

Standard Requirements

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

6.28.1.5 The CM shall at all times permit access to the documents described in this Section 6.28.1 to authorized representatives of the State, local authorities having jurisdiction, the Contracting Authority, the Owner, and the A/E.

6.28.2 Before Final Acceptance.

6.28.2.1 The CM, as a condition precedent to execution of the Certification of Contract Completion, release of retained funds, and final payment, shall organize the As-Built Documents into manageable sets, bind the sets with durable paper cover sheets, and deliver the As-Built Documents to the A/E.

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

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

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

6.28.3 Record Documents.

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

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

6.29 Demonstration and Training, Operating Appurtenances

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

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

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

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

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

6.30 Certification of Contract Completion

6.30.1 Partial Completion.

6.30.1.1 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 CM, as determined in the sole discretion of the Contracting Authority. The A/E shall list deferred items on a Partial Certification of Contract Completion with the dates the items are to be completed.

6.30.1.2 The date that the Contracting Authority executes the Partial Certification of Contract Completion is the date that the Correction Period commences, and retained funds may be released for that portion of the Work. Partial Acceptance is subject to Section 6.25.

6.30.2 Final Acceptance.

6.30.2.1 When all items on the A/E's Punch List have been completed to the satisfaction of the A/E, all requirements of the Contract Documents have been completed, and the provisions of Sections 6.26 through 6.29 have been fulfilled, the A/E shall prepare and recommend execution of a Final Certification of Contract Completion.

6.30.2.2 The date that the Contracting Authority executes the Final Certification of Contract Completion is the date that the Work of the Contract is accepted ("Final Acceptance"). If a Partial Certification of Contract Completion was not executed for the Contract, the date that the Contracting Authority executes the Final Certification of Contract Completion is the date that the Correction Period commences, and retained funds may be released. Final Acceptance is subject to Section 6.25.

ARTICLE 7 - CONTRACT MODIFICATIONS

7.1 General

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

7.1.1.1 The CM shall proportionately increase the amount of the Bond whenever the Contract Sum is increased.

7.1.1.2 If notice of any change affecting the Contract is required by the provision of any Bond, the giving of the notice is the CM's responsibility, and the amount of each applicable Bond shall be adjusted accordingly.

7.1.2 The CM shall not proceed with any change in the Work without the Contracting Authority's prior written authorization except as provided under Sections 1.9 and 7.5.

7.1.2.1 Except as provided in Section 1.9, the CM's failure to obtain prior written authorization for a change in the Work constitutes a waiver by the CM of an adjustment to the Contract Sum or Contract Times, or both, for the related Work.

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

7.1.4 Paperwork Consolidation.

7.1.4.1 Related Contract modifications, with the same or similar justification (e.g., Owner Request or field resolution), may be consolidated into the same change-related document.

7.1.4.2 Add and deduct Contract modifications, with the same or similar justification, may be included on the same Change Order.

7.1.4.3 Contract modifications resulting from errors or omissions shall not be combined with other modifications for which the A/E will receive a fee.

7.1.5 Change Order Numbering.

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

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

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

7.1.6 Change Order Log.

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

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

7.1.7 Reconciliation of Unit Price Items.

7.1.7.1 The Contracting Authority may increase, decrease, or delete entirely the scheduled quantities of Work to be performed and materials to be furnished by Change Order.

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

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

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

7.2 Change Order Procedure

7.2.1 A Change Order is a written instrument prepared by the A/E and signed by the Contracting Authority, the Owner, the A/E, and the CM, stating their agreement upon all of the following:

- 7.2.1.1 a change in the Work;
- 7.2.1.2 the amount of the adjustment of the Contract Sum, if any; and
- 7.2.1.3 the extent of the adjustment of the Contract Times, if any.

7.2.2 Except with the Contracting Authority's written consent as explicitly provided under Section 7.4.8, the CM is not entitled to reserve any rights or take other similar action with respect to a Change Order if the effect or intent of the reservation or action would be to accommodate a further adjustment of the Contract Sum or Contract Times, or both, after the CM signs the Change Order. By signing a Change Order, the CM irrevocably certifies that the elements of a Change Order described in Section 7.2.1 are completely satisfied, and waives all rights, if any, to seek further adjustment of the Contract Sum or Contract Times, or both, at a later date with respect to the associated change in the Work including without limitation on account of the "cumulative impact" of the associated change in the Work in combination with one or more other changes in the Work.

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

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

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

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

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

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

7.3 Initiation of Change Orders

7.3.1 Proposal Request.

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

- .1 In any Proposal for an adjustment of the Contract Sum, the CM shall specifically identify the items set forth in Section 7.7.
- .2 In any Proposal for an adjustment of the Contract Times, the CM shall specifically identify the items set forth in Section 7.8.
- .3 The CM's cost of preparing and providing Proposals is included in the Contract Sum.

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

7.3.1.3 The CM shall hold the Proposal valid and open for acceptance for at least 45 days. The acceptance period may be adjusted by mutual consent of the CM and the Contracting Authority. The time limits described under this Section 7.3.1.3 apply only to Proposals submitted in response to a Proposal Request.

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

7.3.1.5 If the CM does not timely submit a Proposal within the time required in Section 7.3.1.3, the CM waives its right to an adjustment to the Contract Sum or Contract Times, or both, associated with the contemplated change in the Work.

7.3.2 Request for Change Order.

7.3.2.1 The CM may initiate a change in the Work by submitting written notice to the A/E accompanied by a Proposal as described under Section 7.3.1.

7.4 Change Directives

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

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

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

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

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

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

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

7.4.5 The CM may sign the Change Directive to accept the proposed basis for adjustment, if any, of the Contract Sum or Contract Times, or both. Thereafter, the A/E shall prepare and the A/E, Contracting Authority, Owner, and CM shall promptly sign an associated Change Order as described under Section 7.2.

7.4.6 Within 14 days after receiving the Change Directive, the CM shall respond with a Proposal as described under Section 7.3.1 to the A/E and the Contracting Authority for adjustment of the Contract Sum or Contract Times, or both, on account of the change, unless the Change Directive is performed on a time and materials basis under Section 7.4.1.2. If the Change Directive is performed on a time and materials basis, the CM shall submit its Proposal within 7 days after completing the Work.

7.4.6.1 The Proposal for the adjustment of the Contract Sum, if any, shall include: (1) written documentation as described under Section 7.7; and (2) a written statement from the CM that the proposed adjustment is the entire adjustment in the Contract Sum associated with the change.

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

7.4.7 If the CM does not respond to a Change Directive as required under Section 7.4.5, the Contracting Authority shall determine the adjustments, if any, of the Contract Sum and Contract Times. If the CM does not agree with the Contracting Authority's determination, the CM shall initiate a Claim under Article 8 within 10 days of the date on which the Contracting Authority issues its determination, and the CM's failure to do so shall constitute an irrevocable waiver of the Claim.

7.4.8 Pending final determination of the total adjustment of the Contract Times on account of a Change Directive, the period of time not in dispute for that change in the Work may be included in the Construction

Progress Schedule accompanied by a Change Order indicating the parties' agreement with part or all of the time adjustment.

7.4.9 If the Contracting Authority, Owner, and CM agree on the adjustments of the Contract Sum and Contract Times associated with a Change Directive, the A/E shall prepare an appropriate Change Order within 7 days after receiving the CM's Proposal. The A/E, Contracting Authority, Owner, and CM shall promptly sign the Change Order as described under Section 7.2.

7.4.10 If the Contracting Authority, Owner, and CM do not agree on the adjustments of the Contract Sum and Contract Times associated with a Change Directive within 60 days after the Change Directive is issued, the Contracting Authority shall determine the adjustments, if any, of the Contract Sum and Contract Times. If the CM does not agree with the Contracting Authority's determination, the CM shall initiate a Claim under Article 8 within 10 days of the date on which the Contracting Authority issues its determination, and the CM's failure to do so shall constitute an irrevocable waiver of the Claim.

7.5 Minor Changes in the Work

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

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

7.5.3 If the CM reasonably believes that it would be entitled to an adjustment of the Contract Sum or Contract Times, or both, on account of an order for a minor change in the Work, the CM, within 3 business days after receiving the order, shall give the Contracting Authority and the A/E written notice of the CM's position, and not proceed with the subject Work without first receiving a Change Directive or Change Order related to it.

7.5.4 The CM waives its right to an adjustment of the Contract Sum or Contract Times on account of an order for a minor change in the Work by:

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

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

7.6 Differing Site Conditions

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

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

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

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

7.6.2.1 If the A/E determines that the CM has encountered a Differing Site Condition, the A/E shall prepare (as appropriate) a resulting Change Order or a Change Directive through which the Contracting Authority may convey its disagreement with the A/E's determination.

7.6.2.2 If the A/E determines that the CM has not encountered a Differing Site Condition and the CM does not agree with that determination, the CM shall initiate a Claim under Article 8 within 10 days of the date on which the A/E issues its determination.

7.7 Change Order Cost or Credit Determination

7.7.1 General.

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

- .1 Proposals shall include the information required by Section 7.7.1.4.
- .2 A Unit Price Proposal shall only be valid when incorporated into the Contract by Change Order except for Unit Price Work included in the GMP Amendment.
- .3 The maximum cost or credit includes all compensation for impact costs. Additional costs for impacts shall not be allowed.

7.7.1.2 The CM shall not assign any portion of the Work to another Person whereby the CM would benefit directly or indirectly from the double application of charges for overhead or profit.

7.7.1.3 The Contracting Authority may require notarized invoices for material costs and may audit the records of the CM and Subcontractors.

7.7.1.4 For each change in the Work, the CM shall furnish a detailed Proposal itemized on the Change Order Estimate Summary form published by the Department through which the CM shall document the related changes in the Contract Sum as described under Section 7.7.2. Any Subcontractor pricing shall also be itemized on the Change Order Estimate Summary form.

7.7.1.5 Section 7.7.2 establishes the exclusive and maximum amount that the Owner shall pay for any Change Order, including, but not limited to, all amounts for interference with, delay, hindrance, disruption, or impact of the Work (“Pricing Criteria”). These Pricing Criteria also govern the value of deduct Change Orders and the CM’s entitlement to additional compensation or damages through the Claims and dispute resolution processes on account of changes in the Work. In order to expedite the review and approval process, Proposals shall be prepared in the categories and order listed in Section 7.7.2.

7.7.2 Pricing Criteria.

7.7.2.1 CM Construction Stage Personnel Costs: The CM’s on-Site management, supervision, and administrative personnel not subject to prevailing wage under to ORC Chapter 4115. These costs will be calculated on an hourly basis according to the rates set forth in the Personnel Costs Rate Schedule attached to the Agreement.

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

- .1 The cost for supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is included in the adjustment under Section 7.7.2.1 for the CM and under Section 7.7.2.10 for Subcontractors.

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

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

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

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

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

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

- .1 The cost or credit for reusable materials (e.g., concrete form lumber, shoring, or temporary enclosures) shall be limited to 33 percent of the material cost for each use.

7.7.2.9 CM's General Conditions Costs: The CM's General Conditions Costs to the extent attributable to an associated change in the Contract Time for achievement of Final Acceptance resulting from the change in the Work. In no event shall the Contract Sum adjustment per day of Contract Time adjustment exceed an amount equal to (1) the sum of the General Conditions Costs line items in the CM's Schedule of Values attached to the GMP Amendment, (2) divided by the total number of days of the original Contract Time for achievement of Final Acceptance.

- .1 The CM shall (1) exclude the Bond premium from the Schedule of Values for the purposes of the calculation under Section 7.7.2.9, and (2) include the actual adjustment of the Bond premium attributable to an associated change in the Contract Sum.
- .2 If the CM purchases the builder's risk insurance for the Project, the CM shall (1) exclude the builder's risk insurance premium from the Schedule of Values for the purposes of the calculation under Section 7.7.2.9, and (2) include the actual adjustment of the builder's risk insurance premium attributable to an associated change in the Contract Sum.

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

- .1 The allowance applies to CM Affiliated Entities and to each Subcontractor tier.
- .2 The allowance covers: the costs required to schedule and coordinate the Work, telephone, telephone charges, facsimile, telegrams, postage, photos, photocopying, hand tools, simple scaffolds (one level high), tool breakage, tool repairs, tool replacement, tool blades, tool bits, home office estimating and expediting, home office clerical and accounting support, home office labor (management, supervision, engineering), all other home office expense, legal services, travel, and parking expenses.
- .3 An exception is allowed for shop or engineering labor on items in Section 7.7.2.10.2, which shall not be subject to Prevailing Wage rates for steel fabricators, sheet metal fabricators, and sprinkler system fabricators performing work off-site. Recovery for these matters shall be allowed on an hourly basis under items in Sections 7.7.2.2, 7.7.2.3, and 7.7.2.4 of these Pricing Criteria.
- .4 An exception is allowed for field supervision labor on items in Section 7.7.2.10.2, for those portions of the Change Order Work that will be performed, or was performed, at times when the superintendent is not required to be on site under Section 6.4, including but not limited to overtime

Standard Requirements

hours due to acceleration and extensions of the Contract Times. Recovery for this matter will be allowed on an hourly basis under items in Sections 7.7.2.2, 7.7.2.3, and 7.7.2.4 of these Pricing Criteria.

7.7.2.11 CM's Fee: Adjustment of the Contract Sum on account of a change in the Work shall include an allowance for the CM's Fee equal to (1) the percentage for the CM's Fee identified in the Agreement times (2) the sum of the costs described under Section 7.7.2.1 through 7.7.2.10.

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

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

7.7.2.13 State sales tax shall be allowed on items as defined by Section 12.6.2.

7.7.3 Costs that shall not be reimbursed for Change Order Work include the following:

7.7.3.1 Voluntary employee deductions including, but not limited to, deductions for charitable donations or U.S. savings bonds.

7.7.3.2 Employee profit sharing.

7.8 Time Extension

7.8.1 Every adjustment of the Contract Times associated with any change in the Work shall be determined as provided in this Section 7.8, which establishes the CM's maximum entitlement for any change in the Work, including without limitation all adjustments for interference, delay, hindrance, or disruption of the Work. This Section 7.8 also governs time adjustments for deduct Change Orders and the CM's entitlement to additional time through the Claims and dispute resolution processes on account of changes in the Work.

7.8.2 The CM shall substantiate all changes in the Contract Times with:

7.8.2.1 A written description of the nature of the interference, disruption, hindrance or delay;

7.8.2.2 Identification of Persons and events responsible for the interference, disruption, hindrance or delay;

7.8.2.3 Date, or anticipated date, of commencement of the interference, disruption, hindrance or delay;

7.8.2.4 Identification of activities by schedule activity number and name on the Construction Progress Schedule, which may be affected by the interference, disruption, hindrance or delay, or new activities created by the interference, disruption, hindrance or delay and the relationship with existing activities;

7.8.2.5 Anticipated duration of the interference, disruption, hindrance or delay and of any remobilization period;

7.8.2.6 Specific number of days of extension requested and specific number of days for remobilization requested;

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

7.8.2.8 A detailed written Proposal as described under Section 7.7 for an increase in the Contract Sum which would fully compensate the CM for all costs of acceleration of the Work needed to completely overcome the associated delay, if any.

7.8.3 A Change Order may authorize extension of the Contract Times for specific elements, while maintaining Milestone dates for unaffected elements. Such a Change Order may also authorize an appropriate adjustment to Liquidated Damages.

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

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

7.9 Examination and Audit of CM's Records

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

7.9.2 The above-referenced materials shall be made available at the office of the CM or Subcontractor, as applicable, at all reasonable times for inspection, audit, and reproduction until the expiration of 6 years after the date of Final Acceptance of the Project.

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

7.9.3 To the extent that the CM or a Subcontractor, as applicable, informs the Contracting Authority or the Owner in writing that any documents provided to the Contracting Authority or the Owner are trade secrets, the Contracting Authority or the Owner shall treat these documents, to the extent permitted by law, as trade secrets of the CM or Subcontractor, as applicable.

7.9.3.1 If a dispute arises with any other Person about whether that Person should be given access to the documents, the CM or Subcontractor as applicable, shall indemnify the Contracting Authority and the Owner against all costs, expenses, and damages, including, but not limited to, attorney fees, incurred or paid by reason of that dispute.

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

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

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

ARTICLE 8 - DISPUTE RESOLUTION

8.1 Initiation of a Claim

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

8.1.2 Except as provided under Section 1.9, the CM shall initiate every Claim by giving written notice of the Claim to the A/E and the Contracting Authority within 10 days after occurrence of the event giving rise to the Claim, with the following exceptions:

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

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

Standard Requirements

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

8.1.3 The CM's written notice of a Claim shall provide the following information to permit timely and appropriate evaluation of the Claim, determination of responsibility, and opportunity for mitigation:

8.1.3.1 nature and anticipated amount of the impact, including all costs for any interference, disruption, hindrance, or delay, which shall be calculated in accordance with Section 7.7 and be a fair and reasonably accurate assessment of the damages suffered or anticipated by the CM;

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

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

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

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

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

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

8.2 Substantiation of Claims

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

8.2.2 The CM shall substantiate all of its Claims by providing the following minimum information:

8.2.2.1 a narrative of the circumstances, which gave rise to the Claim, including, without limitation, the start date of the event or events and the actual, or anticipated, finish date;

8.2.2.2 detailed identification of the Work (e.g., activity codes from the Construction Progress Schedule) affected by the event giving rise to the Claim;

8.2.2.3 copies of the CM's daily log (Section 6.2.14) for each day of impact;

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

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

8.2.2.6 the notarized certification described under Section 8.5.1.1;

8.2.3 The CM's failure to comply with the requirements of this Section 8.2 shall constitute an irrevocable waiver of any related Claim.

8.3 Substantiation of Claims for Increase of the Contract Sum

8.3.1 The CM shall substantiate each Claim for an increase of the Contract Sum with:

8.3.1.1 written documentation as described under Section 7.7 of the actual additional direct and indirect costs to the CM due to the event giving rise to the Claim;

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

8.3.1.3 the general substantiation documentation described under Section 8.2.

8.3.2 The CM's failure to comply with the requirements of this Section 8.3 shall constitute an irrevocable waiver of any related Claim.

8.4 Substantiation of Claims for Extension of the Contract Times

8.4.1 The CM shall substantiate each Claim for an extension of the Contract Times with:

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

8.4.1.2 a detailed written Proposal as described under Section 7.7 for an increase in the Contract Sum which would fully compensate the CM for all costs of acceleration of the Work needed to completely overcome the associated delay together with a statement consistent with Section 8.3.1.2;

8.4.1.3 a written statement from the CM that the extension requested is the entire extension of the Contract Times associated with the Claim; and

8.4.1.4 the general substantiating documentation described under Section 8.2.

8.4.2 In addition to the requirements of Section 8.4.1, if adverse weather conditions are the basis for a Claim for additional time, the CM shall document the Claim with data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on a critical element of the scheduled construction. The support for and evaluation of all adverse weather Claims shall be based upon average weather conditions during the 10 years immediately preceding the dates at issue in the Claim as those weather conditions were recorded at the government-controlled weather-recording facility nearest to the Site.

8.4.3 The CM's failure to comply with the requirements of this Section 8.4 shall constitute an irrevocable waiver of any related Claim.

8.5 Certification of the Claim

8.5.1 The CM shall certify each Claim within 30 days after initiating the Claim under Section 8.1 or before Contract Completion, whichever is earlier, by providing the notarized certification specified in Section 8.5.1.1, signed and dated by the CM:

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

8.5.2 The date that the CM's certified and fully substantiated Claim is received by the Contracting Authority, or the date on which the CM is required to certify and fully substantiate a Claim pursuant to Sections 8.2.1 and 8.5.1, shall trigger the 120 day period for exhaustion of administrative remedies pursuant to ORC Section 153.16(B).

8.5.3 The CM's failure to comply with the requirements of this Section 8.5 shall constitute an irrevocable waiver of any related Claim.

8.6 Delay and Delay Damage Limitations; Derivative Claims

8.6.1 Subject to other provisions of the Contract, the CM will be entitled to an extension of the Contract Times on account of delay in the commencement or progress of Work on the critical path of the Construction Progress Schedule caused by acts of Nature or the public enemy, acts of the government not arising from the

CM's failure to comply with Applicable Law, fires, floods, epidemics, weather, and labor disputes beyond the CM's control.

8.6.2 Notwithstanding any other provision of the Contract Documents to the contrary, the CM shall not be entitled to an increase in the Contract Sum, or an extension of the Contract Times, or both:

8.6.2.1 on account of the impact of any normal adverse weather on any of the Work or on account of the impact of any abnormal adverse weather on Work not on the critical path;

8.6.2.2 to the extent that a delay occurs concurrently with a delay attributable to the CM; or

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

8.6.3 Notwithstanding any other provision of the Contract Documents to the contrary, the CM shall not be entitled to an increase in the Contract Sum or any type of damages on account of a delay in the commencement or progress of Work on the critical path unless (1) the delay is caused by the Owner and (2) the delay was not authorized or permitted under the Contract.

8.6.4 Notwithstanding any other provision of the Contract Documents to the contrary, the CM shall not be entitled to an increase in the Contract Sum or any type of damages arising from a delay in the commencement or progress of any of the Work caused by the occurrence or non-occurrence of an event beyond the Owner's control such as acts of Nature or the public enemy, acts of the government, fires, floods, epidemics, labor disputes, unusual delivery delays, weather, or damages caused by the CM.

8.7 Liquidated Damages

8.7.1 If the CM fails to achieve a Milestone within the associated Contract Time, it would be difficult, if not impossible, to determine the Owner's resulting damages. Therefore, if the CM fails to achieve a Milestone within the associated Contract Time, the CM shall (at the Owner's option) pay to or credit the Owner the liquidated-damages per-day sum determined according to the following schedule for each day that the CM fails to achieve a Milestone within the associated Contract Time.

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

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

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

8.7.4 The Liquidated Damages described in this Section 8.7 are not intended to compensate the Owner for any damages the Owner incurs on account of (1) any claims attributable to the CM that are brought by others including Separate Consultants and Separate Contractors or (2) any failure of the CM to timely, properly, and completely perform the Contract other than the failure to achieve the Milestones within their associated Contract Times.

8.7.5 The parties acknowledge that the above-listed liquidated-damages per-diem sums are not penalties, and they each irrevocably waive the right (if any) to challenge the validity and enforceability of those liquidated-damages per-diem sums. Notwithstanding any other provision of the Contract Documents to the contrary, if a

court determines that the liquidated-damages per-diem sum(s) or their application are void and unenforceable, the Owner shall be entitled to recover the actual damages that it incurs on account of the CM's failure to achieve one or more of the Milestones within the Contract Times.

8.7.6 Nothing contained in this Section 8.7 shall preclude the Owner's recovery from the CM of actual damages.

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

8.8 Review of the Claim

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

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

8.8.1.2 identification of relevant Contract Documents and language;

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

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

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

8.8.1.6 a concluding opinion regarding CM entitlement to, and the appropriateness and reasonableness of all, or any part of, the Claims; and

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

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

8.9 Claim Decision

8.9.1 The Project Manager shall examine the CM's Claim and the A/E's analysis.

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

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

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

8.9.4 Any Claim remaining unresolved after completion of the process described under this Section 8.9 shall be subject to Claim decision review as described under Section 8.10.

8.10 Claim Decision Review

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

Standard Requirements

8.10.1.1 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.

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

8.10.2 The State Architect or Institutional Designee, if applicable, shall schedule and conduct a meeting within 30 days after receiving the CM's request for review.

8.10.2.1 The Contracting Authority may employ independent resources to assist in the meeting and review.

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

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

8.10.5 If the CM and the Owner agree with the State Architect's or Institutional Designee's decision, the decision shall be incorporated into a Change Order.

8.10.6 Any Claim remaining unresolved after completion of the process described under this Section 8.10 shall be subject to litigation, which may be preceded by Alternative Dispute Resolution ("ADR") as described under Section 8.11.

8.11 Alternative Dispute Resolution

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

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

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

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

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

- .1 CM's superintendent negotiating with the A/E's field representative.
- .2 CM's project manager negotiating with the A/E's project manager.
- .3 CM's principal-in-charge negotiating with the A/E's principal-in-charge and the Contracting Authority's Project Manager.
- .4 CM's principal-in-charge negotiating with the Owner's representative and the Project Manager's supervisor.

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

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

8.12 Audit of the Claim

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

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

8.12.3 The audit may begin upon 10 days notice to the CM or affected Subcontractor.

8.12.4 The CM shall cooperate with the request.

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

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

8.12.6.1 daily time sheets and superintendent's daily reports;

8.12.6.2 union agreements, if any, and employer agreements;

8.12.6.3 insurance, welfare, fringes, and benefits records;

8.12.6.4 payroll register;

8.12.6.5 earnings records;

8.12.6.6 payroll tax returns;

8.12.6.7 material invoices, purchase orders, Subcontractor contracts, and all material and supply acquisition contracts;

8.12.6.8 material cost distribution worksheets;

8.12.6.9 equipment records (list of CM equipment, rates, etc.);

8.12.6.10 vendor rental agreements and Subcontractor invoices;

8.12.6.11 Subcontractor payment certificates;

8.12.6.12 canceled checks (payroll and vendors);

8.12.6.13 job cost report;

8.12.6.14 job payroll ledger;

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

8.12.6.16 cash disbursements journal;

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

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

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

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

8.12.6.21 all documents which reflect the CM's actual profit and Overhead during the years the Project was being performed;

8.12.6.22 all documents related to the preparation of the CM's GMP Proposal, including the final calculations on which the Contract Sum was based;

8.12.6.23 all documents which relate to the Claim together with all documents which support the amount of damages as to the Claim;

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

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

8.13 False Certification of the Claim

8.13.1 If the CM falsely certifies all, or any part, of a Claim, the portion of the Claim falsely certified shall be denied, and may be sufficient cause for the State to debar the CM from future State contracting opportunities as permitted by law.

8.14 Performance and Payment

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

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

ARTICLE 9 - COMPENSATION AND PAYMENT

9.1 Preconstruction Stage Compensation

9.1.1 Preconstruction Stage Compensation—General Provisions.

9.1.1.1 The Preconstruction Stage Compensation is the sum of (1) the Preconstruction Fee, (2) Preconstruction Stage Personnel Costs, and (3) Preconstruction Stage Reimbursable Expenses. The Owner shall pay the Preconstruction Stage Compensation to the CM in exchange for the CM's proper, timely, and complete performance of the Preconstruction Stage Services.

9.1.1.2 If the CM engages a Consultant to perform a portion of the Preconstruction Stage Services, the Consultant's compensation is included in the CM's Preconstruction Stage Compensation as described in the Contract. Unless the Owner and Contracting Authority agree otherwise in writing, the Consultant's Preconstruction Stage compensation will be administered on the same basis as the CM's Preconstruction Stage Compensation.

9.1.2 Preconstruction Fee.

9.1.2.1 The Owner will pay the Preconstruction Fee on a progress basis but (1) for each Preconstruction Stage, not in excess of the portion of the Preconstruction Fee allocated to that Preconstruction Stage in the Agreement and (2) not in excess of the total Preconstruction Fee stated in the Agreement.

9.1.3 Preconstruction Stage Personnel Costs.

9.1.3.1 The Owner shall pay the CM's Preconstruction Stage Personnel Costs on an hourly basis according to the rates set forth in the Personnel Costs Rate Schedule attached to the Agreement, but not in excess of the cap on Preconstruction Stage Personnel Costs stated in the Agreement.

9.1.3.2 For the purpose of invoicing, the CM may group employees within the same category of labor to determine a blended rate.

9.1.4 Preconstruction Stage Reimbursable Expenses.

9.1.4.1 The Owner shall pay the CM on account of the Preconstruction Stage Reimbursable Expenses the CM incurs during the performance of the Preconstruction Services, but not in excess of the cap on Preconstruction Stage Reimbursable Expenses stated in the Agreement. The CM is not entitled to any mark-up on Preconstruction Stage Reimbursable Expenses.

9.1.4.2 Notwithstanding the Preconstruction Stage Reimbursable Expenses Schedule attached to the Agreement, the CM shall obtain the Contracting Authority's written approval before purchasing any tangible property where the CM intends to seek reimbursement of the purchase price from the Owner as a Reimbursable Expense. The CM shall maintain a detailed inventory of all such tangible property.

9.1.5 Allocation of Preconstruction Stage Personnel Costs and Preconstruction Stage Reimbursable Expenses.

9.1.5.1 The Owner, Contracting Authority, and CM will agree upon the allocation of Preconstruction Stage Personnel Costs and Preconstruction Stage Reimbursable Expenses through the Preconstruction Stages, and the CM shall prepare and maintain the Staffing Plan to reflect those agreed-upon allocations.

9.1.5.2 At the CM's request, the Contracting Authority and the Owner may agree in writing to reallocate costs between the Preconstruction Stage Personnel Costs cap and the Preconstruction Stage Reimbursable Expenses cap provided that the sum of the Preconstruction Stage Personnel Costs cap and the Preconstruction Stage Reimbursable Expenses cap does not change.

9.1.6 Preconstruction Compensation Increases.

9.1.6.1 Extension of Project Time. If the CM notifies the Owner and Contracting Authority not less than 30 days before the date set for completion of the Preconstruction Services established in the agreed-upon initial Project Schedule described in Section 5.2.3.1, that the Preconstruction Services are reasonably expected to be completed more than 30 days after that date through no fault of the CM, the CM's compensation caps for Preconstruction Stage Personnel Costs and Preconstruction Stage Reimbursable Expenses to be incurred during that extended period will be negotiated to the mutual satisfaction of the Owner, the Contracting Authority, and the CM. If as a result of that negotiation, the Owner agrees to pay the CM additional compensation, the Contract shall be amended in writing to reflect that agreement before the CM renders any services made necessary because of the extension unless the Owner and Contracting Authority agree otherwise in writing.

9.1.6.2 Change in Project Scope or Budget. The Owner, Contracting Authority, and CM will negotiate a mutually satisfactory adjustment of the CM's compensation caps for Preconstruction Stage Personnel Costs and Preconstruction Stage Reimbursable Expenses if, through no fault of the CM, the Owner or Contracting Authority materially change the Approved Program of Requirements after completion of the Schematic Design Stage or the Construction Budget after the execution of the Agreement. If as a result of that negotiation, the Owner agrees to pay the CM additional compensation, the Contract shall be amended in writing to reflect that agreement before the CM renders any services made necessary because the change in the Approved Program of Requirements or Construction Budget.

9.1.7 CM Preconstruction Invoices.

9.1.7.1 All of the CM's invoices for Preconstruction Services shall:

- .1 describe all Preconstruction Services rendered in sufficient detail to enable the Owner to identify the Preconstruction Services;
- .2 separately identify the portion of the Preconstruction Fee, Preconstruction Stage Personnel Costs, and Preconstruction Stage Reimbursable Expenses included in the total invoiced amount;
- .3 identify the CM's or its Consultants' staff (as appropriate) who performed the Preconstruction Services, the time spent performing the Preconstruction Services, and the related hourly rate(s);

- 4 summarize all Preconstruction Stage Reimbursable Expenses in sufficient detail to enable the Owner to identify the category and amount of the individual Preconstruction Stage Reimbursable Expenses; and
- 5 cover only one calendar month ending on the last day of the month.

9.1.7.2 The CM shall submit its invoices for Preconstruction Services to the Contracting Authority, which will review and forward them to the Owner.

9.1.8 Preconstruction Payment Timing.

9.1.8.1 The Owner shall pay the CM on a monthly basis within 30 days after the Contracting Authority's receipt of the CM's invoice unless the Contracting Authority disputes the invoice amount or exercises its rights under Section 9.1.9.

- 1 If the Contracting Authority disputes the invoice amount or chooses to exercise its rights under Section 9.1.9, (1) the Contracting Authority shall give the CM written notice within 14 days after the Contracting Authority's receipt of the CM's invoice, and (2) the Owner shall timely pay all undisputed amounts or amounts not subject to Section 9.1.9 (as appropriate).
- 2 If the CM takes exception to the withholding of payment under Section 9.1.9 the CM shall initiate and prosecute a Claim under Article 8 and continue to perform the Contract.

9.1.9 Right to Withhold Payment.

9.1.9.1 The Contracting Authority may decline to approve any CM invoice or part thereof, or nullify any previous CM invoice, in whole or in part, to the extent necessary in the Contracting Authority's sole opinion to protect the Owner from loss because of:

- .1 damage caused by the CM;
- .2 failure to comply with Applicable Law;
- .3 failure to timely make any submittal in the Preconstruction Stage;
- .4 failure to carry out the Work in accordance with the Contract Documents; or
- .5 that which is permitted under other provisions of the Contract Documents.

9.1.9.2 If the CM remedies the basis for withholding payment under Section 9.1.9.1 to the Contracting Authority's satisfaction, the Owner shall pay the amounts withheld.

9.2 Construction Stage Compensation

9.2.1 Establishing the Contract Sum—General Provisions.

9.2.1.1 In exchange for the CM's proper, timely, and complete performance of the Work in the Construction Stage, the Owner shall pay the Contract Sum to the CM except as described under Sections 9.2.5.5 and 9.2.5.6.

9.2.1.2 The purpose of Section 9.2.2 is to establish the parties' understanding of the items described in order to facilitate estimating, evaluating, analyzing, discussing, and establishing the Contract Sum before the parties enter into the GMP Amendment.

9.2.1.3 Since the general financial arrangement for the Contract is lump-sum/fixed-cost and not cost-reimbursable (e.g., cost-plus, cost-plus with a guaranteed maximum price, line-item guaranteed maximum price, target price, etc.), once the parties establish the Contract Sum, Section 9.2.2 is not relevant to the payment of the Contract Sum.

9.2.1.4 After the parties enter into the GMP Amendment, adjustments of the Contract Sum on account of Modifications and Claims will be governed by Article 7, Article 8, and other applicable provisions of the Contract.

9.2.2 Establishing the Contract Sum—Elements.

9.2.2.1 For the purposes of the establishing the Contract Sum through the GMP Amendment, the Contract Sum is the sum of the CM's Fee, plus the estimated Cost of the Work (including Allowances and Unit Price Work), plus the CM's Contingency.

- .1 The CM shall propose the amount of the Cost of the Work as a part of the proposed GMP Amendment.
 - .1 The portion of the Cost of the Work attributable to the CM's Construction Stage Personnel Costs, shall not exceed but may be less than the cap on CM's Construction Stage Personnel Costs identified in the Agreement.
 - .2 The portion of the Cost of the Work attributable to the General Conditions Costs, as a percentage of the Cost of the Work identified by the CM in the proposed GMP Amendment, shall not exceed but may be less than the percentage for the General Conditions Costs identified in the Agreement.
- .2 The CM shall propose the amount of the CM's Contingency as a part of the proposed GMP Amendment; provided, however, that the CM's Contingency, as a percentage of the Cost of the Work identified by the CM in the proposed GMP Amendment, shall not exceed but may be less than the percentage for the CM's Contingency identified in the Agreement.
- .3 The CM shall propose the amount of the CM's Fee as a part of the proposed GMP Amendment; provided, however, that the CM's Fee, as a percentage of the sum of the Cost of the Work plus the CM's Contingency identified by the CM in the proposed GMP Amendment, shall not exceed the percentage for the CM's Fee identified in the Agreement.

9.2.3 CM's Fee.

9.2.3.1 After the parties enter into the GMP Amendment, the CM's Fee is subject to adjustment as provided elsewhere in the Contract.

9.2.3.2 After the parties enter into the GMP Amendment and after the Date of Commencement (except as provided under Section 9.2.9.1.1), the CM may request payment of the CM's Fee on a percent-complete progress basis.

9.2.3.3 The CM shall account for the CM's Fee as a separate line item of the Contract Sum in all financial reports and like documents presented to the Owner, the Contracting Authority, and the A/E during the Project.

9.2.4 General Conditions Costs.

9.2.4.1 After the parties enter into the GMP Amendment, the General Conditions Costs are subject to adjustment as provided elsewhere in the Contract.

9.2.4.2 After the parties enter into the GMP Amendment and after the Date of Commencement, the CM may request payment of the General Conditions Costs on a percent-complete progress basis.

9.2.4.3 The CM shall account for the General Conditions Costs as a separate line item of the Contract Sum in all financial reports and like documents presented to the Owner, the Contracting Authority, and the A/E during the Project.

9.2.4.4 Notwithstanding the General Conditions Costs Description attached to the Agreement, the CM shall obtain the Contracting Authority's written approval before purchasing any tangible property where the CM intends to pay for that tangible property with General Conditions Costs paid to the CM. The CM shall maintain a detailed inventory of all such tangible property.

9.2.5 CM's Contingency.

9.2.5.1 After the parties enter into the GMP Amendment and thereby establish the original balance of the CM's Contingency, the CM's Contingency will be further funded by the "buy-out savings," if any, realized as result of a CM's estimate of the cost of a particular Subcontract or CM self-performed scope

of Work that is higher than the actual cost of that scope of Work at the time the Contracting Authority approved of (1) the award of the related Subcontract or (2) the performance of that scope of Work by the CM or a CM Affiliated Entity.

9.2.5.2 After the parties enter into the GMP Amendment and after the Date of Commencement:

- .1 the CM may use the CM's Contingency in its discretion (subject to the concurrence of the Owner and the Contracting Authority) to pay for unexpected events such as: (1) a CM's GMP Amendment estimate of the subcontract sum of a particular Subcontract that is lower than the actual subcontract sum of that Subcontract (provided, however, that the foregoing use does not include the scope of any Work performed by the CM or a CM Affiliated Entity); (2) a Subcontractor's breach of its Subcontract; (3) remediation of Defective Work; and (4) additional costs required to complete the Work within the Contract Times where the CM would not be entitled to a Modification;
- .2 the Owner will pay the CM's Contingency to the CM on a cost-reimbursable basis on account of the CM's appropriate use of the CM's Contingency as described under Section 9.2.5.2.1.

9.2.5.3 The CM shall account for the CM's Contingency as a separate line item of the Contract Sum in all financial reports and like documents presented to the Owner, the Contracting Authority, and the A/E during the Project.

9.2.5.4 Neither the CM nor the Owner will be entitled to adjustment of the CM's Contingency on account of a Modification or Claim except as described under Sections 9.2.5.5 and 9.2.5.6.

9.2.5.5 The dates on which 25%, 50%, and 75% of the Contract Time for achievement of Final Acceptance of all Work has expired will be Contingency Review Dates. On each Contingency Review Date or the next following normal business day, the Owner, the Contracting Authority, and the CM will meet to review the balance in the CM's Contingency and to sign a deduct Change Order to reduce the Contract Sum by an amount equal to the sum of (1) the amount that the balance in CM's Contingency exceeds the original balance of the CM's Contingency as established through the GMP Amendment, plus (2) the amount of the CM's Contingency that the CM decides to release to the Owner at that time, plus (3) an associated reduction of the CM's Fee.

Example: Assume that (1) the original balance of the CM's Contingency established through the GMP Amendment is \$100,000, (2) the CM's Fee is established in the Agreement at 3% of the sum of the Cost of the Work plus the CM's Contingency, (3) the balance of the CM's Contingency as of the Contingency Review Date is \$125,000, and (4) the CM has decided to reduce the CM's Contingency by an additional \$15,000. **Step 1.** The amount that the balance in CM's Contingency exceeds the original balance of the CM's Contingency as established through the GMP Amendment is \$25,000 [$\$125,000 - \$100,000 = \$25,000$]. **Step 2.** The additional amount of the CM's Contingency that the CM decides to release to the Owner at that time is \$15,000. **Step 3.** The associated reduction of the CM's Fee is \$1,200 [$(\$25,000 + \$15,000) \times 3\% = \$1,200$]. **Step 4.** The amount of the deduct Change Order (i.e., the amount by which the Contract Sum is reduced) is \$41,200 [$\$25,000 + \$15,000 + \$1,200 = \$41,200$].

9.2.5.6 Except as provided in Article 11, no more than 30 days before final payment to the CM, the parties shall execute the Shared-Savings Change Order described at Agreement Article 3. Notwithstanding Sections 9.2.5.2.2 and 9.2.9.1, in the CM's final Payment Request, the CM may request payment by lump sum of any portion of the CM's Contingency remaining in the Contract Sum after execution of that Shared-Savings Change Order.

9.2.6 Allowances.

9.2.6.1 The Contract Sum includes the Allowances (if any) identified in the GMP Amendment.

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

9.2.6.3 Except as explicitly set forth in the Contract, the CM's Fee and the CM's costs for unloading and handling on the Site, labor, installation costs, and other expenses contemplated for the Allowances are included in the Contract Sum and not in the Allowances.

9.2.6.4 Before final payment, an appropriate Change Order will be issued to reflect actual amounts due to the CM on account of Work covered by Allowances, and the Contract Sum will be correspondingly adjusted.

9.2.7 Unit Prices.

9.2.7.1 Where the Contract provides that all or part of the Work is to be Unit Price Work, initially the Contract Sum will include for all Unit Price Work an amount equal to the sum of the established Unit Prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Contract. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Sum. The Contracting Authority will determine the actual quantities and classifications of Unit Price Work performed by CM.

9.2.7.2 Except as explicitly set forth in the Contract, the CM's Fee on account of Unit Price Work is not included in the Unit Price.

9.2.8 Schedule of Values.

9.2.8.1 The CM shall prepare the Schedule of Values on a form published by the Department, with separate amounts shown for labor and materials for each branch of Work, following the numbers and titles of the Construction Specifications Institute's *MasterFormat* for individual work results, or *UniFormat* for assemblies in place.

- .1 The CM shall clearly indicate on the Schedule of Values, the amount(s) allocated for each certified EDGE Business Enterprise used in the performance of the Work. The amount(s) shall indicate labor and materials, as appropriate.

9.2.8.2 The grand total shown on the Schedule of Values shall equal the total Contract Sum. The Contracting Authority may use the approved Schedule of Values to determine the cost or credit to the Owner resulting from any change in the Work.

- .1 The first items shall be a breakdown of General Conditions Costs.
- .2 The amounts for labor and materials shall accurately reflect the cost for each item.
- .3 If the material allocation exceeds 55 percent of the Contract Sum, the CM shall provide, upon request, sufficient information to support the higher percentage.
- .4 Subcontract Work shall show amounts for labor and materials. Fringe benefits shall be shown as a part of labor costs.
- .5 When more than one major structure is included in the Work, the CM shall subdivide the Schedule of Values accordingly, with cost details for each structure shown separately.
- .6 The line items shall be coordinated with line items in the Project Schedule, which may require division of items of Work by area of the Project by floor, phase, or other appropriate area.
- .7 Mechanical and electrical Work shall include separate line items for all major pieces of equipment, and group smaller equipment items by type.
- .8 Line items shall be included for each Allowance, CM's Contingency, CM's Fee, Punch List Work, Project Record Document Submittals, delivery of attic stock, and specified demonstrations and training.

9.2.8.3 The A/E may return the Schedule of Values to the CM for re-submittal if it does not meet the requirements or contains insufficient items or details of the Work, or approve the Schedule of Values if the A/E determines that it conforms to this Section 9.2.8.

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

9.2.9 CM Payment Request.

9.2.9.1 After the parties enter into the GMP Amendment and after the Date of Commencement, the CM may request payment of the Contract Sum. The Owner will pay the Contract Sum (not including the CM's Contingency) to the CM on a percent-complete progress basis. The Owner will pay the CM's Contingency portion of the Contract Sum to the CM on a cost-reimbursable basis as described under Section 9.2.5.2.2.

- .1 Notwithstanding Section 9.2.9.1, the CM may request payment of a portion of the Contract Sum on account of the CM's procurement of long-lead-time items before the Date of Commencement.

9.2.9.2 The CM may submit a CM Payment Request to the A/E each month or upon another interval approved by the Contracting Authority. When the rate of Work and amount involved is sufficient that it is considered appropriate by the Contracting Authority, the CM may submit CM Payment Requests twice a month. The CM shall base each CM Payment Request on the Schedule of Values current as of the date on which the CM submits the CM Payment Request.

- .1 The CM shall support each CM Payment Request with documentation substantiating the CM's right to payment. The CM shall supply additional documentation as the A/E may request in connection with each payment to the CM.
- .2 The CM shall support each use of the CM's Contingency in sufficient detail to enable the Contracting Authority and the Owner to identify the associated scope of Work and expenditures.
- .3 The Contracting Authority may require proof of the renewal of required insurance as a condition precedent to payment.
- .4 The CM shall attach certified payroll reports for the relevant period to 1 copy of each CM Payment Request, see Document 00 73 43 - "Prevailing Wage Requirements."
- .5 The CM may list on the CM Payment Request any Change Orders approved and performed prior to submission of the CM Payment Request.
- .6 The CM shall submit its application for payment using the CM Payment Request form or forms current at the time of each application and as provided by the Contracting Authority in the manner prescribed by the Contracting Authority.
 - .1 The CM shall submit 1 draft copy of its CM Payment Request ("Pencil Copy") to the A/E not less than 1 week prior to submitting multiple copies of its CM Payment Request.
 - .2 The A/E shall review the Pencil Copy and provide comments to the CM within 3 days of receiving it.
 - .3 The CM shall incorporate the A/E's comments into its CM Payment Request prior to submitting multiple copies for payment.
- .7 The CM shall clearly indicate on the CM Payment Request, the amount(s) requested for each certified EDGE Business Enterprise used in the performance of the Contract. The amount(s) shall indicate labor and materials, as appropriate.
- .8 The CM shall submit an electronic copy of the CM Payment Request to the A/E with its paper copies of the CM Payment Request for collection and reporting of information used for contract compliance evaluation and statistical purposes. The CM may issue the copy in any electronic media acceptable to the Contracting Authority.

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

9.2.9.4 Subject to Section 9.2.13, the Owner shall pay an approved CM Payment Request within 30 days from the date the A/E recommends acceptance of the CM Payment Request.

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

9.2.10 Labor Payments.

9.2.10.1 Partial payments to the CM for labor performed under either a Unit Price or lump sum Contract shall be made at the rate of 92 percent of the amount invoiced through the CM Payment Request that shows the Work is 50 percent complete, as evidenced by payments in the amount of at least 50 percent of the original Contract Sum.

9.2.10.2 After the Work is 50 percent complete, as evidenced by payments in the amount of at least 50 percent of the original Contract Sum to the CM, no additional funds shall be retained from payments for labor.

9.2.11 Material Payments.

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

9.2.11.2 The Owner shall pay the CM at the rate of 92 percent of the invoice cost, not to exceed the scheduled value, for materials delivered to the Site, or other off-site storage location approved by the A/E, provided the CM provides the following information with the CM Payment Request:

- .1 A list of the fabricated materials consigned to the Project, giving the place of storage, together with copies of invoices, in order to verify quantity and cost.
- .2 A certification of materials stored off-site, prepared by the CM and signed by the A/E to evidence that the materials are in conformity with the Specifications and have been tagged with the Project name and number for delivery to the Project. The CM shall directly reimburse the A/E for all costs incurred to visit a storage site, other than the areas adjacent to the Project.
- .3 The Owner shall pay the balance of the scheduled value when the materials are incorporated into and become a part of the Project.

9.2.11.3 When payment is allowed for materials delivered to the Site or other approved off-site storage location but not yet incorporated into the Project, the materials are the property of the Owner.

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

9.2.12 Retainage.

9.2.12.1 If the total Contract Sum is \$15,000 or more, when the Contract is 50 percent complete, as evidenced by payments in the amount of at least 50 percent of the Contract Sum to the CM, all funds retained for the faithful performance of the Work, in accordance with Section 9.2.10.1, shall be deposited in an escrow account with a bank in the state in accordance with the terms and conditions provided in an escrow agreement executed by the CM, the Contracting Authority, and the applicable bank.

9.2.12.2 When the major portion of the Work is occupied or in use, and there is no other reason to retain funds, including, but not limited to, compliance with Section 6.28.2; upon request of the CM, the funds retained in connection with that Work shall be released from escrow and paid to the CM, withholding only that amount necessary to assure faithful completion in the sole discretion of the Contracting Authority.

- .1 Funds in the escrow account not previously paid shall be authorized for release to the CM within 30 days of the Contracting Authority's approval of a final CM Payment Request and Payment Release Affidavit furnished by the CM, and execution of the Certification of Contract Completion by the Contracting Authority.

9.2.12.3 Upon consent by the CM's Surety, the Contracting Authority may reduce the amount of funds retained for the faithful performance of Work by 50 percent of the amount of funds required to be retained, provided the CM's Surety remains responsible for all damages that may be caused due to default by the CM, including, but not limited to, the following:

- .1 Completion of the Work;
- .2 All interference, disruption, hindrance and delay claims;
- .3 All Liquidated Damages; and
- .4 All additional expenses incurred by the State.

9.2.13 Payments Withheld.

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

9.2.13.2 The Contracting Authority may decline to approve any CM Payment Request or part thereof, or nullify any previous CM Payment Request, in whole or in part, to the extent necessary in the Contracting Authority's sole opinion to protect the Owner from loss because of:

- .1 Defective Work not remedied;
- .2 Damage caused by the CM;
- .3 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .4 Reasonable evidence that the Work will not be completed within the Contract Times, and that the unpaid balance would not be adequate to cover damages under the Contract Documents for the anticipated delay;
- .5 Failure to comply with Applicable Law including, but not limited to, the requirements of ORC Chapter 4115;
- .6 Failure to timely submit EDGE Participation Reports in accordance with Section 1.7.2;
- .7 Failure to timely submit a Construction Progress Schedule in accordance with Section 6.5;
- .8 Failure to carry out the Work in accordance with the Contract Documents; or
- .9 That which is permitted under other provisions of the Contract Documents.

9.2.13.3 If the CM remedies the basis for withholding payment under Section 9.2.13.2 to the Contracting Authority's satisfaction, the Owner shall pay the amounts withheld.

9.2.14 Final CM Payment Request.

9.2.14.1 The CM, as a condition precedent to execution of the Certification of Contract Completion and to final payment, shall complete all requirements of the Contract Documents.

- .1 The CM and each of its Subcontractors, regardless of tier, shall execute a Payment Release Affidavit to certify that the CM and each of its Subcontractors, regardless of tier, have complied with all requirements of ORC Chapter 4115, and to certify that all of its Subcontractors have been paid in full for all Work performed or materials furnished for the Project.
- .2 If the Owner reimbursed to the CM (either as a Preconstruction Stage Reimbursable Expense or as a General Conditions Cost) the CM's cost to purchase tangible property, and that tangible property has any remaining useful life after Final Acceptance, the CM shall deliver that tangible property to the Owner before the Owner makes final payment to the CM.

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

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

9.2.14.3 The acceptance of final payment by the CM or a Subcontractor constitutes the payee's waiver of all Claims against the State except those previously made in writing under Article 8 and identified by that payee as unsettled at the time of the final CM Payment Request.

ARTICLE 10 - BONDS, INSURANCE, AND INDEMNIFICATION

10.1 Performance and Payment Bonds

10.1.1 Before signing the Agreement, the CM shall provide the Performance Bond and the Payment Bond as required under OAC Section 153:1-4-02 and below:

10.1.1.1 The Performance Bond must be in the form of Document 00 61 13.13 - "Performance Bond Form."

10.1.1.2 The Payment Bond must be in the form of Document 00 61 13.16 - "Payment Bond Form."

10.1.1.3 Each Surety under the Bonds shall be licensed to do business in Ohio and satisfactory to the Contracting Authority.

10.1.1.4 If there is more than one Surety under a Bond, each of them shall be jointly and severally liable as surety under that Bond.

10.1.1.5 The penal sum of each of the Bonds, when initially submitted, shall be equal to one-hundred percent of the Preconstruction Stage Compensation.

10.1.2 The CM shall submit with each executed Bond (1) a certified copy of the authority to act (power of attorney) of the agent signing the Bond on behalf of the Surety and (2) a current and signed Certificate of Compliance under ORC Section 9.311 issued by the Ohio Department of Insurance showing the Surety is licensed to do business in Ohio.

10.1.3 If the Preconstruction Stage Compensation increases at any time after the CM provides the Bonds under Section 10.1.1, the CM shall cause the penal sums of the Bonds to be increased such that the penal sums equal to one-hundred percent of the increased Preconstruction Stage Compensation.

10.1.4 As a condition precedent to the effectiveness of the GMP Amendment, the CM shall cause the penal sums of the Bonds to be increased such that the penal sums equal one-hundred percent of the Contract Sum established in the GMP Amendment. If the Contract Sum increases at any time after the GMP Amendment, the CM shall cause the penal sums of the Bonds to be increased such that the penal sums equal one-hundred percent of the increased Contract Sum.

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

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

10.2 CM's General Insurance Requirements

10.2.1 Throughout the performance of the Work or longer as may be described below, the CM shall obtain, pay for, and keep in force, the minimum insurance coverage described in this Article 10.

10.2.1.1 Each requirement of this Article 10 applies to Subcontractors just as it applies to the CM.

10.2.1.2 If a Subcontractor's usual insurance coverage does not meet the minimum coverage requirements, before entering into an agreement with that Subcontractor, the CM shall submit to the Contracting Authority (1) a certificate of insurance evidencing the insurance the Subcontractor will carry without additional compensation and (2) if the Contracting Authority requests, a written proposal from the

Standard Requirements

Subcontractor to provide coverage which meets the minimum coverage requirements. The Contracting Authority will decide whether to accept the non-conforming insurance coverage or the proposal to provide conforming coverage.

10.2.1.3 On a case-by-case basis, the Contracting Authority and the CM may agree to adjust the below requirements for any particular Subcontractor.

10.2.2 Before starting the Work on the Site, upon renewal of any policy, and upon a change of any insurance carrier, the CM shall deliver to the Contracting Authority certificates evidencing that the required insurance is in force.

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

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

10.2.3.2 if the certificate(s) of insurance is not on the ACORD 25 (2009/09) form, it (1) shall provide or be endorsed to provide that coverage will not be cancelled or not renewed until at least 30-days' prior written notice (10-day notice for nonpayment of premium) has been given to the Contracting Authority, and (2) shall have the words "endeavor to" and "but failure to do so shall impose no obligation or liability of any kind upon insurer, its agents or representatives" and any like provisions crossed out or deleted; and

10.2.3.3 within 30 days of the Contracting Authority's request, the CM shall submit insurance-company certified copies of the policies, the policy endorsements, or both.

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

10.2.5 The CM shall pay a proportionate share of the deductibles, or self-insured retentions, or both contained in any insurance policy the Contracting Authority purchases for the Project. The CM's proportionate share will derive from the percentage of the associated Claim or loss attributable to the alleged or actual negligence of the CM or a Subcontractor.

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

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

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

10.3 CM's Minimum Coverage Requirements

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

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

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

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

10.3.3.2 The CM shall include the State, the Contracting Authority, the Owner, and the A/E as additional insureds under the CGL policy using ISO endorsement CG 20 10 11 85 or a substitute form(s) providing equivalent coverage.

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

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

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

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

10.3.3.7 The CM shall maintain the CGL insurance in effect for no less than five years after the earlier of the termination the Contract or Final Acceptance of all Work.

10.3.3.8 There shall be no endorsement or modification to the CGL insurance limiting the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage, or damage to the Work.

10.3.4 Business Automobile Liability. The CM shall maintain business automobile ("BA") coverage written on ISO form CA 00 01 10 01 or a substitute form, providing at least equivalent coverage with a limit of not less than \$1,000,000 each accident.

10.3.4.1 The coverage shall extend to any auto.

10.3.4.2 The CM shall include the State, the Contracting Authority, the Owner, and the A/E as additional insureds under the BA policy.

10.3.5 Umbrella/Excess Liability.

10.3.5.1 The CM may employ an umbrella/excess liability policy to achieve the above-required minimum coverage.

10.3.5.2 The CM shall maintain umbrella/excess liability coverage with a limit of not less than \$2,000,000 (in addition to the above-required limits) if the Work (or the Work to be performed by the Subcontractor) includes any of the following:

- .1 brick/block masonry;
- .2 exterior caulking/sealant;
- .3 cast-in-place or precast concrete;
- .4 curtain wall;
- .5 dampproofing/waterproofing;
- .6 electrical;
- .7 elevator;
- .8 exterior glass and/or glazing;
- .9 exterior marble, granite, and/or other stonework;
- .10 miscellaneous metals;
- .11 plaster/stucco;
- .12 plumbing;

- .13 HVAC;
- .14 roofing and/or sheet metal;
- .15 scaffolding;
- .16 spray-on fireproofing;
- .17 sprinkler and/or fire protection; or
- .18 structural steel and/or metal deck.

10.3.5.3 The CM shall maintain umbrella/excess liability coverage with a limit of not less than \$5,000,000 (in addition to the above-required limits) if the Work (or the Work to be performed by the Subcontractor) includes any of the following:

- .1 caissons and/or piles;
- .2 demolition;
- .3 excavation and/or utility work;
- .4 sheeting, shoring, and/or underpinning;
- .5 window washing equipment; or
- .6 wrecking.

10.3.6 Contractor's Pollution Liability. If the Work includes environmentally sensitive, hazardous types of activities (such as demolition, exterior insulation finish systems, Asbestos abatement, storage-tank removal, or similar activities), or involves Hazardous Materials, the CM shall maintain a contractor's pollution liability ("CPL") policy with (1) a per-claim limit of not less than \$1,000,000 and (2) an annual-aggregate limit of not less than \$1,000,000, covering the acts, errors and/or omissions of the CM for damages (including from mold) sustained by the Contracting Authority by reason of the CM's performance of the Work.

10.3.6.1 The CPL policy shall have an effective date which is on or before the date on which the CM first started to perform any Project-related services.

10.3.6.2 Upon submission of the associated certificate of insurance and at each policy renewal, the CM shall advise the Contracting Authority in writing of any actual or alleged claims which may erode the CPL policy's limits.

10.3.6.3 The CM shall maintain the CPL insurance in effect for no less than five years after the earlier of the termination the Contract or Final Acceptance of all Work.

10.3.7 Professional Liability—CM. The CM shall maintain professional liability insurance with a per-claim limit of not less than \$1,000,000.

10.3.7.1 The professional liability policy shall have an effective date which is on or before the date on which the CM first started to provide any Project-related services.

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

10.3.7.3 The CM shall maintain the professional liability insurance in effect for no less than five years after the earlier of the termination the Contract or Final Acceptance of all Work.

10.3.8 Professional Liability—Subcontractors. If the Work to be performed by a Subcontractor includes any professional design services (including without limitation sprinkler and/or fire protection and other design-build work) the Subcontractor shall maintain professional liability insurance with a per-claim limit of not less than \$1,000,000.

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

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

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

10.3.9 Aviation Liability. If the CM or a Subcontractor uses aircraft, including helicopters, in the performance of the Work, the CM shall maintain aircraft or aviation liability coverage in an amount of no less than \$10,000,000. The Contracting Authority and Owner will not be liable for any damage to any aircraft owned, leased, rented, or borrowed by the CM or a Subcontractor.

10.3.10 Watercraft Liability. If the CM or a Subcontractor uses watercraft in the performance of the Work, the CM shall maintain watercraft liability coverage including protection and indemnity insurance in an amount of no less than \$5,000,000. The Contracting Authority and Owner will not be liable for any damage to any watercraft owned, leased, rented, or borrowed by the CM or a Subcontractor.

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

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

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

10.3.12.2 coverage for general average and salvage charges;

10.3.12.3 "on deck" coverage;

10.3.12.4 warehouse-to-warehouse coverage;

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

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

10.3.12.7 "Inchmaree" clause;

10.3.12.8 sue and labor;

10.3.12.9 "both-to-blame" coverage;

10.3.12.10 free of particular average;

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

10.3.12.12 damage by saltwater and rainwater perils and cargo sweat.

10.3.13 Additional Property Insurance. For any demolition, blasting, excavating, tunneling, shoring, or similar operations, the CM shall provide and maintain Property Damage Liability insurance with a limit of liability equal to the limit as specified in the applicable sections of Article 10.

10.4 Builder's Risk Insurance

10.4.1 The CM shall provide and maintain, during the progress of the Work and until the execution of the final Certification of Contract Completion by the Contracting Authority, a Builder's Risk insurance policy to cover all Work in the course of construction including false-work, temporary buildings and structures, and materials

used in the construction process, stored on or off-site, or while in transit. This insurance shall be on a special cause of loss form, which provides coverage on an open perils basis insuring against the direct physical loss of, or damage to, covered property including, but not limited to, theft, vandalism, malicious mischief, earthquake, tornado, lightning, explosion, breakage of glass, flood, collapse, water damage, and hot and cold testing. This insurance shall be written on a replacement cost basis and shall also include debris removal, and/or demolition occasioned by enforcement of Applicable Law.

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

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

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

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

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

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

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

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

10.4.1.9 Coverage shall be primary to all other applicable insurance.

10.4.1.10 The Builder's Risk policy shall specifically permit and allow for Partial Occupancy by the Owner prior to execution of the final Certification of Contract Completion by the Contracting Authority and coverage shall remain in effect until all punch list items are completed.

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

10.4.2 If the CM is involved solely in the installation of material and equipment and not in new building construction, the CM shall purchase and maintain a Builder's Risk, Builder's Risk-Renovations, or Installation Floater insurance policy. The policy shall comply with the provisions of Section 10.4.1.

10.5 Waivers of Subrogation

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

10.6 Indemnification for Injury or Damage

10.6.1 To the fullest extent permitted by Applicable Law, the CM shall indemnify, defend, and hold harmless the Indemnified Parties from and against all claims, costs, damages, losses, fines, penalties, and expenses (including but not limited to all fees and charges of contractors, engineers, architects, attorneys, and other professionals and all court, arbitration, or other dispute-resolution costs) arising out of or in connection with

the Project, provided that any such claim, cost, damage, loss, fine, penalty, or expense (all of which may be direct, indirect, or consequential) is attributable to:

10.6.1.1 bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property but only to the extent caused by the negligent acts, errors, or omissions of the CM or a person or entity for whom the CM may be liable;

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

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

10.6.1.4 a breach of contract by the CM or a person or entity for whom the CM may be liable.

10.6.2 The CM's indemnification obligation under Section 10.6 exists regardless of whether or not and the extent to which the claim, damage, loss, fine, penalty, or expense is caused in part by a party indemnified under Section 10.6. But nothing in Section 10.6 obligates the CM to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

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

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

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

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

10.6.7 The CM's indemnification obligation under Section 10.6 will survive termination of the Contract and Final Acceptance of the Work.

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

10.7 Indemnification for Use of Electronic Files

10.7.1 To the fullest extent permitted by law, the CM shall indemnify and hold harmless the Indemnified Parties from and against all claims, damages, losses, and expenses (including, but not limited to, the fees and charges of contractors, engineers, architects, attorneys, and other professionals) arising out of, or related to the CM's, or any other Person's use of electronic files, including, but not limited to, CAD or BIM files (collectively "Electronic Files").

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

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

10.7.1.3 The Electronic Files are not products.

10.7.1.4 The CM shall not use the Electronic Files for any purpose other than as a convenience for preparing Shop Drawings, Coordination Drawings, Record Drawings, or fabrication data for components, systems, and assemblies intended solely for use on the Project.

10.7.1.5 The State and the A/E make no warranties, either express or implied, of the merchantability or fitness of the Electronic Files for any particular purpose.

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

10.7.1.7 The State and the A/E make no representations as to compatibility, usability, or readability of the Electronic Files resulting from the use of software, application packages, operating systems, or computer hardware differing from those used to create the Electronic Files.

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

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

10.7.1.10 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.

ARTICLE 11 - SUSPENSION AND TERMINATION

11.1 Suspension of the Work

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

11.1.1.1 If the Contracting Authority suspends the Work under this Section 11.1.1 and the CM complies with Article 8, the Preconstruction Stage Compensation, Contract Sum, and Contract Times shall be adjusted for increases in the cost and time caused by the suspension, delay, or interruption.

11.1.1.2 Notwithstanding the foregoing, no adjustment shall be made to the Preconstruction Stage Compensation, Contract Sum, or Contract Times to the extent that:

- .1 performance was, or could have been, suspended, delayed, or interrupted by a cause for which the CM is responsible; or
- .2 an equitable adjustment is made or denied under another provision of the Contract.

11.1.1.3 If the Contracting Authority suspends the Work under this Section 11.1.1 and the CM submits a proper CM invoice or Payment Request, but subject to all other provisions of the Contract Documents, the CM shall be entitled to payment of compensation due under the Contract Documents for Work performed before the suspension based upon the Schedule of Values, other appropriate reference documents, or both.

11.1.2 The Contracting Authority, without prejudice to any other right or remedy it may have, may order the CM in writing to suspend, delay, or interrupt the performance of the Work in whole or in part for such period of time as the Contracting Authority may determine for any of the following reasons: (1) Defective Work; (2) the CM is causing undue risk of damage to any part of the Project or adjacent area; (3) the CM fails to furnish or perform the Work in such a way that the complete Work will conform to the requirements of the Contract Documents; or (4) any other cause the Contracting Authority reasonably believes justifies a suspension.

11.1.2.1 The Contracting Authority's exercise of its right to suspend the Work under this Section 11.1.2 shall not entitle the CM to any adjustment of the Preconstruction Stage Compensation, Contract Sum, or Contract Times.

11.1.2.2 If the Contracting Authority is adjudged to have improperly suspended the Work under this Section 11.1.2, the suspension shall be deemed to have been a suspension under Section 11.1.1.

11.1.3 Upon receipt of notice of suspension under this Section 11.1, the CM shall cease Work on the suspended activities and take all necessary or appropriate steps to limit disbursements and minimize respective costs. The CM shall furnish a report to the Contracting Authority, within 5 days of receiving the notice of suspension, describing the status of the Work, including, but not limited to, results accomplished, resulting conclusions, and other information as the Contracting Authority may require.

11.1.4 The Contracting Authority's right to stop the Work shall not give rise to any duty to exercise the right for the benefit of the CM or any other party, and the Contracting Authority's exercise or failure to exercise the right shall not prejudice any of the Contracting Authority's other rights.

11.2 Termination for Convenience

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

11.2.2 Upon receipt of the notice of termination for convenience, the CM shall immediately proceed with performance of the following duties in accordance with instructions from the Contracting Authority:

11.2.2.1 cease operation as specified in the notice;

11.2.2.2 place no further orders and enter into no further subcontracts for materials, labor, services, or facilities, except as necessary to complete continued portions of the Project;

11.2.2.3 terminate all subcontracts and orders to the extent they relate to the Work terminated;

11.2.2.4 proceed with Work not terminated; and

11.2.2.5 take actions that may be necessary, or that the Contracting Authority may direct, for the protection and preservation of the terminated Work.

11.2.3 If the Contract is terminated before the Contract Sum is established, the Owner shall pay the CM for services rendered before the date of termination in accordance with the Personnel Rate Schedule for Work completed, including any Reimbursable Expenses incurred, but not in excess of the allocations and caps otherwise provide in the Contract.

11.2.3.1 In no event shall the CM be entitled to Preconstruction Fee associated with services the CM did not perform on account of the termination or otherwise.

11.2.4 If the Contract is terminated after the Contract Sum is established, the Owner shall pay the CM in accordance with the Schedule of Values for Work completed, including any retained funds, and the value of materials ordered and delivered, less any salvage credit the CM may receive for them.

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

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

11.2.4.3 Notwithstanding any other provision of the Contract to the contrary, if the Contract is terminated before Final Acceptance, the CM shall not be entitled to any portion of the CM's Contingency through the Shared-Savings Change Order described at Agreement Article 3.

11.2.5 If the Contracting Authority terminates the Work under this Section 11.2, the termination shall not affect the rights or remedies of the State against the CM then existing or which may thereafter accrue.

11.2.6 Notwithstanding Sections 11.2.3 and 11.2.4, if the Contracting Authority terminates the Work under this Section 11.2, but there exists an event of the CM's default, the CM shall be entitled to receive only such sums as it would be entitled to receive following the occurrence of an event of default as provided in Section 11.3.

11.3 Termination for Cause

11.3.1 The Contracting Authority may terminate all or a portion of the Contract if the CM:

11.3.1.1 fails to prosecute the Work with the necessary force or in a timely manner;

11.3.1.2 refuses to remedy Defective Work;

11.3.1.3 fails to supply enough properly skilled workers or proper materials;

11.3.1.4 fails to properly make payment to Subcontractors or Consultants;

11.3.1.5 performs any services outside of the United States;

11.3.1.6 permits its Subcontractors or Consultants to perform any services outside of the United States; or

11.3.1.7 disregards laws, ordinances, or rules, regulations, or orders of a public authority with jurisdiction over the Project.

11.3.2 If the Contracting Authority intends to exercise its termination rights under this Section 11.3, the Contracting Authority shall issue not less than 5-days' written notice to the CM and the CM's Surety in accordance with ORC Section 153.17 ("5-Day Notice").

11.3.3 If the CM fails to satisfy the requirements set forth in the 5-Day Notice within 15 days of receipt of the 5-Day Notice, the Contracting Authority may declare the CM in default, terminate the Contract, and employ upon the Work the additional force or supply materials or either as appropriate, and remove Defective Work.

11.3.4 If the Contract is terminated, the CM's Surety may perform the Contract. If the CM's Surety does not commence performance of the Contract within 10 days of the date of Contract termination, the Contracting Authority may complete the Work by means the Contracting Authority determines appropriate. The Contracting Authority may take possession of and use all materials, facilities, and equipment at the Site or stored off-site, for which the Owner has paid.

11.3.5 If the Contract is terminated, the CM shall not be entitled to further payment.

11.3.5.1 If the Contract is terminated after the Contract Sum is established and the unpaid balance of the Preconstruction Stage Compensation is exceeded by the costs of finishing the Preconstruction Services, including without limitation the fees and charges of contractors, engineers, architects, attorneys, and other professionals and court costs, and other damages incurred by the Owner and not expressly waived, the CM or Surety shall immediately pay the amount of the insufficiency to the Owner. This obligation for payment shall survive termination of the Contract.

11.3.5.2 If the Contract is terminated after the Contract Sum is established and the unpaid balance of the Contract Sum is exceeded by the costs of finishing the Work, including without limitation the fees and charges of contractors, engineers, architects, attorneys, and other professionals and court costs, and other damages incurred by the Owner and not expressly waived, the CM or Surety shall immediately pay the amount of the insufficiency to the Owner. This obligation for payment shall survive termination of the Contract.

.1 Notwithstanding any other provision of the Contract to the contrary, if the Contract is terminated before Final Acceptance, the CM shall not be entitled to any portion of the CM's Contingency through the Shared-Savings Change Order described at Agreement Article 3.

11.3.6 If the CM's Surety performs the Work, the provisions of the Contract Documents govern the Surety's performance, with the Surety in place of the CM in all provisions including, but not limited to, provisions for payment for the Work, and provisions of the right of the Contracting Authority to complete the Work.

11.3.7 If the Contracting Authority terminates the Work under this Section 11.3, the termination shall not affect any rights or remedies of the State against the CM then existing or which may thereafter accrue. The Contracting Authority's retention or payment of funds due the CM shall not release the CM or the CM's Surety from liability for performance of the Work in accordance with the requirements of the Contract Documents.

11.3.8 If the Contracting Authority is adjudged to have improperly terminated the Work under this Section 11.3, the termination will be deemed to have been a termination under Section 11.2.

11.4 CM Insolvency

11.4.1 Bankruptcy of CM.

11.4.1.1 If the CM files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it, the CM, the CM as the debtor-in-possession, or the trustee of the CM's bankruptcy estate shall file a motion to assume or reject the Contract under Bankruptcy Code §365, 11 U.S.C. §365, within 20 days after the filing of the voluntary petition or involuntary petition and shall diligently prosecute that motion to conclusion so as to obtain an order granting or denying that motion within 45 days after the filing of the voluntary or involuntary petition. The failure to file and prosecute that motion within the time frames provided by this Section 11.4 shall constitute a material breach of the Contract as time is of the essence with respect to CM's performance of all terms of this Contract. CM agrees to the granting of relief from the automatic stay of the Bankruptcy Code, 11 U.S.C. §362(a), to permit the Contracting Authority to terminate the Contract for cause in such instance and issue and serve all notices necessary to terminate the Contract or arising out of the termination of the Contract and to take any and all other action necessary to terminate the Contract.

11.4.2 Receivership or Assignment for the Benefit of Creditors.

11.4.2.1 If the CM makes a general assignment for the benefit of creditors or if a receiver is appointed for all or a substantial part of the CM's business or property, the Contracting Authority shall serve written notice on the CM and the CM's Surety stating that any failure of the CM to provide adequate assurance of continued performance shall be considered a rejection of the Contract, which shall result in termination of the Contract for cause. Such termination of the Contract need not be evidenced by an order of any court.

ARTICLE 12 - GENERAL PROVISIONS

12.1 Application and Governing Law

12.1.1 The Contract and the rights of the parties thereunder shall be governed by the laws of the state of Ohio and only Ohio courts shall have jurisdiction over any action or proceeding concerning the Contract and/or performance thereunder. The CM irrevocably consents to such jurisdiction.

12.1.2 The parties to the Contract shall comply with Applicable Law.

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

12.2 Conditions of the Contract

12.2.1 These General Conditions govern, take precedence over, and shall not be superseded or amended by Drawings and Specifications, unless so provided in Supplementary Conditions prepared by the Contracting Authority and approved by the State Architect.

12.3 Notice of Commencement

12.3.1 The Contracting Authority shall prepare a Notice of Commencement and make it available as required under ORC Section 1311.252.

12.3.2 Upon request, the Contracting Authority or the CM shall furnish the Notice of Commencement to Subcontractors or any other member of the public.

12.4 Written Notice

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

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

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

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

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

12.5 Contract Documents

12.5.1 Ownership.

12.5.1.1 The Owner alone owns the Contract Documents and every right, title, and interest therein from the moment of creation.

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

12.5.1.2 The CM may retain copies, including reproducible copies, of the Contract Documents for information, reference, and performance of the Work.

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

12.5.2 Intent.

12.5.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the CM.

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

12.5.2.3 The CM shall provide all services, labor, and materials necessary for the entire completion of the Work described in the Contract Documents and reasonably inferable to produce the intended results.

12.5.2.4 The Drawings govern dimensions, details, and locations of the Work. The Specifications govern quality of materials and workmanship.

12.5.2.5 The organization of the Specifications in divisions, sections, and articles, and the arrangement of Drawings shall not restrict the CM in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

12.5.2.6 In the event of inconsistency or conflict within the Contract Documents, the CM shall provide the better quality or greater quantity of Work, and comply with the stricter requirement.

12.5.2.7 Unless otherwise defined in the Contract Documents, words that have well-known technical or construction industry meanings are used in accordance with those recognized meanings.

12.5.2.8 The Sections of Division 01 - "General Requirements" govern the performance of the Work of all Sections of the Specifications.

12.6 Taxes

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

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

12.7 Computing Time

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

12.7.2 Except as excluded under Section 12.7.1, the Contract Times and all other time periods referred to in the Contract Documents includes Saturdays, Sundays, and all days defined as legal holidays by Section 12.7.4.

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

12.7.4 Legal holidays are as follows:

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

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

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

12.7.4.4 Memorial Day – Last Monday in May;

12.7.4.5 Independence Day – Fourth day of July;

12.7.4.6 Labor Day – First Monday in September;

12.7.4.7 Columbus Day – Second Monday in October;

12.7.4.8 Veteran's Day – Eleventh Day of November;

12.7.4.9 Thanksgiving Day – Fourth Thursday of November; and

12.7.4.10 Christmas Day – Twenty-fifth day of December.

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

12.8 Time of the Essence

12.8.1 Time limits stated in the Contract Documents are of the essence of the Contract and all obligations under the Contract. By signing the GMP Amendment, the CM acknowledges that the Contract Times are reasonable, taking into consideration the usual weather and other conditions prevailing in the locality of the Project. By signing the Construction Progress Schedule, the CM acknowledges that the specified Milestone dates are reasonable, taking into consideration the usual weather and other conditions prevailing in the locality of the Project.

12.8.1.1 The CM acknowledges that the Owner has entered into, or may enter into, agreements for use of all or part of the premises where the Work is to be completed based upon the CM achieving Contract Completion within the Contract Times.

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

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

INDEX

Page numbers follow the Document Number (00 72 23) in the footer of each page.

A

acceleration, 52, 55, 74
Acceptable Components, 34
Affirmative Action, 2
Agreement, 3, 20, 21, 50, 52, 60, 61, 63, 64, 69, 77, 78
Allowance, 19, 21, 63, 64, 65
Alternative Dispute Resolution (“ADR”), 58
antitrust claims, 3
Applicable Law, 1, 2, 7, 8, 12, 16, 21, 32, 34, 35, 38, 39, 42, 50, 56, 62, 68, 70, 74, 75, 79
approval, 4, 6, 7, 8, 11, 16, 18, 22, 23, 25, 26, 27, 28, 29, 31, 32, 38, 39, 40, 42, 43, 47, 49, 50, 61, 63, 67, 75
Architect/Engineer (“A/E”), 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 53, 54, 57, 58, 63, 64, 65, 66, 67, 68, 71, 74, 75, 76, 79, 80
Architect/Engineer Agreement, 7
As-Built Documents, 44
audit, 50, 53, 59

B

Bankruptcy of CM, 79
Basis of Design Component, 34
Bond, 45, 51, 69
Builder’s Risk, 73
Builder’s Risk, 73, 74
Building Commissioning, 38
Building Information Modeling (“BIM”), 31, 75

C

capacity charges, 25
Certification of Contract Completion, 6, 42, 44, 45, 67, 68, 73, 74

Change Directive, 45, 46, 48, 49, 53
change in the Work, 6, 45, 46, 47, 48, 50, 51, 52, 65
Change Order, 22, 29, 39, 42, 45, 46, 47, 48, 49, 50, 51, 52, 53, 57, 58, 64, 65, 66, 75, 77, 78
Change Order Log, 47
Claim, 12, 48, 49, 50, 52, 53, 54, 55, 57, 58, 59, 60, 62, 64, 69, 70
Claim Affidavit, 12
cleaning, 37, 42
CM Affiliated Entity, 10, 11, 20, 21, 64
CM Payment Request, 4, 12, 43, 62, 64, 66, 67, 68, 69, 76
CM’s Contingency, 20, 63, 64, 65, 66, 77, 78
CM’s Fee, 20, 52, 63, 64, 65, 77
Commissioning Agent (“CxA”), 38
Computer-Aided Design (“CAD”), 31, 75
Construction Budget, 14, 15, 17, 18, 19, 20, 21, 22, 24, 61
Construction Documents Stage, 18, 22, 23, 24
construction procedures, 26
Construction Progress Schedule, 9, 15, 17, 18, 19, 20, 22, 24, 26, 28, 29, 30, 41, 49, 52, 54, 55, 68, 81, 82
Construction Specifications Institute (“CSI”), 65
Construction Stage, 25
Construction Stage Personnel Costs, 50
construction supervision, 27
Contract, 1, 2, 3, 4, 5, 6, 7, 11, 12, 13, 20, 26, 32, 40, 41, 42, 45, 46, 48, 50, 53, 54, 55, 56, 60, 61, 62, 63, 65, 66, 67, 69, 70, 71, 72, 73, 75, 76, 77, 78, 79, 81
Contract Completion, 6, 25, 26, 28, 29, 42, 43, 55, 81
Contract Documents, 2, 5, 6, 7, 10, 11, 21, 23, 26, 27, 28, 30, 31, 32, 34, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 56, 57, 60, 62, 66, 68, 76, 78, 79, 80, 81
Contract Sum, 2, 4, 5, 7, 10, 13, 20, 21, 22, 24, 32, 34, 40, 42, 45, 46, 47, 48, 49, 50, 51, 52, 54, 55,

56, 57, 58, 59, 62, 63, 64, 65, 66, 67, 68, 69, 75, 76, 77, 78
 Contract Times, 5, 7, 10, 20, 22, 24, 31, 32, 40, 45, 46, 47, 48, 49, 52, 53, 55, 56, 57, 58, 64, 68, 76, 77, 81, 82
 Contracting Authority, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 53, 54, 55, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80
 Coordination Areas, 31
 Coordination Drawings, 30, 31, 76
 coordination meetings, 30, 31
 Coordination Participant, 30, 31
 correction of the Work, 41
 Correction Period, 7, 41, 45
 Cost of the Work, 11, 20, 63, 64
 critical path, 28, 29, 52, 55, 56

D

daily log, 26, 54
 default, 26, 68, 78
 Defective Work, 6, 7, 31, 34, 40, 41, 42, 64, 68, 76, 78
 demonstration and training, 44
 Department, 3, 4, 5, 50, 58, 65
 Design Development Stage, 18, 19, 20
 Differing Site Conditions, 49, 54
 Division of Industrial Compliance, 25, 43
 Domestic Steel, 3
 drainage, 16, 36
 Drawings, 14, 16, 18, 22, 23, 43, 44, 75, 79, 80
 Drug Free Safety Program (“DFSP”), 3, 4

E

electric service, 36
 Electronic Files, 44, 75, 76
 emergency, 5
 Encouraging Diversity Growth and Equity (“EDGE”), 4, 5, 8, 65, 66, 68
 environmental controls, 35
 Equal Employment Opportunity, 2
 Equal Opportunity Coordinator (“EOC”), 1, 2, 4, 5
 equipment, 12, 14, 16, 17, 18, 20, 23, 26, 29, 30, 31, 33, 35, 36, 38, 39, 40, 51, 57, 59, 60, 64, 65, 72, 73, 74, 77, 78, 81
 explosives, 38

F

facilities, 8, 18, 23, 35, 37
 Field Conditions, 32
 Final Acceptance, 25, 32, 33, 35, 36, 38, 41, 42, 44, 45, 51, 53, 64, 68, 71, 72, 73, 75, 77, 78
 Final Inspection, 25, 43
 Fire Marshal, 25, 44

G

General Conditions, 22, 24, 79
 General Conditions Costs, 20, 51, 63, 65, 68
 General Conditions Work, 8
 GMP Amendment, 20, 21, 22, 50, 51, 62, 63, 64, 66, 69, 81

H

Hazardous Materials, 34, 35, 72
 hoisting facilities, 36, 77, 78

I

indemnification, 74, 75
 Institution of Higher Education, 58
 Institutional Designee, 58
 insurance, 6, 38, 51, 59, 60, 66, 69, 70, 71, 72, 73, 74, 75
 interruption of existing services, 37

L

labor, 1, 2, 3, 4, 12, 14, 16, 18, 20, 22, 23, 34, 50, 51, 56, 57, 60, 65, 66, 67, 73, 77, 80
 legal holiday, 81
 licenses, 8, 25
 Liquidated Damages, 52, 53, 56, 57, 68

M

MasterFormat, 65
 material, 12, 14, 16, 17, 18, 20, 23, 26, 27, 32, 33, 34, 35, 37, 38, 39, 40, 42, 44, 45, 46, 48, 50, 51, 53, 57, 59, 60, 64, 65, 66, 67, 68, 73, 74, 77, 78, 80, 81
 Material Safety Data Sheet (“MSDS”), 35
 Material Supplier, 4, 10, 12
 mediation, 58
 Milestone, 28, 29, 52, 53, 56, 57, 81
 minor change in the Work, 7, 45, 46, 49

N

National Pollutant Discharge Elimination System (“NPDES”), 25, 27
negotiation, 58, 61
no damage for delay, 56
Nondiscrimination, 1
Notice of Commencement, 80
Notice to Proceed, 6, 22, 25
Notice, 5-Day, 78

O

Ohio Building Code, 7
Ohio Bureau of Workers’ Compensation (“OBWC”), 3, 4
Ohio Construction Contract Information Report, 2
Ohio Department of Commerce, 2, 25, 43, 50
Ohio Department of Insurance, 69
Ohio Environmental Protection Agency, 25
Ohio Underground Utility Protection Services (“OUPS”), 27
Operation and Maintenance Manuals, 38, 44
organizational meeting, 13
Owner, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 53, 54, 56, 57, 58, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 73, 74, 75, 77, 78, 79, 80, 81

P

Partial Occupancy, 6, 32, 33, 35, 36, 74
Pencil Copy, 66
performance evaluation, 6
permits, 25
Plan Approval, 25
Preconstruction Fee, 5, 60, 61, 77
Preconstruction Stage Compensation, 4, 60, 69, 76, 77, 78
Preconstruction Stage Personnel Costs, 60, 61
Preconstruction Stage Reimbursable Expenses, 60, 61, 62
Prevailing Wage Requirements, 66
Pricing Criteria, 50, 51, 52
Product Data, 38, 40, 43
Program Verification Stage, 14, 15
progress meetings, 29, 30, 35
Project Budget, 15
Project Manager, 5, 33, 34, 37, 57, 58
Project Manager’s supervisor, 58

Project Schedule, 8, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 61, 65
Proposal, 47, 48, 49, 50, 53, 55
Proposal Request, 46, 47
Protection of the Project, 32
Punch List, 28, 42, 43, 45, 65

R

Record Documents, 44, 65
Record Drawings, 76
Request for Change Order, 48
Request for Interpretation, 32, 53
Retainage, 67
royalties and patents, 2

S

Samples, 38, 39, 40, 43
schedule of submittals, 26
Schedule of Values, 22, 24, 51, 65, 66, 74, 76, 77
Schematic Design Stage, 15, 16, 17, 61
Separate Consultant, 25, 26, 56
Separate Contractor, 25, 26, 30, 39, 56
Shop Drawings, 28, 29, 38, 39, 40, 43, 44, 76
snow and ice, 26
special inspection, 7, 31, 32
Specifications, 22, 23, 43, 67, 75, 79, 80, 81
State, 1, 2, 3, 6, 7, 9, 11, 12, 25, 37, 41, 44, 55, 60, 68, 69, 76, 77, 79, 81
State Architect, 57, 58, 79
storm water, 25
structural testing, 7
Subcontractor, 3, 4, 10, 11, 12, 30, 34, 37, 44, 50, 53, 54, 59, 60, 68, 69, 78, 80
Substitutions, 34
Supplementary Conditions, 79
Surety, 26, 41, 68, 69, 78, 79
Suspension of the Work, 76

T

tap fees, 25
taxes, 52, 81
temporary occupancy permit, 6
Termination for Cause, 78
Termination for Convenience, 77
testing, 4, 7, 31, 32, 74
tests and inspections, 31
time, 5, 7, 28, 29, 30, 32, 38, 41, 42, 43, 47, 48, 51, 52, 53, 54, 55, 57, 59, 60, 66, 69, 76, 77, 79, 81, 82

U

uncovering the Work, 40
UniFormat, 65
Unit Price, 21, 46, 50, 51, 63, 65, 66, 67
utilities, 35

W

Waivers of Subrogation, 74
warranty, 40
waste materials and rubbish, 37
water, 36
written notice, 5, 6, 26, 32, 35, 39, 41, 48, 49, 53,
54, 57, 58, 62, 70, 77, 78, 79, 80

END OF DOCUMENT