

Exhibit A - Consultant Standard Terms and Conditions

State of Ohio Professional Services Agreements for Public Facility Construction

ARTICLE 1 - CONSULTANT'S RESPONSIBILITIES

1.1 Nondiscrimination

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

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

1.2 Royalties and Patents

1.2.1 The Consultant shall inform the State if the Consultant is aware that a particular invention, design, process, or device specified in the Contract Documents is subject to patent rights or copyrights calling for the payment of a license fee or royalty.

1.3 Assignment of Antitrust Claims

1.3.1 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 State. Therefore, the following assignment is made: The Consultant hereby assigns, sells, conveys and transfers to the State any and all rights, title, and interest in and to any and all claims and causes of action which the Consultant 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 State pursuant to this Agreement, and except as to any claims or causes of action which result from antitrust violations commencing after the compensation is established under this Agreement, which are not passed on to the State by any means. In addition, the Consultant warrants and represents that it will require any and all of its Sub-consultants and suppliers to assign any and all federal and state antitrust claims and causes of action to the State, subject to the proviso and exception stated above.

1.4 Use of Domestic Steel

1.4.1 The Consultant shall comply with ORC Section 153.011 regarding the specification and use of domestically produced steel products. Copies of ORC Section 153.011 may be obtained from the Ohio Facilities Construction Commission or downloaded at <http://codes.ohio.gov/orc/153.011v1>.

1.5 Drug Free Safety Program

1.5.1 The Consultant shall comply with Applicable Law regarding smoke-free and drug-free workplaces and shall make a good-faith effort to ensure that none of its or its Sub-consultants' employees engaged in the Services purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs in any way while on or about the Project.

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

1.6.1 If the State decides, in its sole discretion, to utilize the State's web-based project management software for the Project, the Consultant shall use such software for all compatible Services required under this Agreement.

1.6.2 All costs for the Consultant's use of the State's web-based project management software for the Project shall be included in its Basic Services Fee, and additional compensation shall not be permitted. If the Consultant's staff or its Sub-consultants are unfamiliar with the proper use of such software, the Consultant shall provide its staff and Sub-consultants for training without additional compensation.

1.7 Consultant's Services

1.7.1 If the Consultant is providing professional design services, the Consultant shall be (1) a registered architect holding a license and certificate of authorization issued by the Ohio Architects Board pursuant to ORC Chapter 4703, (2) a registered landscape architect holding a license and certificate of authorization issued by the Ohio Landscape Architects Board pursuant to ORC Chapter 4703, or (3) a professional engineer or professional surveyor holding a license and certificate of authorization issued by the Ohio Engineers and Surveyors Board pursuant to ORC Chapter 4733.

1.7.2 The Consultant shall provide Services for the Project, including, but not limited to, Services customarily furnished in accordance with generally accepted architectural, landscape architectural, engineering, surveying, commissioning, construction management, or other relevant specialty consulting practice as appropriate, in accordance with the terms of this Agreement.

1.7.3 The Consultant shall provide the Services in accordance with Applicable Law, the applicable announcement issued pursuant to ORC Section 153.67 (“Announcement”), and the State’s Standards of Design, if any.

1.7.4 The Consultant 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.

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

1.7.6 If the Consultant is providing professional design services and construction contract administration, the Consultant shall render interpretations and decisions in connection with a Contractor’s responsibilities under the Contract Documents and submit recommendations to the State for enforcement of the Contractor’s contract as necessary.

1.7.6.1 The Consultant is the initial interpreter of all requirements of the Contract Documents.

1.7.6.2 The Consultant’s interpretations and decisions are subject to final determination by the State.

1.8 Standard of Care

1.8.1 Notwithstanding any other provision of this Agreement to the contrary, the Consultant shall perform its Services consistent with the professional skill and care ordinarily provided by registered architects, registered landscape architects, professional engineers, professional surveyors, commissioning agents, construction managers, or other relevant specialty consultant discipline as appropriate in the same or similar locality under the same or similar circumstances.

1.8.2 The Consultant shall perform its Services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

1.9 Construction Budget

1.9.1 The State shall provide written notice to the Consultant of any change in the Construction Budget.

1.9.2 The Consultant shall perform its Services so that the Project is completed within the Construction Budget.

1.9.3 The Consultant and the State do not have control over the cost of labor, materials, or equipment, over Contractors’ methods of determining prices, or over competitive bidding, market, or negotiating conditions. Accordingly, the Consultant does not warrant or represent that competitively bid or negotiated prices will not vary from the Construction Budget or from any estimate of cost or evaluation prepared, or agreed to, by the Consultant.

1.10 Cooperation

1.10.1 The Consultant shall perform the Services so as not to interfere with, disturb, hinder, or delay the services of Separate Consultants or Work of the Contractors. The Consultant shall cooperate and coordinate fully with all Separate Consultants and Contractors and shall freely share all of the Consultant’s Project-related information with them to facilitate the timely and proper performance of the Services and of the services and work of Separate Consultants and Contractors.

1.10.2 If the Consultant damages the property or work of any Separate Consultant or Contractor, or by failure to perform the Services with due diligence, delays, interferes with, hinders, or disrupts the services of any Separate Consultant or the work of any Contractor who suffers additional expense and damage as a result, the Consultant is responsible for that damage, injury, or expense.

1.10.3 If the proper execution or results of any part of the Services depends upon work performed or services provided by the State, a Separate Consultant, or a Contractor, the Consultant shall review that other work and appropriate instruments of service, and promptly report to the State in writing any defects or deficiencies in that other work or services that render it unavailable or unsuitable for the proper execution and results of the Services. The Consultant’s failure so to report will constitute an acceptance of the other work and services as fit and proper for integration with the Consultant’s Services except for defects and deficiencies in the other work or services that were not reasonably discoverable at the time of the Consultant’s inspection.

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

1.11 Records

1.11.1 The records of all of the Consultant's Direct Personnel Expenses, Reimbursable Expenses, and payments to Sub-consultants pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the State at all times and shall be maintained for seven years after Substantial Completion of all Work.

1.11.2 All other records kept by the Consultant related to the Project shall be available to the State at all times and shall be maintained for six years after Substantial Completion of all Work.

ARTICLE 2 - STATE'S RIGHTS AND RESPONSIBILITIES

2.1 The State

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

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

2.2 Required Actions

2.2.1 The State shall review, approve, or take such actions as are required of it by this Agreement, the Contract Documents, and Applicable Law in a reasonable and timely manner.

2.3 State's Requirements

2.3.1 The State shall provide to the Consultant full information regarding the State's 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 State's use, design, time, and financial objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, time constraints imposed by fiscal and budgetary considerations, special equipment, and systems and Site requirements.

2.4 Site Description

2.4.1 If reasonably requested by the Consultant as necessary for the Project, the State 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.

2.5 Provided Information

2.5.1 The State does not warrant or guarantee the accuracy of Project-related information they provide to the Consultant, but the Consultant may rely upon that information to the extent consistent with the standard of care described under **Section 1.8**.

2.6 Notice to Consultant

2.6.1 If the State 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 Consultant.

2.7 Legal Representation

2.7.1 The State shall not be responsible to provide or pay for any legal representation of the Consultant.

2.8 Limitation of Authority

2.8.1 The Consultant shall not have any authority to bind the State for the payment of any costs or expenses without the prior express written approval of the State.

2.8.2 The Consultant shall have authority to act on behalf of the State only to the extent provided in this Agreement and the Contract Documents.

2.8.3 The Consultant's authority to act on behalf of the State may be modified only by an amendment to this Agreement in accordance with **Section 4.3**.

2.9 Approval or Disapproval of Consultant's Services

2.9.1 The State may disapprove any portion of the Services.

2.9.2 If the State disapproves of the Services at any Stage, the Consultant shall proceed, when requested by the State, to re-perform the Services to satisfy the objections without additional compensation to the Consultant or its Sub-consultants.

2.9.3 The Consultant acknowledges that any review or approval by the State of any Services shall not relieve the Consultant of the Consultant's responsibility to properly and timely perform the Services.

2.10 Performance Evaluations

2.10.1 The State shall evaluate the Consultant during performance of the Services, at completion of a phase of the Project, completion of the Project, or any or all of the foregoing. The State shall retain the evaluation(s).

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

2.10.1.2 The State may use the evaluation(s) in determining the qualifications of the Consultant for future contracts.

2.10.1.3 The State may request information from the Consultant for use in evaluating the Contractor's or the State's performance. If such information is requested, the Consultant shall comply in a timely and responsive manner.

ARTICLE 3 - SUB-CONSULTANTS

3.1 Sub-consultant Services

3.1.1 The Consultant may provide a portion of the Services through one or more Sub-consultants, provided, however, that the Consultant shall remain responsible for all of the Consultant's duties and obligations under this Agreement.

3.1.2 By appropriate written agreement, the Consultant shall require each Sub-consultant, to the extent of the Sub-consultant's portion of the Services, to be bound to the Consultant by the terms of this Agreement, and to assume toward the Consultant all of the obligations and responsibilities which the Consultant assumes toward the State.

3.1.2.1 The Consultant shall not retain any Sub-consultant on terms inconsistent with this Agreement.

3.1.2.2 All agreements between the Consultant and a Sub-consultant shall identify the State as the agreement's intended third-party beneficiaries.

3.1.2.3 Upon the request of the State, the Consultant shall submit a copy of the agreement between the Consultant and each Sub-consultant.

3.1.3 The Consultant shall obtain the State's written approval before engaging any Sub-consultant not named in the Agreement. The Consultant shall not employ any Sub-consultant against whom the State has a reasonable objection. The State's approval or disapproval of any Sub-consultant, however, will not relieve the Consultant of the Consultant's full responsibility for performance of the Services.

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

3.1.5 The State may communicate with any Sub-consultant either through the Consultant or directly with the Sub-consultant, but the State may not modify the agreement between the Consultant and any Sub-consultant. The State will advise the Consultant with reasonable promptness of direct communication with any Sub-consultant.

3.1.6 The Consultant hereby assigns to the State each Sub-consultant's agreement provided that the assignment is effective only after the State terminates this Agreement in whole or in part and only for those agreements that the State accepts by notifying the Sub-consultant and Consultant in writing. The State may re-assign accepted agreements.

3.2 Payments by Consultant

3.2.1 Within ten business days after receipt of payment made pursuant to this Agreement, the Consultant shall pay all portions thereof due to Sub-consultants and to persons who provided items, the expenses of which are Reimbursable Expenses.

3.2.2 The State has no obligation to pay or see to the payment of money to any Sub-consultant except as otherwise required under Applicable Law.

ARTICLE 4 - MODIFICATIONS

4.1 Compensation for Extension of Project Time

4.1.1 If the Consultant notifies the State not less than 30 days before the date for completion of the Project identified in the approved Project Schedule, that the time for completion is reasonably expected to be exceeded by more than ten percent through no fault of the Consultant, the Consultant's compensation for Services to be rendered during such extended period shall be negotiated to the mutual reasonable satisfaction of the State and Consultant.

4.1.2 If, through such negotiation, the State agrees that the Consultant shall be paid additional compensation, an amendment to that effect shall be executed in accordance with **Section 4.3**.

4.1.3 That amendment shall be executed before the Consultant renders any Services made necessary by the extension of the time of completion, unless otherwise agreed in writing by the State.

4.2 Compensation for Change of Scope of Project or Construction Budget

4.2.1 The Project Scope is defined by the Approved Program of Requirements, as provided in **Exhibit B**.

4.2.2 The Construction Budget is defined in the Agreement.

4.2.3 If the State, through no fault of the Consultant, materially changes the Project Scope after the Schematic Design Stage or materially changes the Construction Budget at any time after the execution of this Agreement, any necessary adjustment in the Consultant's compensation shall be negotiated to the mutual reasonable satisfaction of the State and Consultant.

4.2.4 If, through such negotiation, the State agrees that the Consultant shall be paid additional compensation, an amendment to that effect shall be executed in accordance with **Section 4.3**.

4.2.5 That amendment shall be executed before the Consultant renders any Services made necessary by the change in the Project Scope or the Construction Budget, unless otherwise agreed in writing by the State.

4.3 Amendments

4.3.1 This Agreement may be modified only by an amendment prepared by the State and executed by both the Consultant and the State.

4.3.2 If the Attorney General approved the original Agreement, Amendments involving changes to the legal terms and conditions of this Agreement shall require approval by the Attorney General of the state of Ohio.

4.3.2.1 Changes to the legal terms and conditions do not include amendments to the scope or cost of the Services governed by this Agreement, which include changes to **Exhibit B**.

4.4 Allocation Adjustments

4.4.1 Without exceeding the total compensation for this Agreement, the allocation of costs, as described in the Agreement, may be adjusted upon request of the Consultant and approval by the State without a formal signed amendment.

ARTICLE 5 - DISPUTE RESOLUTION

5.1 Notice and Filing of Requests

5.1.1 Any request by the Consultant for additional fees or expenses shall be made in writing to the State and filed prior to payment of the final five percent of the Basic Fee. The Consultant's failure to comply with the requirements of this **Section 5.1.1** shall constitute an irrevocable waiver by the Consultant of any request for such fees and expenses.

5.2 Substantiation of Request

5.2.1 In every written request filed pursuant to **Section 5.1**, the Consultant 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.

5.3 Meeting with the Project Manager

5.3.1 Within 30 days after receipt of the request filed with the State pursuant to **Section 5.1**, or other period mutually agreed by the parties, the Project Manager shall schedule a meeting to resolve the request and render a decision on the request promptly thereafter or render a decision on the request without a meeting.

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

5.4 Appeal to Commission

5.4.1 If the efforts of the Project Manager do not lead to resolution of the request, the Consultant may request review of the Project Manager's decision by written notice delivered by certified mail to the Executive Director of the Commission within 14 days after the Project Manager's decision.

5.4.2 Within 30 days after receipt of notice or other period mutually agreed by the parties, the Commission shall schedule a meeting to resolve the dispute and render a decision on the appeal promptly thereafter or render a decision on the appeal without a meeting.

5.4.3 The meeting shall be attended by persons expressly and fully authorized to resolve the matters on behalf of the Consultant.

5.4.4 ORC Chapter 119 shall not be applicable to any proceedings of the Commission under this **Section 5.4**.

5.4.5 The decision of the Commission shall serve as the State's final and conclusive determination.

5.5 Delegation

5.5.1 No provision of this **Article 5** shall prevent the Executive Director from delegating the duties or authorities of the Commission to any other person selected at the Executive Director's sole discretion.

5.6 Alternative Dispute Resolution

5.6.1 At any point in Claims and dispute resolution processes, the Project's key stakeholders may agree in writing to enter into non-binding ADR including progressive negotiation, Dispute Review Board, mediation, or another non-binding ADR procedure accepted by all of the Project's key stakeholders.

5.7 Performance

5.7.1 The Consultant shall proceed with the Consultant's performance of this Agreement during any dispute resolution process, unless otherwise agreed by the Consultant and the State in writing.

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

5.8 Mutual Waiver of Consequential Damages

5.8.1 Except as provided under **Section 5.8.2**, the State and Consultant each waive against the other all claims for consequential damages that may arise out of or relate to this Agreement.

5.8.1.1 The State's waiver includes claims for loss of use, income, profit, revenue, financing, cost of capital, business and reputation, management and employee productivity, and consequential damages arising from termination of the Agreement or related to insolvency.

5.8.1.2 The Consultant's waiver includes claims for overhead; delay damages except as otherwise specifically provided for in the Agreement; increased cost of funds for the Project; lost opportunity to work on other projects; losses of financing, business, and reputation; loss of profit except anticipated profit arising directly from properly performed Services; and consequential damages arising from termination of the Agreement or related to insolvency.

5.8.2 Notwithstanding **Section 5.8.1**, this **Section 5.8**:

5.8.2.1 does not apply to any damages that would be covered by insurance required or provided in connection with the Project if the Agreement did not include **Section 5.8.1**;

5.8.2.2 does not apply to the Consultant's indemnity obligations for third-party claims against the Indemnified Parties even if those claims are for damages that **Section 5.8.1** would otherwise preclude; and

5.8.2.3 does not apply to Claims for damages arising from the State or Consultant's gross negligence or willful misconduct.

5.8.3 This **Section 5.8** shall survive termination of the Agreement.

ARTICLE 6 - COMPENSATION AND PAYMENT

6.1 Direct Personnel Expense

6.1.1 If the Consultant is providing construction management services, including services as an Owner Agent, the State shall pay the Consultant the amount identified in the Agreement for Direct Personnel Expense provided by the Consultant and all Sub-consultants.

6.1.1.1 Direct Personnel Expense for the Consultant's and its Sub-consultant'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 Consultant's Staffing Plan. Such Direct Personnel Expense shall be evidenced by time records certified by the Consultant.

6.1.1.2 The Consultant shall use all reasonable means to minimize Direct Personnel Expense.

6.2 Basic Fee

6.2.1 For Basic Services provided by the Consultant and all Sub-consultants, the State shall pay the Consultant a Basic Fee in accordance with the amount identified in the Agreement.

6.2.2 A change in the Basic Fee may be made only by an amendment to this Agreement in accordance with **Section 4.3**.

6.3 Additional Services Fee

6.3.1 The State shall pay the Consultant the Additional Services Fees for the associated Additional Services, when those Services are performed in accordance with the Agreement.

6.3.1.1 For Additional Services performed by a Sub-consultant, the Additional Services Fees shall be based on the Sub-consultant's associated invoices to the Consultant and may include a Consultant mark-up negotiated between the State and Consultant.

6.3.2 Except for the Additional Services and Additional Services Fees listed above, Additional Services and any Additional Services Fees shall be approved only by an amendment to this Agreement in accordance with **Section 4.3**.

6.3.2.1 For Additional Services not included in the original Agreement that are provided by the Consultant and any Sub-consultants in accordance with **Section 4.3**, the State shall pay the Consultant Additional Services Fees in an amount negotiated to the mutual reasonable satisfaction of the State and the Consultant, but in all events, such Additional Services Fees shall not exceed two-and-one-half times the Direct Personnel Expense incurred by the Consultant and any applicable Sub-consultant in providing those Additional Services.

6.3.3 The Consultant, with the prior written consent of the State, may provide Additional Services through one or more Sub-consultants.

6.4 Reimbursable Expenses

6.4.1 The Consultant shall use its best efforts to minimize Reimbursable Expenses.

6.4.2 In all events, total Reimbursable Expenses shall not exceed the amount identified in the Agreement, without the prior written approval of the State and an amendment to this Agreement in accordance with **Section 4.3**.

6.4.3 Reimbursable Expenses shall only be permitted for the items identified in the Agreement and shall not exceed the respective amounts.

6.4.4 No Consultant or Sub-consultant mark-up shall be permitted on Reimbursable Expenses.

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

6.4.6 Limits on Tangible Property: The determination of whether to purchase or rent tangible property as Reimbursable Expenses must be approved in advance by the State. The Consultant 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 State.

6.5 Method and Terms of Payment

6.5.1 Direct Personnel Expense. Payments of Direct Personnel Expense in accordance with **Section 6.1**, shall be made monthly based upon services performed, and as shown by a properly completed Professional Services Pay Request.

6.5.2 Basic Fee.

6.5.2.1 Payment of the Basic Fee shall be made monthly in proportion to Basic Services performed in each Stage, in accordance with **Section 6.2**, and the percentages of the Basic Fee described in the Agreement.

6.5.2.2 The State may, in its sole discretion, waive the withholding of any final balance or part thereof if the Consultant has performed to the satisfaction of the State.

6.5.2.3 Payment of the last five percent of the Basic Fee for any Stage of the Services shall be made only after all deliverables required for the Stage have been submitted by the Consultant to the State, in form and substance reasonably satisfactory to the State.

6.5.2.4 The entire Basic Fee is subject to all setoffs for claims against the Consultant in favor of the State.

6.5.2.5 Payments for Basic Services shall be based upon a properly completed Professional Services Pay Request and shall be made within the applicable time limits provided by ORC 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 ORC Section 5703.47.

6.5.3 Additional Services Fees and Reimbursable Expenses. Payments of the Additional Services Fees in accordance with **Section 6.3** and for Reimbursable Expenses in accordance with **Section 6.4** shall be made monthly based upon Additional Services performed or expenses incurred, as applicable, and as shown by a properly completed Professional Services Pay Request.

ARTICLE 7 - INSURANCE AND INDEMNIFICATION

7.1 Consultant's General Insurance Requirements

7.1.1 Throughout the performance of the Services or longer as may be described below, the Consultant shall obtain, pay for, and keep in force, the minimum insurance coverage described in this **Article 7**.

7.1.1.1 Each requirement of this **Article 7** applies to Sub-consultants just as it applies to the Consultant.

7.1.1.2 If a Sub-consultant's usual insurance coverage does not meet the minimum coverage requirements, before entering into an agreement with that Sub-consultant, the Consultant shall submit to the State **(1)** a certificate of insurance evidencing the insurance the Sub-consultant will carry without additional compensation and **(2)** if the State requests, a written proposal from the Sub-consultant to provide coverage that meets the minimum coverage requirements. The State will decide whether to accept the non-conforming insurance coverage or the proposal to provide conforming coverage.

7.1.1.3 Notwithstanding any other provision of this Agreement to the contrary, the Consultant will not be entitled to any Fee increase on account of the State's refusal to accept a Sub-consultant's nonconforming insurance coverage.

7.1.1.4 On a case-by-case basis, the State and Consultant may agree to adjust the below minimum coverage requirements for any particular Sub-consultant.

7.1.2 Before starting the Services, upon renewal of any policy, and upon a change of any insurance carrier, the Consultant shall deliver to the State certificates evidencing that the required insurance is in force.

7.1.2.1 Certificates of insurance for other than government-controlled workers' compensation insurance must identify **(1)** all below-required additional insureds and **(2)** the Project name.

7.1.3 With the exception of government-controlled workers' compensation coverage:

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

7.1.3.2 the policies shall be endorsed to require the Consultant's insurance carrier to **(1)** provide at least 30-days' written notice to the State (as certificate holder) of the cancellation or non-renewal of the insurance and **(2)** provide

at least ten-days' written notice to the State (as certificate holder) of the cancellation of the insurance for non-payment of premium; and

7.1.3.3 within 30 days after the State's request, the Consultant shall submit insurance-company certified copies of the policies, the policy endorsements, or both from which the Consultant may redact the premium amount.

7.1.4 The Consultant shall pay all deductibles, or self-insured retentions, or both contained in the Consultant's policies of insurance required or provided in connection with the Project. The State reserves the right to approve or reject all levels of self-insured retention, captive insurance programs, or other alternative risk financing the Consultant may use to comply with any insurance requirement.

7.1.5 The Consultant shall pay a proportionate share of the deductibles, or self-insured retentions, or both contained in any insurance policy the State purchases for the Project. The Consultant's proportionate share will derive from the percentage of the associated claim or loss attributable to the negligence of the Consultant or a Sub-consultant.

7.1.6 The State does not represent that required coverage or limits are adequate to protect the Consultant.

7.1.7 Failure of the State to demand a certificate or other evidence of full compliance with the insurance requirements or failure of the State to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Consultant's obligation to maintain the required insurance.

7.1.8 The State may terminate the Agreement for cause on account of the Consultant's failure to maintain the required insurance.

7.2 Consultant's Minimum Coverage Requirements

7.2.1 Workers Compensation. The Consultant shall maintain workers' compensation coverage meeting the requirements of Applicable Law.

7.2.2 Employers' Liability Coverage. The Consultant shall maintain employers' liability coverage with **(1)** an each-accident limit of not less than \$1,000,000, **(2)** a disease each-employee limit of not less than \$1,000,000, and **(3)** a disease policy limit of not less than \$1,000,000.

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

7.2.3.1 The CGL insurance shall be written on ISO occurrence form CG 00 01 04 13 or a substitute form, providing at least equivalent coverage for liability arising from premises, operations, independent contractors, products/completed-operations, personal and advertising injury, and liability assumed under an insured contract.

7.2.3.2 The Consultant shall include the State, the as an additional insured under the CGL policy using ISO endorsement CG 20 10 07 04 and ISO endorsement CG 20 37 07 04 or a substitute form(s) providing equivalent coverage.

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

7.2.3.4 The CGL insurance shall not exclude coverage for property damage to electronic data.

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

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

7.2.3.7 The Consultant shall maintain the CGL insurance in effect for no less than five years after the earlier of the termination the Agreement or Substantial Completion of all Work.

7.2.4 Business Automobile Liability. The Consultant shall maintain business automobile ("BA") coverage written on ISO form CA 00 01 04 13 or a substitute form, providing at least equivalent coverage with a limit of not less than \$1,000,000 each accident.

7.2.4.1 The coverage shall extend to any auto: owned (if any), non-owned, leased, rented, hired, or borrowed.

7.2.4.2 The Consultant shall include the State as an additional insured under the BA policy.

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

7.2.6 Professional Liability. The Consultant shall maintain professional liability (“PL”) insurance with a per-claim limit of not less than \$1,000,000 and an annual aggregate limit of not less than \$2,000,000.

7.2.6.1 The PL policy shall have an effective date, which is on or before the date that the Consultant first started to provide any Project-related Services.

7.2.6.2 Upon submission of the associated certificate of insurance and at each policy renewal, the Consultant shall advise the State in writing of any actual or alleged claims that may erode the PL policy’s limits.

7.2.6.3 The Consultant shall maintain the PL insurance in effect for no less than five years after the earlier of the termination of the Agreement or Substantial Completion of all Work.

7.2.6.4 If the Project is using the design-build project delivery system, the PL policy shall not contain any design-build exclusions.

7.2.7 Pollution Liability. If the Services include environmentally sensitive, hazardous types of activities (such as demolition, exterior insulation finish systems, Asbestos abatement, storage-tank removal, or similar activities), or involves Hazardous Materials, the Consultant shall maintain a pollution liability (“Pollution”) policy with **(1)** a per-claim limit of not less than \$1,000,000 and **(2)** an annual-aggregate limit of not less than \$1,000,000, covering the acts, errors and/or omissions of the Consultant for damages (including from mold) sustained by the State by reason of the Consultant’s performance of the Services.

7.2.7.1 The Pollution policy shall have an effective date, which is on or before the date that the Consultant first started to perform any Project-related Services.

7.2.7.2 Upon submission of the associated certificate of insurance and at each policy renewal, the Consultant shall advise the State in writing of any actual or alleged claims that may erode the Pollution policy’s limits.

7.2.7.3 The Consultant shall maintain the Pollution insurance in effect for no less than five years after the earlier of the termination of the Agreement or Substantial Completion of all Work.

7.2.7.4 The Consultant may achieve the Pollution insurance requirement through a PL policy, which provides the required pollution coverage or through a contractor’s pollution liability policy.

7.3 Waivers of Subrogation

7.3.1 To the fullest extent permitted by Applicable Law, the Consultant waives all rights against the State, and its agents and employees for damages to the extent covered by any insurance (not including professional liability insurance), except rights to the proceeds of that insurance. All policies shall accomplish the waiver of subrogation by endorsement or otherwise.

7.3.2 To the fullest extent permitted by Applicable Law, the Consultant waives all rights against the State, and its employees for damages to the extent covered by any professional liability insurance, except rights to the proceeds of that insurance. All policies shall accomplish the waiver of subrogation by endorsement or otherwise.

7.3.3 The State and Consultant 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.

7.4 Indemnification for Injury or Damage

7.4.1 Liability Other than Professional Liability. To the fullest extent permitted by Applicable Law and with respect to liability other than professional liability claims, the Consultant shall indemnify, defend, and hold harmless the Indemnified Parties from and against all claims, costs, damages, losses, fines, penalties, and expenses (including but not limited to all fees and charges of attorneys and other professionals and all court, arbitration, or other dispute-resolution costs) arising out of or in connection with the Project, provided that any such claim, cost, damage, loss, fine, penalty, or expense is attributable to: **(1)** bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property but only to the extent caused by the negligent acts, errors, or omissions of the Consultant or a Person for whom the Consultant may be liable; **(2)** infringement of patent rights or copyrights by the Consultant or a person or entity for whom the Consultant may be liable; or **(3)** a violation of Applicable Law but only to the extent attributable to the Consultant or a Person for whom the Consultant may be liable.

7.4.2 Professional Liability. To the fullest extent permitted by Applicable Law and with respect to professional liability claims, the Consultant shall indemnify and hold harmless the State and its officers, officials, and employees from and against all claims, costs, damages, losses, fines, penalties, and expenses (including but not limited to all fees and charges of attorneys and other professionals, and all court, arbitration, or other dispute-resolution costs) arising out of or in connection with **(1)** the failure of the Consultant or a Person for whom the Consultant is legally liable to comply with the

standard of care described under **Section 1.8**; and **(2)** infringement of patent rights or copyrights by the Consultant or a Person for whom the Consultant may be liable.

7.4.3 The Consultant's indemnification obligation under **Section 7.4** exists regardless of whether or not and the extent to which the claim, damage, loss, fine, penalty, or expense is caused in part by a party indemnified under **Section 7.4**. But nothing in **Section 7.4** obligates the Consultant to indemnify any individual or entity from and against the consequences of that Person's own negligence.

7.4.4 If the Consultant is not providing professional design services, the Consultant's obligations under **Section 7.4** shall not extend to the liability of the Consultant, the Consultant's Sub-consultants, agents, representatives, or employees for negligent preparation or approval of Drawings, Specifications, Change Orders, opinions, and any other responsibility of the Consultant, except to the extent covered by the Consultant's insurance.

7.4.5 In claims against a Person indemnified under **Section 7.4** by any direct or indirect employee (or the survivor or personal representative of that employee) of the Consultant or a Person for whom the Consultant may be liable, the indemnification obligation under **Section 7.4** will not be limited by a limitation on the amount or type of damages, compensation, or benefits payable under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.4.6 The Consultant's indemnification obligation under **Section 7.4** will not be limited by any insurance policy provided or required in connection with the Project.

7.4.7 The Consultant's obligations under **Section 7.4** shall not negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a Person indemnified under **Section 7.4**.

7.4.8 The Consultant's indemnification obligation under **Section 7.4** will survive termination of the Agreement and Final Acceptance of the Work.

7.4.9 The State may deduct from amounts due to the Consultant the claims, damages, losses, fines, penalties, and expenses for which the Consultant is liable under **Section 7.4**. If those claims, damages, losses, fines, penalties, and expenses exceed the unpaid balance of amounts due to the Consultant, the Consultant shall immediately pay the difference to the State.

ARTICLE 8 - SUSPENSION AND TERMINATION

8.1 Suspension of the Services

8.1.1 The State, without cause and without prejudice to any other right or remedy it may have, may order the Consultant in writing to suspend, delay, or interrupt the performance of the Services in whole or in part for such period as the State may determine.

8.1.1.1 If the State suspends the Services under this **Section 8.1.1** and the Consultant complies with **Article 5**, the Basic Fee, Additional Services Fee, and Reimbursable Expenses shall be adjusted for increases in the cost and time caused by the suspension, delay, or interruption.

8.1.1.2 Notwithstanding the foregoing, no adjustment shall be made to the Basic Fee, Additional Services Fee, or Reimbursable Expenses to the extent that: **(1)** performance was or could have been suspended, delayed, or interrupted by a cause for which the Consultant is responsible; or **(2)** an equitable adjustment is made or denied under another provision of the Agreement.

8.1.1.3 If the State suspends the Services under this **Section 8.1.1** and the Consultant submits a proper Professional Services Payment Request, but subject to all other provisions of the Agreement, the Consultant shall be entitled to payment of compensation due under the Agreement for Services performed before the suspension.

8.1.2 Upon receipt of notice of suspension under this **Section 8.1**, the Consultant shall cease providing the suspended Services and take all necessary or appropriate steps to limit disbursements and minimize respective costs. The Consultant shall furnish a report to the State, within five days after receiving the notice of suspension, describing the status of the Services, including results accomplished, resulting conclusions, and other information as the State may require.

8.2 Termination for Convenience

8.2.1 The State may terminate at any time the Agreement in whole or in part for the State's convenience and without cause, upon written notice to the Consultant. Upon receipt of the notice of termination for convenience, the Consultant shall immediately proceed with performance of the following duties in accordance with instructions from the State: **(1)** cease operation as specified in the notice; **(2)** no further Sub-consultant agreements except as necessary to complete

continued portions of the Project; (3) terminate all Sub-consultant agreements to the extent they relate to the Services terminated; and (4) proceed with Services not terminated.

8.2.2 The State shall pay the Consultant for Services rendered before the date of termination in accordance with the allocations in the Agreement, including any Reimbursable Expenses incurred, but not in excess of the allocations and caps otherwise provided in the Agreement. In no event shall the Consultant be entitled to overhead and profit associated with Services the Consultant did not perform on account of the termination or otherwise.

8.2.3 If the State terminates the Services under this **Section 8.2**, the termination shall not affect the rights or remedies of the State against the Consultant then existing or which may thereafter accrue for Services performed before the termination.

8.2.4 Notwithstanding **Section 8.2.2**, if the State terminates the Services under this **Section 8.2**, but there exists an event of the Consultant's default, the Consultant shall be entitled to receive only such sums as it would be entitled to receive following the occurrence of an event of default as provided in **Section 8.3**.

8.3 Termination for Cause

8.3.1 The State may terminate the Agreement in whole or in part if the Consultant commits a material breach of the Agreement including but not limited to: (1) failure to prosecute the Services with the necessary force or in a timely manner; (2) refusal to remedy disapproved Services; (3) failure to properly make payment to Sub-consultants; (4) performance of any services outside of the United States; (5) permitting Sub-consultants to perform any services outside of the United States; or (6) disregarding Applicable Law, or orders of a public authority with jurisdiction over the Project.

8.3.2 If the State intends to exercise its termination rights under this **Section 8.3**, the State shall notify the Consultant in writing of the State's intent to terminate this Agreement and the cause(s) for that termination.

8.3.3 If the Consultant fails to cure the identified cause(s) for termination within seven days after receiving the notice described under **Section 8.3.2**, the State may terminate the Agreement by giving written notice of the termination to the Consultant.

8.3.4 If the Agreement is terminated, the State may complete the Services by means the State determines appropriate. The State may take immediate possession of all Consultant Documents.

8.3.5 If the Agreement is terminated, the Consultant shall not be entitled to further payment.

8.3.5.1 If the unpaid balance of the sum of the Basic Fee plus Additional Services Fees plus Reimbursable Expenses is exceeded by the costs of finishing the Services, including without limitation the fees and charges of contractors, engineers, architects, attorneys, and other professionals and court costs, and other damages incurred by the State and not expressly waived, the Consultant shall immediately pay the amount of the insufficiency to the State. This obligation for payment shall survive termination of the Agreement.

8.3.6 If the State terminates the Services under this **Section 8.3**, the termination shall not affect any rights or remedies of the State against the Consultant then existing or which may thereafter accrue. The State's retention or payment of funds due the Consultant shall not release the Consultant from liability for performance of the Services.

8.3.7 If the State is adjudged to have improperly or unjustifiably terminated the Services under this **Section 8.3**, the termination will be deemed to have been a termination under **Section 8.2**.

8.4 Consultant's Termination for Cause

8.4.1 The Consultant may terminate this Agreement for cause if the State fails to pay undisputed amounts owed to the Consultant when required under this Agreement.

8.4.2 If the Consultant elects to terminate this Agreement for cause, the Consultant must give the State written notice of (1) the Consultant's intention to terminate the Agreement and (2) an accounting of the undisputed amounts owed to the Consultant and the date(s) on which the Consultant believes payment of those amounts was due. If the State does not cure the cause for termination by initiating the process to pay the undisputed amounts owed to the Consultant within ten days after receiving the notice, the termination will take effect upon the State's receipt of the Consultant's written notice of termination, which is in addition to the Consultant's notice of intention to terminate.

8.4.3 If the Consultant properly terminates this Agreement for cause, but subject to other provisions of this Agreement, the State must pay the Consultant for Services performed by the Consultant before the date of termination. In no event will the State be obligated to pay anything on account of Services the Consultant does not perform.

8.4.4 If the Consultant improperly terminates this Agreement under this **Section 8.4**, the Consultant shall be obligated to the State as described under **Section 8.3.5.1**.

ARTICLE 9 - GENERAL PROVISIONS

9.1 Consultant's Documents and Contract Documents

9.1.1 Except as provided under **Section 9.1.2** and subject to **Section 9.1.6**, the State alone owns the Consultant's Documents and the Contract Documents and every right, title, and interest in the Consultant's Documents and the Contract Documents from the moment of creation.

9.1.2 **Section 9.1.1** does not apply to standard details and specifications regularly used by the Consultant or any of its Sub-consultants in its normal course of business that are included in the Consultant's Documents. The Consultant grants to the State an irrevocable, non-exclusive, perpetual, freely assignable, and royalty-free license to copy, reproduce, distribute, and otherwise use those standard details and specifications for all Project-related purposes such as but not limited to owning, financing, constructing, testing, commissioning, decommissioning, using, operating, maintaining, repairing, modifying, selling, obtaining insurance for, and obtaining permits for the Project before, during, and after termination or completion of this Agreement.

9.1.3 The Consultant must execute and deliver and cause its employees and agents and all Sub-consultants to execute and deliver, to the State any transfers, assignments, documents, or other instruments (if any) necessary to vest in the State complete right, title, interest in and ownership of all of the Consultant's Documents and the Contract Documents under **Section 9.1.1** and the license described under **Section 9.1.2**.

9.1.4 The Consultant may retain copies, including reproducible copies of Consultant's Documents and the Contract Documents for information, reference, and the performance of the Services. The State grants to the Consultant and its Sub-consultants a non-exclusive, royalty-free license to copy, reproduce, distribute, and otherwise use the Consultant's Documents and the Contract Documents in relation to the performance of the Services, including any Additional Services.

9.1.5 The submission or distribution of Consultant's Documents and the Contract Documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the State's reserved rights in the Consultant's Documents and the Contract Documents. Any unauthorized use of the Consultant's Documents and the Contract Documents will be at the sole risk of the entity making the unauthorized use of the Consultant's Documents and the Contract Documents.

9.1.6 Should the State desire to use any of the Consultant's Documents for an addition to, remodeling or rehabilitation of, or change to any one or more of the Project improvements built on the basis of the Consultant's Documents, the State shall engage one or more suitably licensed design professionals under terms that require each of those design professionals to independently evaluate any design or related features in the Consultant's Documents without reliance on any information in the Consultant's Documents that would be inconsistent with the standard of care applicable to that design professional.

9.1.7 The Consultant shall provide Electronic Files to the Contractor for the Contractor's and Subcontractors' use in connection with the Project. The Consultant shall provide the Electronic Files **(1)** at no additional cost to the Contractor, Subcontractors, or State and **(2)** without requiring the Contractor, Subcontractors, Separate Consultants, or State to agree to any terms or conditions concerning the provision, receipt, or use of the Electronic Files that differ in any material respect from the Contract.

9.1.8 Use of Electronic Files.

9.1.8.1 The State, Consultant, and Contractor reasonably expect that they will provide Electronic Files to each other to facilitate the design and construction of the Project consistent with current practices and customs in the construction industry.

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

9.1.8.3 In the event of a discrepancy between information contained in a paper version of a document and the Electronic File of that document, the paper version will govern.

9.1.8.4 This **Section 9.1.8** does not relieve the Consultant of its responsibility for the preparation, completeness, or accuracy of the Consultant's Documents.

9.2 Public Relations

9.2.1 Publicity prior to completion of the Project. Prior to completion of the Project, public relations or publicity about the Project shall be solely within the control and with the consent of the State.

9.2.2 Publicity after completion of the Project. After completion of the Project, the Consultant may exercise reasonable public relations and marketing efforts related to the Project, provided the Consultant properly identifies the State, and its participation in the Project.

9.3 Application and Governing Law

9.3.1 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 Consultant irrevocably consents to such jurisdiction.

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

9.3.3 Other rights and responsibilities of the Contractor, the Consultant, and the State are set forth throughout the Contract Documents and included under different titles, articles, and paragraphs for convenience.

9.4 Written Notice

9.4.1 Notice under this Agreement shall be validly given if: **(1)** delivered personally to a member of the organization for whom the notice is intended; **(2)** delivered by trackable delivery service, or sent by registered or certified mail, to the last known business address of the organization; or **(3)** sent by facsimile, email, or web-based project management software, provided the original, signed document is delivered within three business days after the date of the electronic transmission.

9.4.2 When the State, the Consultant, or a Contractor gives notice to one of the other two, it shall also simultaneously send a copy of that notice to the others.

9.4.3 A copy of all notices, certificates, requests, or other communications to the State shall be sent to the Project Manager.

9.4.4 In the event of an emergency involving the Project, including, but not limited to, a fatality, serious injury, fire, collapse, flood, utility, or power loss to occupied facilities, explosion, or environmental damage, the Consultant shall immediately notify the State by the most expedient means available.

9.4.5 The State or the Consultant may, by written notice given hereunder, designate addresses, telephone numbers, email addresses, or facsimile numbers to which notices, certificates, requests, or communications shall be sent.

9.5 Computing Time

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

9.5.2 Except as excluded under **Section 9.5.1**, all periods referred to in this Agreement include Saturdays, Sundays, and legal holidays.

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

9.6 Time of the Essence

9.6.1 Time limits stated in the Agreement are of the essence of the Agreement and all obligations under the Agreement. By signing the Agreement, the Consultant acknowledges that those time limits are reasonable.

9.6.1.1 The Consultant acknowledges that the State has entered into, or may enter into, other contracts based upon the Consultant properly providing the Services in a timely manner.

9.6.1.2 The Consultant shall perform the Services in a reasonable, efficient, and economical sequence, and in the order and time as provided in the Project Schedule.

9.6.1.3 The Consultant acknowledges that it may be subject to interference, disruption, hindrance, or delay in the progress of the Services from any cause including without limitation acts of Nature or the public enemy, acts of the government not arising from the Consultant's failure to comply with Applicable Law, fires, floods, epidemics, weather, and labor disputes beyond the Consultant's control. The sole remedy for such interference, disruption,

hindrance, or delay shall be an extension of the time for performance of the Services, unless otherwise required by ORC Section 4113.62.

9.7 Successors and Assigns

9.7.1 The State and the Consultant 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.

9.7.2 The Consultant shall not assign or transfer any right, title, or interest in this Agreement without the State's prior written consent.

9.8 Extent of Agreement

9.8.1 Entire Agreement. This Agreement, including the attached documents, and the Contract Documents represent the entire and integrated agreement between the State and the Consultant and supersede all prior negotiations, representations, or agreements, either written or oral.

9.8.1 Multiple Counterparts. 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.

9.8.2 Captions. 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.

9.8.3 Precedence. If there are any inconsistencies between the provisions of the Contract Documents and the provisions of this Agreement, the provisions of this Agreement shall prevail.

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.

9.10 Electronic and Facsimile Signatures

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

9.11 Ohio Retirement System

9.11.1 All individuals employed by the Consultant that provide personal services to the State are not public employees for the purposes of ORC Chapter 145, as amended.

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

9.12 No Third-Party Interest

9.12.1 Except as expressly provided under **Section 3.1, (1)** no person or entity, other than the State and the Consultant, will have any right or interest under the Agreement, and **(2)** the Agreement does not create a contractual relationship of any kind between any people or entities other than the State and the Consultant.

9.13 No Waiver

9.13.1 The failure of the State or the Consultant to insist in any one or more instances upon the strict performance of any one or more of the provisions of the Agreement or to exercise any rights under the Agreement or provided by law will not be construed as a waiver or relinquishment of that provision or right or of the right to subsequently demand strict performance or exercise the right and the rights will continue unchanged and remain in full force and effect.

9.14 Rights and Remedies

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

9.15 Survival of Obligations

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

ARTICLE 10 - DEFINED TERMS AND ABBREVIATIONS

10.1 For the purposes of this Agreement, the words, terms, and abbreviations set forth below have the following meanings:

10.1.1 “Consultant” means the Person identified in the Agreement responsible for providing professional consulting services for the Project.

10.1.2 “Consultant’s Documents” means all Project-related documents, including those in electronic form, prepared by the Consultant or Sub-consultants.

10.1.3 “Contract Documents” means collectively, the documents that constitute the substance of the Contract including the final Drawings, final Specifications, Addenda if any, General Conditions, Supplementary Conditions if any, Project Manual, Bid Form, Wage Rates; and the executed Agreement, Bid Guaranty and Contract Bond if any, GMP Documents if any, and Modifications if any.

10.1.4 “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. As used in the Agreement, the term Contractor may include a Construction Manager at Risk or a Design-Builder.

10.1.5 “Direct Personnel Expense” means the portion of direct salaries and wages of all personnel of the Consultant or any Sub-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.

10.1.6 “Equal Opportunity Coordinator” means the public official who exercises the duties and responsibilities of the position of the equal employment opportunity coordinator identified in ORC Section 121.04, including but not limited to issuing certificates of compliance with the State’s affirmative action and EDGE programs.

10.1.7 “Fee” (as in “Basic Fee,” “Additional Services Fees,” and otherwise) means all of the compensation to be paid by the State to the Consultant on account of the proper, timely, and complete performance of the associated Services by the Consultant or its Sub-consultants, including, but not limited to, salaries or other compensation of the Consultant’s employees at the principal office, branch offices, and the field office, general operating expenses of the Consultant’s principal office, branch offices, and the field office, any part of the Consultant’s capital expenses, including interest on the Consultant’s capital employed for the Project, overhead or expenses of any kind, except Direct Personnel Expense and Reimbursable Expenses, any costs incurred due to the Consultant’s negligence, the Consultant’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.

10.1.8 “Indemnified Parties” means the State, and its respective officials, officers, consultants, agents, representatives, and employees, in both individual and official capacities.

10.1.9 “Project Schedule” means a document that, with respect to each phase of the Project, identifies, coordinates and integrates the anticipated design and construction schedules, the State’s responsibilities, government authority reviews and other activities as are necessary for the timely completion of the Work.

10.1.10 “Reimbursable Expenses” means actual expenditures incurred by the Consultant or its Sub-consultants in the interest of the Project, approved by the State for reproduction of Contract Documents for distribution to Bidders, plan approval fees, building permits, and, if requested by the State, reformatting Project Record Submittals to a computer medium different than the computer medium used by the Consultant.

10.1.11 “Services” includes all of the Consultant’s obligations, individually or collectively, under the Agreement including all items reasonably inferable from the Agreement, whether provided or to be provided by the Consultant, a

Sub-consultant, or any other entity for whom the Consultant is responsible. The Services include both Basic Services and Additional Services as defined in the Agreement.

10.1.12 “Sub-consultant” means a Person engaged by the Consultant to provide or perform a portion of the Services.

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

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