance. Each such certificate of insurance shall expressly provide that the insurer will endeavor to provide no less than 30 days' written notice to the Contracting Authority in the event of cancellation of the coverage evidenced by the certificate.

6.3.1.1 For each insurance policy required by this Agreement, the CM shall provide the Contracting Authority with 30 days' prior written notice of cancellation or non-renewal. Failure to comply with these reporting provisions shall constitute grounds for the Contracting Authority's termination for cause pursuant to paragraph 8.1.

6.4 Waivers of Subrogation

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

6.5 Indemnification by CM Generally

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

6.6 Intellectual Property Indemnification

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

6.7 Indemnification for Use of Electronic Files

6.7.1 To the fullest extent permitted by law, the CM shall indemnify and hold harmless the Indemnified Parties from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including, but not limited to, the fees and charges of engineers, architects, construction managers, attorneys, and other professionals) arising out of, or related to the CM's, or any other Person's use of electronic files, including, but not limited to, Computer-Aided Design ("CAD") or Building Information Modeling ("BIM") files (collectively "Electronic Files").

6.7.1.1 The Electronic Files are provided solely for the CM's convenience and use related to the Project. Any use of the Electronic Files shall be at the sole risk of the CM.

6.7.1.2 The Owner alone owns the Electronic Files and every right, title, and interest therein from the moment of creation.

6.7.1.3 The Electronic Files are not products.

6.7.1.4 The CM shall not use the Electronic Files for any purpose other than as a convenience for preparing Drawings and Specifications intended solely for use on the Project.

6.7.1.5 The State makes no warranties, either express or implied, of the merchantability or fitness of the Electronic Files for any particular purpose.

6.7.1.6 The CM understands and accepts that the Electronic Files may deteriorate or be inadvertently or otherwise modified without authorization of the State.

6.7.1.7 The State makes no representations as to compatibility, usability, or readability of the Electronic Files resulting from the use of software, application packages, operating systems, or computer hardware differing from those used to create the Electronic Files.

6.7.1.8 In the event of a conflict between the Contract Documents and the Electronic Files, the Contract Documents shall control, take precedence over, and govern the Electronic Files.

6.7.1.9 The CM alone is responsible to check, verify, and otherwise confirm the accuracy of data on the Electronic Files.

6.7.1.10 The CM shall not make any claims and hereby waives, to the fullest extent permitted by law, any claims or causes of action of any nature against the Indemnified Parties, which may arise out of, or in connection with, the use of the Electronic Files.

6.8 Financial Assurance

6.8.1 Except when a modification is requested in writing by the CM and approved in writing by the Contracting Authority, the CM, as required by O.R.C. Section 9.333, shall provide to the Owner one of the following: (1) a letter of credit pursuant to O.R.C. Chapter 1305, (2) a surety bond pursuant to O.R.C. Sections 153.54 to 153.57, (3) a certified check or cashier's check in an amount equal to the value of this Agreement, or (4) other reasonable financial assurances of a nature and amount satisfactory to the Contracting Authority and the Owner before performing any services hereunder.

ARTICLE 7 - DISPUTE RESOLUTION PROVISIONS

7.1 Mediation

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

7.2 Notice and Filing of Requests

7.2.1 Any request by the CM for additional fees or expenses shall be made in writing to the Contracting Authority and filed prior to payment of the final 5 percent of the Basic Fee. The CM's failure to comply with the requirements of this subparagraph 7.2.1 shall constitute an irrevocable waiver by the CM of any request for such fees and expenses.

7.3 Substantiation of Request

7.3.1 In every written request filed pursuant to paragraph 7.2, the CM shall provide the nature and amount of the request; identification of persons, entities and events responsible for the request; activities on the Project Schedule affected by the request or new activities created by any delay and the relationship with existing activities; anticipated duration of any delay; and recommended action to avoid or minimize any future delay.

7.4 Meeting with the Project Manager

7.4.1 If the CM files a written request with the Contracting Authority pursuant to paragraph 7.2, the Project Manager shall, within 30 days of receipt of the request, schedule a meeting in an effort to resolve the request

and render a decision on the request promptly thereafter or render a decision on the request without a meeting, unless a mutual agreement is made to extend such time limit.

7.4.2 The meeting scheduled by the Project Manager shall be attended by persons expressly and fully authorized to resolve the request on behalf of the CM.

7.5 Appeal to State Architect

7.5.1 If the efforts of the Project Manager do not lead to resolution of the request, the CM may request review of the Project Manager's decision by written notice delivered by certified mail within 14 days of the Project Manager's decision.

7.5.1.1 If the Project is administered by the Department through the State Architect's Office or locally administered by authority granted to an agency by the Department, the written notice shall be delivered to the State Architect.

7.5.1.2 If the Project is locally administered by an Institution of Higher Education under O.R.C. Section 3345.50 or O.R.C. Section 3345.51, the written notice shall be delivered to the Institutional Designee who will review the Project Manager's decision instead of the State Architect.

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

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

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

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

7.6 Delegation

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

7.7 Performance

7.7.1 The CM shall proceed with the CM's performance of this Agreement during any dispute resolution process, unless otherwise agreed by the CM and the Contracting Authority in writing.

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

ARTICLE 8 - TERMINATION AND REMEDIES

8.1 Termination of the Agreement

8.1.1 Means of Termination

8.1.1.1 This Agreement may be terminated by either party upon 7 days written notice should the other party fail to perform in accordance with the terms of this Agreement; provided, however, the CM shall not terminate this Agreement for non-payment if the Contracting Authority initiates the payment process by preparing, executing, and submitting a voucher for all reasonably undisputed amounts due to the CM within 10 days of receipt of the CM's written notice to terminate.

8.1.1.2 This Agreement may be terminated by the Contracting Authority without cause upon 15 days written notice to the CM.

8.1.1.3 This Agreement may be terminated at any time upon the mutual written consent of the Contracting Authority and the CM.

8.1.2 CM's Remedies Upon Termination by Contracting Authority Without Cause or Termination by CM

8.1.2.1 In the event of a termination by the CM or a termination which is not a result of the CM's failure to perform in accordance with the terms of this Agreement, the CM shall be compensated for all Basic Services of a completed Phase performed prior to the termination date, in accordance with the percentages set forth in the attached Scope of Construction Management Agreement labeled Exhibit #1, together with Direct Personnel Expense and Reimbursable Expenses incurred prior to the termination date.

8.1.2.2 In such event, for services rendered prior to the termination date in an uncompleted Phase and for Additional Services, the CM shall receive compensation based on the percentages of completion of that Phase or those Additional Services, as applicable, and as reasonably determined by the Contracting Authority, together with Reimbursable Expenses incurred prior to the termination date.

8.1.3 CM's Remedies Upon Termination by Contracting Authority for Cause

8.1.3.1 In the event of a termination resulting from the CM's failure to perform in accordance with the terms of this Agreement, the CM shall be compensated only for Basic Services performed and paid for prior to the termination date, in accordance with the percentages set forth in the attached Scope of Construction Management Agreement labeled Exhibit #1, together with Additional Services completely performed prior to the termination date.

8.1.3.2 In such event, the CM shall be reimbursed only for Direct Personnel Expense and Reimbursable Expenses incurred prior to the date of the notice of termination, unless the Contracting Authority consents in writing to the payment of Direct Personnel Expense and Reimbursable Expenses incurred after that date.

8.1.4 CM's Remedies Upon Termination by Mutual Consent

8.1.4.1 In the event of a termination upon the mutual written consent of the Contracting Authority and the CM, any compensation for Basic Services or for Additional Services or payment of Reimbursable Expenses shall be negotiated and set forth in an amendment to this Agreement, in accordance with subparagraph 9.6.2, prior to such termination.

8.1.5 Post-Termination Matters

8.1.5.1 If the Contracting Authority and the CM agree that any services are to be performed for the Project by the CM after any termination date, the amount of any compensation and the method and terms of payment of such compensation or any Direct Personnel Expense and Reimbursable Expenses related to such services shall be negotiated and set forth in an amendment to this Agreement, in accordance with subparagraph 9.6.2, prior to the commencement of such services.

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

8.2 Remedies

8.2.1 Cumulative Remedies

8.2.1.1 No remedy conferred upon the Contracting Authority or the Owner by the terms of this Agreement is intended to be exclusive of any other remedy provided at law or in equity.

8.2.1.2 Each and every remedy of the Contracting Authority or the Owner shall be cumulative and shall be in addition to any other remedy given to the Contracting Authority or the Owner hereunder, or now or hereafter existing. Except as otherwise provided in this Agreement, no remedy conferred upon the CM by the terms of this Agreement is intended to be exclusive of any other remedy provided at law or in equity.

8.2.1.3 Except as otherwise provided in this Agreement, each and every remedy of the CM shall be cumulative and shall be in addition to any other remedy given to the CM hereunder, or now or hereafter existing.

8.2.2 Remedies Not Waived

8.2.2.1 No delay, omission or forbearance to exercise any right, power or remedy accruing to the Contracting Authority, the Owner or the CM hereunder shall impair any such right, power or remedy or shall be construed to be a waiver of any breach hereof or default hereunder.

8.2.2.2 Every such right, power, or remedy may be exercised from time to time and as often as deemed expedient.

ARTICLE 9 - MISCELLANEOUS PROVISIONS

9.1 Governing Law

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

9.1.2 The parties to the Agreement shall comply with Applicable Law.

9.1.3 Other rights and responsibilities of the Contractor, the CM, the Contracting Authority, and the Owner are set forth throughout the Contract Documents and included under different titles, articles, and paragraphs for convenience.

9.2 Document Ownership and Use

9.2.1 Property of State

9.2.1.1 Drawings, Specifications, and other documents prepared by, or with the cooperation of, the CM or any Consultant pursuant to this Agreement, including the Electronic Files used to create them, are, from the moment of creation, the property of the Owner, whether or not the Project for which they are prepared is commenced or completed, and the Owner alone owns every right, title, and interest therein.

9.2.1.2 The CM or Consultant, as applicable, may retain copies, including reproducible copies of such Drawings, Specifications and other documents for information and reference.

9.2.1.3 Such Drawings, Specifications, or other documents, including the Electronic Files used to create them, may be used by the Contracting Authority, the Owner or others employed by the Contracting Authority or Owner for reference in any completion, correction, remodeling, renovation, reconstruction, alteration, modification of, or addition to, the Project, without prior approval of, or compensation to, the CM or its Consultants.

9.2.1.4 If an event occurs, for which the CM or Consultant may be liable, the Contracting Authority shall notify the CM or Consultant of such event as soon as practical after such event and shall provide access to the Project to the CM or Consultant and their representatives.

9.2.1.5 This subparagraph 9.2.1 shall survive termination of this Agreement.

9.2.2 CM’s Intellectual Property

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

9.3 Public Relations

9.3.1 Publicity Prior to Completion of the Project

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

9.3.2 Publicity After completion of the Project

9.3.2.1 After completion of the Project, the CM may exercise reasonable public relations and marketing efforts related to the Project, provided the CM properly identifies the Owner and the Contracting Authority, and their participation in the Project.

9.3.3 Professional Photography

9.3.3.1 If the CM commissions photography of the completed Project, the CM shall include in its photography agreements a release for unrestricted and unlimited use of photographs by the Owner and the Contracting Authority, and shall provide the Owner and the 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 Web sites.

9.3.4 Craft Awards and Other Recognition

9.3.4.1 If the CM submits the Project for craft awards or other similar venues for recognition of the Project, the CM shall properly identify the Owner and the Contracting Authority, and their participation in the Project.

9.3.4.2 In addition, if the Project receives any craft award or other recognition, the CM shall provide duplicate copies of the award plaque or other memento of the award to the Owner and the Contracting Authority.

9.4 Records

9.4.1 The records of all of the CM's Direct Personnel Expenses, Reimbursable Expenses, and payments to Consultants pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the Contracting Authority at all times and shall be maintained for 7 years after the Contracting Authority's Final Acceptance of the Project.

9.4.2 All other records kept by the CM related to the Project shall be available to the Contracting Authority at all times and shall be maintained for 6 years after the Contracting Authority's Final Acceptance of the Project.

9.5 Successors and Assigns

9.5.1 The Contracting Authority and the CM, each bind themselves, their successors, assigns, and legal representatives, to the other party to this Agreement and to the successors, assigns and legal representatives of the other party with respect to all terms of this Agreement.

9.5.2 The Contracting Authority and the CM each acknowledge that the Owner is an intended third-party beneficiary of this Agreement.

9.5.3 The CM shall not assign, or transfer any right, title, or interest in this Agreement without the Contracting Authority's prior written consent.

9.6 Extent of Agreement

9.6.1 Entire Agreement

9.6.1.1 This Agreement, including the attached Scope of Construction Management Agreement labeled Exhibit #1, and the Contract Documents represent the entire and integrated agreement between the Contracting Authority and the CM and supersede all prior negotiations, representations, or agreements, either written or oral.

9.6.2 Amendments

9.6.2.1 This Agreement may be modified only by an amendment prepared by the Contracting Authority and signed by both the CM and the Contracting Authority, with the concurrence of the Owner.

9.6.2.2 If the Project is administered using OAKS CI, the A/E shall submit its request for an amendment to the Contracting Authority, for approval through the OAKS CI "Professional Services Amendments" business process.

9.6.3 Cost Allocation Adjustments

9.6.3.1 Without exceeding the total compensation for this agreement, the allocation of costs, as described in the attached Scope of Construction Management Agreement labeled Exhibit #1, may be adjusted upon request of the CM and approval by the Contracting Authority without a formal signed amendment.

9.6.3.2 If the Project is administered using OAKS CI, the CM shall submit its request for a cost allocation adjustment to the Contracting Authority, for approval through the OAKS CI "Professional Services Amendments" business process.

9.6.4 Multiple Counterparts and Facsimile Signatures

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

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

9.6.5 Captions

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

9.6.6 Precedence

9.6.6.1 If there are any inconsistencies between the provisions of the Contract Documents and the provisions of the Announcement or this Agreement, the provisions of this Agreement shall prevail.

9.6.6.2 In addition, the CM shall refer to *The SAO Manual*, including, but not limited to, all exhibits thereto, for applicable procedures, policies, and forms.

9.6.7 Conditions to Validity

9.6.7.1 None of the rights, duties and obligations contained in this Agreement shall be binding on any party until all relevant statutory provisions of the Ohio Revised Code, including, but not limited to O.R.C. Section 126.07, have been complied with, and until such time as all necessary funds are available or encumbered and, when required, such expenditure of such funds is approved by the State Controlling Board, or other applicable approving body.

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

9.7 Assignment of Antitrust Claims

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

9.7.1.1 Intending to be legally bound, the CM, acting herein by and through the person signing this Agreement on its behalf as a duly authorized agent, hereby assigns, sells, conveys and transfers to the Owner any and all right, title and interest in and to any and all claims and causes of action which the CM may now have or hereafter acquire under the antitrust laws of the United States of America or the state of Ohio, provided that the claims or causes of action relate to the particular goods, products, commodities,

intangibles, or services purchased, procured, or acquired by, or rendered to, the Owner pursuant to this Agreement, and except as to any claims or causes of action which result from antitrust violations commencing after the price is established under this Agreement and which are not passed on to the Owner by any means. In addition, the CM warrants and represents that it will require any and all of its Consultants and suppliers to assign any and all federal and state antitrust claims and causes of action to the Owner, subject to the proviso and exception stated above. The provisions of this subparagraph 9.7.1 shall become effective at the time the Owner executes its concurrence to this Agreement without further acknowledgement by any of the parties.

9.8 Written Notice

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

Revise the following text, as appropriate for the project, and change the text color to black.

If to the Contracting Authority:
[Ohio Department of Administrative Services]
[State Architect's Office]
[4200 Surface Road]
[Columbus, Ohio 43228-1395]
Attention: [Insert Project Manager]

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

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

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

9.8.2 When the Owner, the Contracting Authority, the A/E, the CM, or a Contractor gives notice to one of the other 4, it shall also simultaneously send a copy of that notice to the others.

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

Revise the following text, as appropriate for the project, and change the text color to black.

9.8.4 For convenience of communication only, notices, certificates, requests, or other communications hereunder, may be sent by facsimile to the Contracting Authority at [614.644.7982], to the Owner at [Insert Area Code and Fax Number], to the A/E at [Insert Area Code and Fax Number], and to the CM at [Insert Area Code and Fax Number], 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.

9.8.4.1 Notices, certificates, requests, or other communications sent by electronic transmission shall be validly given provided a counterpart is delivered or mailed in accordance with subparagraph 9.8.1.

9.8.4.2 Requests for payment may be sent to the Contracting Authority by facsimile only upon the Contracting Authority's prior specific written direction.

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

9.8.6 The Contracting Authority, the Owner, or the CM may, by written notice given hereunder, designate any further or different addresses, telephone numbers, or facsimile numbers to which subsequent notices, certificates, requests, or communications shall be sent.

9.9 Severability

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

ARTICLE 10 - DEFINITIONS

10.1 Defined Terms and Abbreviations

10.1.1 For the purposes of this Agreement, the words and terms set forth below in this Article 10 are understood to have the following meanings:

10.1.1.1 “Acceptable Component” means a component listed in the Specifications after the Basis of Design Component.

10.1.1.2 “Addenda” or “Addendum” means a written or graphic instrument issued prior to the bid opening which modifies or interprets the proposed Contract Documents by additions, deletions, clarifications, or corrections. Addenda become part of the Contract Documents when the Contract Form is executed.

10.1.1.3 “Allowance” means a sum stipulated in the Contract Documents, included in the Base Bid, which includes overhead and profit for a defined scope of the Work that may not be completely defined at the time of bidding.

10.1.1.4 “Alternate” means a change in the proposed Project scope, which may include but is not limited to alternate materials, or methods of construction and an amount stated on the Bid form to be added to or deducted from the Base Bid if the corresponding Alternate is incorporated into the Contract for construction.

10.1.1.5 “Applicable Law” means all federal, state, and local codes, statutes, ordinances, and regulations that apply to the performance of the CM’s services.

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

10.1.1.7 “Basis of Design” or “BOD” means a document that records the concepts, calculations, decisions, and product selections used to meet the Owner’s Project Requirements and to satisfy applicable regulatory requirements, standards, and guidelines. The document includes both narrative descriptions and lists of individual items that support the design process.

10.1.1.8 “Basis of Design Component” means a component listed first in the Specifications.

10.1.1.9 “Bid” means a written proposal to perform a contract for the Project, submitted on a completed Bid Form, accompanied by other required documents.

10.1.1.10 “Bidder” means a Person that submitted a Bid.

10.1.1.11 “Building Information Model” or “BIM” means a digital representation of physical and functional characteristics of a facility; a shared knowledge resource for information about a facility forming a reliable basis for decisions during its life-cycle, which is defined as existing from earliest conception to demolition.

10.1.1.12 “Certification of Contract Completion” means a form used to document that a Contractor’s Work is complete, and the Contractor has complied with all conditions precedent to final payment and release of retainage. This form may also be used to document partial completion.

10.1.1.13 “Change Order” means a written instrument prepared by the A/E and signed by the Contracting Authority, Owner, A/E, CM, and a Contractor, which modifies the Contractor’s contract and states the signing parties agreement on a change in the Contractor’s Work, the amount of adjustment to the Contract Sum, if any, and the amount of adjustment to the Contract Time, if any.

10.1.1.14 “Change Order Fee Allowance” means the amount established by the Contracting Authority in the Architect/Engineer Agreement for the purpose of funding Change Order fees payable to the A/E resulting from increases in the construction cost by approved Change Orders.

10.1.1.15 “Commissioning Agent” or “CxA” means the Person identified by the Contracting Authority who leads, plans, schedules, and coordinates the commissioning team to implement the Commissioning Process for the Project.

10.1.1.16 “Commissioning Plan” means a document that outlines the organization, schedule, allocation of resources, and documentation requirements of the Commissioning Process.

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

10.1.1.18 “Commissioning Report” means a document that records the activities and results of the Commissioning Process. The Commissioning Report is developed from the final Commissioning Plan with its attached appendices.

10.1.1.19 “Conformed Documents” means Contract Documents with all Addenda items and accepted Alternates incorporated by the A/E, published, and issued to a successful Bidder for its use during performance of its contract.

10.1.1.20 “Construction Manager” or “CM” means a Person responsible, under the Construction Manager version of the Department’s General Conditions, for providing administration, management, and related services as required for scheduling the Project, coordinating the Contractors and providing other services as provided in the Contract Documents.

10.1.1.21 “Construction Progress Schedule” means the critical path schedule for performance of the Construction Contract; showing the time for completing the Work within the Contract Time; the planned sequence for performing the various components of the Work; the interrelationship between the activities of the Contractors, the A/E, the CM, the Contracting Authority, and the Owner; and the Contractors’ resource and cost loading information; as periodically updated during the performance of the Work.

10.1.1.22 “Consultant” means a Person engaged by the Owner, Contracting Authority, A/E, CM or a Contractor to provide professional services of various types for the Project.

10.1.1.23 “Contract Completion” means the schedule Milestone, by which deficiencies listed in the Punch List are corrected, the Contractor's Work is 100 percent complete, and the Contractor has complied with conditions precedent to final payment and release of retained funds.

10.1.1.24 “Contract Documents” means, collectively, the documents that constitute the substance of a Contractor’s contract including, but not limited to, Drawings, Specifications, Addenda if any, General and

Supplementary Conditions of the contract, Bid Form, Wage Rates; and the executed Contract Form, Bid Guaranty and Contract Bond, and Change Orders if any.

10.1.1.25 "Contract Form" means the form furnished by the Contracting Authority that, when completed and signed by a Contractor and the Contracting Authority, and approved by the Attorney General, evidences entry into a contract.

10.1.1.26 "Contract Sum" means the amount stipulated in the Contract Form that is the total amount payable to a Contractor for performance of the Work, including adjustments authorized by executed Change Orders.

10.1.1.27 "Contract Time" means the period stipulated in the Contract Form for performance of the Work, in consecutive days, beginning and ending on the dates established by the Notice to Proceed, including adjustments authorized by executed Change Orders.

10.1.1.28 "Contracting Authority" means the Ohio Department of Administrative Services, acting by and through the General Services Division, State Architect's Office; or the director of an agency of the State with the approval of the Department for local administration of a specific Project; or the chief executive officer of an Institution of Higher Education certified by the Department to perform local administration; or the legislative body of a political subdivision.

10.1.1.29 "Contractor" means a Person which is party to a contract for the performance of Work on the Project in cooperation with Separate Contractors and Persons, and in accordance with the Contract Documents.

10.1.1.30 "Contractor Payment Request" means the form furnished by the Department that is to be used by a Contractor in requesting payments and which, when signed by the Contractor, shall serve as an affidavit that payments requested are in proportion to the Work completed as shown on the Schedule of Values.

10.1.1.31 "Contractor's Punch List" means a document prepared by a Contractor that consists of a list of items of Work to be completed or corrected by the Contactor as a condition precedent to the A/E issuing the Punch List.

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

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

10.1.1.34 "Department" means the Ohio Department of Administrative Services.

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

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

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

10.1.1.38 "Estimated Construction Cost" means the sum of the Estimated Contract Cost amounts published in the Solicitation, as modified by Addenda, for a phase of the Project.

10.1.1.39 "Field Work Order" means a written document prepared by the A/E and executed by the Contracting Authority, the Owner, the A/E, and the CM, that directs a change in a Contractor's Work.

10.1.1.40 "Final Acceptance" means the Contracting Authority's acceptance of the Work performed by a Contractor after certification by the A/E, and CM, if any, of Contract Completion.

10.1.1.41 "Final Inspection" means the final review of a Contractor's Work by the A/E, and CM, if any, to determine whether issuance of the Certificate of Contract Completion is appropriate.

10.1.1.42 "Implementation Plan" means a formal document prepared and submitted by the CM and approved by the Contracting Authority for the implementation of construction management activities during the pre-construction and construction stages of the Project. The plan delineates direct personnel expenses, the basic fee, and reimbursable expenses for the Project. The plan will also describe the items the CM plans to purchase, when they will be purchased, and the estimated cost for all items. No expenses will be authorized until the Implementation Plan has been approved by the Contracting Authority.

10.1.1.43 "Life Cycle Cost" means the sum of present values of investment costs, capital costs, installation costs, energy costs, operating costs, maintenance costs, and disposal costs over the lifetime of the Project, product, or measure.

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

10.1.1.45 "Material Supplier" means a Person who furnishes materials or supplies on the Project.

10.1.1.46 "Milestone" means a significant date or event in the development of the Work identified in the Contract Documents and illustrated on the Construction Progress Schedule.

10.1.1.47 "OAKS Capital Improvements" or "OAKS CI" means the State's Web-based capital program and project management information system, based on Unifier software licensed to the State by Skire, Inc., hosted on State servers.

10.1.1.48 "Ohio Administrative Knowledge System" or "OAKS" means the State's Enterprise Resource Planning system, known as the Ohio Administrative Knowledge System. OAKS Capital Improvements is one of several modules of the total OAKS system.

10.1.1.49 "Owner" means the state of Ohio agency, university, college, or other instrumentality for whom the Project is being constructed.

10.1.1.50 "Owner's Project Requirements" or "OPR" means a written document that details the functional requirements of the Project and the expectations of how it will be used and operated. These include project goals, measurable performance criteria, cost considerations, benchmarks, success criteria, and supporting information.

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

10.1.1.52 "Person" means an individual, corporation, business trust, estate, partnership, association, or other public or private entity.

10.1.1.53 "Phase" means a separation of the Work by sequence or time intervals, which may include Separate Contractors for each Phase.

10.1.1.54 "Plan Holder" means a prospective Bidder that received a set of Contract Documents prior to the bid opening.

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

10.1.1.56 "Project Manager" means a permanent employee of the Contracting Authority assigned to the Project and authorized to perform specific responsibilities.

10.1.1.57 "Project Schedule" means the critical path schedule for performance of the Agreement for Professional Design Services; showing the time for completing the Work within the Contract Time; the planned sequence for performing the various components of the Work; the interrelationship between the activities of the Contractors, the A/E, the CM, the Contracting Authority, and the Owner; and the Contractors' resource and cost loading information; as periodically updated during the performance of the Work.

10.1.1.58 "Proposal Request" means a document issued after execution of a contract requesting a Proposal from the Contractor(s), which may initiate a Change Order to modify the contract.

10.1.1.59 "Punch List" means a document listing items of Work requiring correction or completion by a Contractor as a condition precedent to Contract Completion.

10.1.1.60 "Record Documents" means electronic files and printed documents of all nature prepared by the A/E, which incorporate the information shown on a Contractor's As-Built Documents. They consist of the "Record Drawings" and "Record Project Manual," the Certification of Contract Completion (as complete), Contractor's Warranty, Manufacturers' Warrantees, Certificate(s) of Occupancy, approved shop drawings and other action submittals, Field Work Orders, Proposal Requests, Requests for Interpretation, Addenda, Change Orders, Balancing Reports, and the final version of the approved Construction Progress Schedule.

10.1.1.61 "Reimbursable Expenses" means actual expenditures incurred by the CM or its Consultants in the interest of the Project, approved by the Contracting Authority for field office supplies, postage and courier services, safety equipment, printing, and advertising.

10.1.1.62 "Request for Interpretation" or "RFI" means a written request to the A/E seeking an interpretation or clarification of the Contract Documents.

10.1.1.63 "Separate Contractor" means a contractor, other than the Contractor, that is performing work on the Project.

10.1.1.64 "Site" means the location designated for the Project.

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

10.1.1.66 "Stage" means a distinct period in the life cycle of a facility from concept through construction, to use and deconstruction or demolition. Typical Stages include Predesign, Schematic Design, Design Development, Construction Documents, Bidding and Award, Construction, and Closeout.

10.1.1.67 "Standard Requirements" means the brief name of the "State of Ohio Standard Requirements for Public Facility Construction," including, but not limited to, Instructions to Bidders, General Conditions, and other Division 00 Documents and Division 01 Sections; currently in effect, which the Department may modify from time to time.

10.1.1.68 "Statutory Delay Forfeiture" means a sum established in the Contract Documents, pursuant to O.R.C. Section 153.19, to be paid to the Owner because of a Contractor's failure to complete the Work

within the Contract Time, or any applicable portion of the Work on or prior to any Milestone date stated in the Contract Form.

10.1.1.69 “Subcontractor” means a Person who undertakes to perform any part of the Work on the Project under a contract with a Contractor or with any Person other than the State, including all such Persons in any tier.

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

10.1.1.71 “Substitution” means an article, device, material, equipment, form of construction, or other item, proposed by a prospective Bidder prior to the bid opening and approved by the A/E by Addendum, for incorporation or use in the Work as being functionally and qualitatively equivalent to essential attributes of a Basis of Design or Acceptable Component specified in the proposed Contract Documents.

10.1.1.72 “Supplementary Conditions” means amendments to the General Conditions, issued as a separate document, which describe conditions of the Contract unique to a particular Owner or Project, which may include provisions regarding the assignment of responsibility for refuse removal, safety and security precautions and programs, temporary Project facilities and utilities, weather and fire protection, scaffolding and equipment, materials and services to be used commonly by Contractors and requiring Contractors to provide assistance in the utilization of any applicable equipment system, preparation of operation and maintenance manuals, and training of Owner personnel for operation and maintenance of the Project. The 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 Department.

10.1.1.73 “Supplementary Instructions” means amendments to the Instructions to Bidders, issued as a separate document, which describe instructions unique to a particular Owner or Project. The Instructions to Bidders shall not be superseded or amended by Drawings and Specifications, unless so provided in Supplementary Instructions prepared by the Contracting Authority and approved by the Department.

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

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

SIGNATURE PAGE

Project [AGY-FYNNNN]
[Project Name]
[Location]

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

[Insert CONSTRUCTION MANAGER]

By: _____
(Authorized Signature)

_____
(Print or type Signatory Name)

_____
(Print or type Signatory Title)

STATE OF OHIO

By: _____
[Insert Name, *Title*]
[Insert Contracting Authority]
[by Name, *Title*]

OWNER'S CONCURRENCE

[Insert OWNER]

By: _____
(Authorized Signature)

_____
(Print or type Signatory Name)

_____
(Print or type Signatory Title)

END OF DOCUMENT