

IN THE COURT OF CLAIMS OF OHIO

2014 DEC 30 PM 3: 07

TRANSAMERICA BUILDING )  
COMPANY, INC., )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
OHIO SCHOOL FACILITIES )  
COMMISSION, )  
 )  
Defendant/Third-Party Plaintiff. )

Case No. 2013-00349

Judge McGrath

Referee Wampler

**ORIGINAL**

MOTION FOR LEAVE OF DEFENDANT OHIO SCHOOL FACILITIES  
COMMISSION TO FILE THIRD-PARTY COMPLAINT *INSTANTER*

Defendant Ohio School Facilities Commission ("OSFC") moves the court for an order granting leave to file a third-party complaint against Lend Lease (US) Inc. and Steed Hammond Paul, Inc. dba SHP Leading Design, entities not currently parties to this action. Lend Lease and SHP may be liable for all or part of Plaintiff's claim against OSFC. A Memorandum in Support of this Motion is attached, along with a copy of the third-party complaint.

Respectfully submitted,

MIKE DeWINE  
Ohio Attorney General



WILLIAM C. BECKER (0013476)  
CRAIG BARCLAY (0023041)  
JERRY KASAI (0019905)  
Assistant Attorneys General  
Court of Claims Defense  
150 East Gay Street, 18th Floor  
Columbus, OH 43215-3130  
Telephone: (614) 466-7447  
Facsimile: (614) 644-9185  
Email: [william.becker@ohioattorneygeneral.gov](mailto:william.becker@ohioattorneygeneral.gov)  
[craig.barclay@ohioattorneygeneral.gov](mailto:craig.barclay@ohioattorneygeneral.gov)  
[jerry.kasai@ohioattorneygeneral.gov](mailto:jerry.kasai@ohioattorneygeneral.gov)  
Attorneys for Defendant OSFC

**ON COMPUTER**

## MEMORANDUM IN SUPPORT

### I. Introduction

This matter concerns the construction of the Residential Portion for the new Ohio State School for the Blind and Ohio School for the Deaf ("Project"). The Project was administered by Defendant OSFC. Plaintiff Transamerica Building Company, Inc. ("Transamerica") held the prime contract for the general trades Work on the Project. Compl. at ¶s 14, 15. Work began in December of 2010 and was scheduled for completion in December of 2011. *Id.* The Project utilized the services of Lend Lease to act as the construction manager ("CM") in providing management and administration services for the Project and SHP as the architect ("AE") for the Project. *Id.* at ¶s 23, 18. The Project allegedly experienced delays and as a result Plaintiff has sued for additional compensation.

The Complaint, filed on August 1, 2013, alleges causes of action for:

- 1) Breach of contract in failing to coordinate Work, failing to provide buildable plans and specifications, failing to properly schedule the Work, delaying and hindering the Work of Plaintiff, failing to respond to RFIs promptly, failing to act professional, and improperly supplementing Plaintiff's Work.
- 2) Equitable adjustment to the Contract for work performed out of Plaintiff's scope;
- 3) Breach of express and implied warranties, for the same basis as (1) above;
- 4) Fraud, for allegedly misrepresenting that the plans were complete and buildable;
- 5) Fraud in the inducement, for the same basis as (4) above;
- 6) Negligent representation, for the same basis as (4) above; and
- 7) Negligence, for the same basis as in (4) above. (*Id.* at ¶s 22-70).

*All* of Plaintiff's claims involve actions by either Lend Lease, acting as the CM, or SHP, acting as the AE. In fact, none of the claims made in the Complaint, references actions by any employees of Defendant OSFC as the factual basis for Plaintiff's claims.

### II. Law and Argument

Ohio Rule of Civil Procedure 15(A) provides:

(A) **Amendments.** A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within twenty-eight days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party. Leave of court shall be freely given when justice so requires.

OSFC respectfully submits that justice requires that leave of court be given to file a Third-Party Complaint. Nearly all of the factual allegations of the Complaint involve or implicate Lend Lease or SHP. There should not be an no effect on the presentation of Transamerica's case, or the witnesses to be presented by Transamerica, as both should be the same. As such, there should be no prejudice to Transamerica by granting leave of court to file a third-party complaint. Furthermore, there should no effect on the actual trial date since Lend Lease and SHP have been fully participating in the attempt to resolve this matter through alternative dispute resolution.

#### I. Conclusion

The OSFC respectfully requests that this Court grant it leave to file a Third-Party Complaint against Lend Lease and SHP. There is no prejudice to Plaintiff and justice requires that all the correct parties be in the same case.

Respectfully submitted,

MIKE DeWINE  
Ohio Attorney General



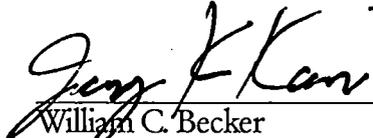
WILLIAM C. BECKER (0013476)  
CRAIG BARCLAY (0023041)  
JERRY KASAI (0019905)  
Assistant Attorneys General  
Court of Claims Defense  
150 East Gay Street, 18th Floor  
Columbus, OH 43215-3130  
Telephone: (614) 466-7447  
Facsimile: (614) 644-9185  
Email: [william.becker@ohioattorneygeneral.gov](mailto:william.becker@ohioattorneygeneral.gov)

[craig.barclay@ohioattorneygeneral.gov](mailto:craig.barclay@ohioattorneygeneral.gov)  
[jerry.kasai@ohioattorneygeneral.gov](mailto:jerry.kasai@ohioattorneygeneral.gov)  
Attorneys for OSFC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Leave to Amend the Complaint was sent by regular U.S. mail, postage prepaid, this 30<sup>th</sup> day of December 2014 to:

Donald Gregory ([dgregory@keglerbrown.com](mailto:dgregory@keglerbrown.com))  
Mike Madigan ([mmadigan@keglerbrown.com](mailto:mmadigan@keglerbrown.com))  
65 East State Street, 18<sup>th</sup> Floor  
Columbus, OH 43215

  
\_\_\_\_\_  
William C. Becker  
Assistant Attorney General (0013476)

IN THE COURT OF CLAIMS OF OHIO

TRANSAMERICA BUILDING  
COMPANY, INC.,

Plaintiff,

v.

OHIO SCHOOL FACILITIES  
COMMISSION,

Defendant/Third-Party Plaintiff

v.

STEED HAMMOND PAUL, INC. dba  
SHP LEADING DESIGN,  
Serve: Lauren B. Della Bella  
4805 Montgomery Rd., Suite 400  
Cincinnati, OH 45212

and

LEND LEASE (US) CONSTRUCTION  
INC.,  
Serve: CT Corporation System  
1300 East Ninth Street  
Cleveland, OH 44114

Third-Party Defendants.

Case No. 2013-00349

Judge McGrath

Referee Wampler

THIRD-PARTY COMPLAINT  
OF DEFENDANT/THIRD-  
PARTY PLAINTIFF OHIO  
SCHOOL FACILITIES  
COMMISSION

INTRODUCTION

Now comes the Defendant/Third-Party Plaintiff, the Ohio School Facilities Commission (hereinafter "OSFC"), by and through counsel, and for its Third-Party Complaint *Instanter* against Steed Hammond Paul, Inc. dba SHP Leading Design ("SHP") and Lend Lease (US) Construction Inc. ("Lend Lease"), and states the following:

1. This is an action for indemnification.
2. Defendant and Third-Party Plaintiff OSFC is an agency of the State of Ohio, organized and existing pursuant to R.C. Chapter 3318, with specific authority to administer

and enforce R.C. Chapter 3318.01 for and on behalf of the state of Ohio, and has the right to sue in its own name.

3. OSFC was formed by the Ohio General Assembly to facilitate the construction and reconstruction of educational buildings throughout the State of Ohio, and its headquarters are located at 30 West Spring Street, 4th Floor, Columbus, Ohio 43215.

4. The events that give rise to this action occurred in connection with the design and construction of a new Ohio State School for the Blind and Ohio School for the Deaf Residential Dorm Project ("Project"). The Project began design in 2005 and construction began in 2010.

5. The Project included among other things the design, engineering, construction, manufacturing, assembly, delivery, and installation of structural steel, roof, flashing, wall, windows, doors, insulation, and masonry systems, site development of storm sewer systems as well as site development, excavation, and preparation of the buildings identified in the preceding paragraph.

6. Third-Party Defendant, SHP is, upon information and belief, an Ohio Professional Corporation licensed to do business in Ohio and is engaged in providing architectural and design services.

7. SHP was the Architect and Engineer of record for the Project, performing, designing, and supervising the architectural, engineering, and construction administration aspects of the Project before, during, and after construction. The acts performed by agents and employees of Third-Party Defendant SHP concerning the Project were in connection with their duties with said Third-Party Defendant, and they were acting in and about the discharge of those duties and within the scope of their employment and/or agency.

8. On or about March 24, 2009, the OSFC entered into a contract with SHP to serve as the Architect and Engineer of record for the Project (the "SHP Contract"). A true and accurate copy of the SHP Contract is attached hereto as *Exhibit A* and incorporated by reference as if fully rewritten herein.

9. The acts performed by agents and employees of Third-Party Defendant SHP concerning the Project were in connection with their duties with said Third-Party Defendant, and they were acting in and about the discharge of those duties and within the scope of their employment.

10. Third-Party Defendant, Lend Lease is, upon information and belief, a foreign professional corporation licensed to do business in Ohio and is engaged in providing construction management and other construction related services.

11. Third-Party Defendant Lend Lease was the Construction Manager ("CM") for the Project, performing oversight, management, inspections, budgeting, coordination, scheduling, and other construction administration aspects of the Project before, during, and after construction. The acts performed by agents and employees of Third-Party Defendant Lend Lease concerning the Project were in connection with their duties with said Third-Party Defendant, and they were acting in and about the discharge of those duties and within the scope of their employment and/or agency.

12. On or about February 10, 2010, the OSFC entered into a Final Contract with Lend Lease to serve as the CM for the Project (the "Lend Lease Contract"). A true and accurate copy of the Lend Lease Contract is attached hereto as *Exhibit B* and incorporated by reference as if fully rewritten herein. The Final Contract between OSFC and Lend Lease was preceded by two interim contracts and two amendments to the interim contracts which are attached as *Exhibits C-F* and incorporated by reference as if fully rewritten herein.

13. The acts performed by agents and employees of Third-Party Defendant Lend Lease concerning the Project were in connection with their duties with said Third-Party Defendant, and they were acting in and about the discharge of those duties and within the scope of their employment.

14. Each of the aforementioned contracts, *Exhibits A & B*, incorporates by reference additional documents, including without limitation the Ohio School Design Manual, General Conditions and Specifications, Plans and Specifications, Special Conditions, manufacturers' specifications and installation guidelines, applicable building codes, later written and executed amendments, and the like (collectively, the "Contract Documents"). These additional documents are part of the aforementioned contracts, but are not attached as they are voluminous and each Third-Party Defendant should have them in its possession; regardless, the additional documents will be produced upon request.

15. OSFC performed all of its obligations under the SHP Contract and all conditions precedent to bring this action.

16. OSFC performed all of its obligations under the Lend Lease Contract and all conditions precedent to bring this action.

17. On August 1, 2013, Plaintiff Transamerica Building Company, Inc. ("Transamerica" or "Plaintiff") filed a complaint in this matter against OSFC for money damages.

18. Plaintiff Transamerica alleged in its Complaint that OSFC, through the actions of its agents, SHP and Lend Lease:

- a. Failed to provide plans that were accurate, complete and buildable;
- b. Delayed the Project through incomplete and inaccurate plans;
- c. Failed to properly schedule, coordinate and sequence the Project;
- d. Failed to respond timely and sufficiently to request for information and submittals;
- e. Delayed the Work of Plaintiff in failing to award later bid packages timely;
- f. Failed to properly obtain approvals and inspections delaying the Work;
- g. Performed additional Work above the Contract;

- h. Made false representations to Plaintiff amounting to fraud, fraud in the inducement, and negligent misrepresentation; and
- i. Negligently breached an alleged duty of care owed to Plaintiff with respect to the management of the Project.
- j. Wrongfully assessing liquidated damages and withholding contract balance

19. OSFC incorporates by reference as if fully rewritten herein the allegations of Plaintiff's Transamerica's Complaint, and also incorporates, as if fully re-written herein, each and every admission, denial, and affirmative defense asserted in OSFC's Answer to Transamerica's Complaint.

**FIRST CLAIM FOR RELIEF**  
**CONTRIBUTION & INDEMNIFICATION AGAINST SHP**

20. OSFC incorporates by reference paragraphs 1-19 above as if fully re-written herein.

21. If OSFC is found to be liable for negligence, breaches of contract, fraudulent or negligent misrepresentations, or breaches of express or implied warranties for the alleged injuries and damages claimed by Plaintiff, which negligence, breaches and misrepresentations are specifically denied, SHP is liable to OSFC for contribution and indemnification for causing such injuries.

**SECOND CLAIM FOR RELIEF**  
**CONTRIBUTION & INDEMNIFICATION AGAINST LEND LEASE**

22. OSFC incorporates by reference paragraphs 1-21 above as if fully re-written herein.

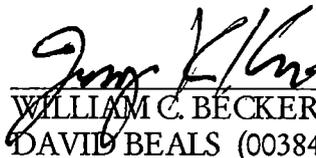
23. If OSFC is found to be liable for negligence, breaches of contract, fraudulent or negligent misrepresentations, or breaches of express or implied warranties for the alleged injuries and damages claimed by Plaintiff, which negligence, breaches and misrepresentations are specifically denied, Lend Lease is liable to OSFC for contribution and indemnification for causing such injuries.

WHEREFORE, Third-Party Plaintiff, Ohio School Facilities Commission, demands judgment as follows, costs taxed to SHP and Lend Lease:

- A. Upon OSFC's First Claim for Relief against SHP for contribution and/or indemnification for all damages and costs awarded to Plaintiff Transamerica as against Defendant/Third-Party Plaintiff OSFC.
- B. Upon OSFC's Second Claim for Relief against Lend Lease for contribution and/or indemnification for all damages and costs awarded to Plaintiff Transamerica as against Defendant/Third-Party Plaintiff OSFC.

Respectfully submitted,

MIKE DeWINE  
Ohio Attorney General



WILLIAM C. BECKER (0013476)

DAVID BEALS (0038495)

JERRY KASAI (0019905)

Assistant Attorneys General

Court of Claims Defense

150 East Gay Street, 18th Floor

Columbus, OH 43215-3130

Telephone: (614) 466-7447

Facsimile: (614) 644-9185

Email: [william.becker@ohioattorneygeneral.gov](mailto:william.becker@ohioattorneygeneral.gov)

[david.beals@ohioattorneygeneral.gov](mailto:david.beals@ohioattorneygeneral.gov)

[jerry.kasai@ohioattorneygeneral.gov](mailto:jerry.kasai@ohioattorneygeneral.gov)

Attorneys for Defendant OSFC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Third Party Complaint was sent by regular U.S. mail, postage prepaid, this 30<sup>th</sup> day of December 2014 to:

Donald Wayne Gregory ([dgregory@keglerbrown.com](mailto:dgregory@keglerbrown.com))  
Michael Madigan ([mmadigan@keglerbrown.com](mailto:mmadigan@keglerbrown.com))  
Kegler Brown Hill & Ritter  
65 East State Street. 18<sup>th</sup> Floor  
Columbus, OH 43215

  
\_\_\_\_\_  
William Becker  
Assistant Attorney General (0013476)

# EXHIBIT A

AGREEMENT No. 3 (Final)  
FOR

**PROFESSIONAL DESIGN SERVICES**  
(CONSTRUCTION MANAGER INVOLVED)

This Agreement for Professional Design Services (this "Agreement"), is made as of NOV 20, 2008, by and between the *Ohio School Facilities Commission* ("Commission"), whose contact person and address is set out below, and *Steed Hammond Paul, Inc, dba as SHP Leading Design* ("Architect") whose contact person and address is set forth below.

The Commission, under conditions named herein, does employ the Architect to provide professional services with respect to the School and Residential Facilities for the Ohio State School for the Blind and Ohio School for the Deaf Project ("the Project").

The Commission and the Architect further acknowledge that Construction Management services will be provided by *Bovis Lend Lease* (the "Construction Manager") pursuant to a contract with the Commission whose contact persons are set forth below:

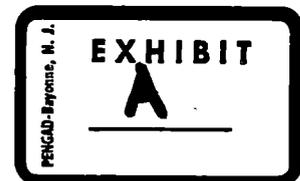
**Project Name:** School and Residential Facilities for the Ohio State School for the Blind and Ohio School for the Deaf

**Ohio School Facilities Commission:**

Contact Person: *Rob Grinch*  
Address: *10 West Broad Street, Suite 1400*  
*Columbus OH 43215-3494*  
Phone Number(s): *(614) 466 - 6290*  
Fax Number(s): *(614) 995 - 9908*

**Architect:** *Steed Hammond Paul, Inc. dba SHP Leading Design*  
Contact Person: *Andrew Maletz*  
Address: *111 West Rich St., Suite 200*  
*Columbus OH 43215*  
Phone Number(s): *(614) 223 - 2124*  
Fax Number(s): *(614) 223 - 2130*

**Construction Manager:** *Bovis Lend Lease, Inc.*  
Contact Person: *Jim Swartzmiller*  
Address: *111 West Rich St., Suite 280*  
*Columbus OH 43215*  
Phone Number(s): *(614) 621 - 4148*  
Fax Number(s): *(614) 621 - 4149*



OHIO SCHOOL  
FACILITIES COMMISSION

2009 MAR -9 AM 11:31

WHEREAS, the Ohio General Assembly has appropriated funds for the Project to the Commission as more fully itemized in the applicable Controlling Board Request and the applicable Office of Budget and Management Encumbrance; and

WHEREAS, the Architect desires, and is capable and licensed, to provide professional design services for the Project; and

WHEREAS, previous Interim Agreements No. 1 (Programming and Schematic Design Phase) and No. 2 (Design Development Phase, Partial) were previously agreed between the Commission and the Architect; and

WHEREAS, unless adjusted as provided herein, the Basic Fee and any approved Additional Services payable to the Architect under this Agreement shall not exceed *Two Million Two Hundred Thirty Two Thousand Four Hundred Fourteen Dollars (\$2,232,414)*.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the Commission and the Architect agree as follows:

## **ARTICLE I RESPONSIBILITIES OF ARCHITECT**

**1.0** The Architect shall obtain a copy of the Ohio School Design Manual ("Design Manual"). The Architect shall endeavor to ensure that the plans, specifications and materials proposed for use in the Project, to the extent practical at discretion of the Commission, comply with the standards established by the Design Manual and Commission policies with the exception of any variance approved by the Commission. The Architect agrees that any Variance Request will be submitted to the Commission 30 days before the completion of the Design Development Phase.

### **1.1 Architect's Services**

**1.1.1 Scope of Services; Applicable Law.** The Architect shall provide professional design services, including without limitation, services customarily furnished in accordance with generally accepted architectural and engineering practices, for the Project in accordance with the terms of this Agreement. The Architect shall provide such services in accordance with the applicable Sections of the Ohio Revised Code, any applicable state rules and regulations, any applicable federal and local statutes, ordinances, rules, building codes and regulations, and the Ohio State School for the Blind and Ohio School for the Deaf's Master Facilities Plan, Program of Requirements (comprised of, without limitation, the educational requirements, Bracketing Forms and Summary of Renovations, Project Budget and Cost Estimates) all of which are incorporated by reference herein. The Architect shall cooperate with the Construction Manager in performing services hereunder.

**1.1.2.1 Construction Budget.** The total amount available for the construction of the Project is *Thirty Seven Million, Three Hundred Eighty Three Thousand Dollars (\$37,383,000)* (the "Construction Budget"). The Commission shall give written notice to the Architect and Construction Manager of any change in the Construction Budget. It is recognized that the Commission, Architect and Construction Manager do not have control over the costs of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the

Construction Budget or from any estimate of cost or evaluation prepared by or agreed to by the Architect.

**1.1.2.2 Construction Budget Details.** Subtotal Amounts of the Construction Budget are as follows:

New Academic & Residential Facilities	\$ 35,557,795
Non-Optional Demolition; Selective Demolition & Existing Bldgs. Tie-Ins	553,605
OSD & OSSB Easement Connector (Bridge)	850,000
<u>OSD &amp; OSSB Outdoor Entries &amp; School Themed Gardens</u>	<u>421,600</u>
<b>Sub Total:</b>	<b>\$ 37,383,000</b>

**1.1.3 Timeliness; Standard of Care.** The Architect shall perform services in accordance with professional standards of skill, care and due and reasonable diligence in a timely manner in accordance with the Project Schedule and so that the Project shall be completed as expeditiously and economically as possible within the Construction Budget and in the best interests of the Commission. The time limits stated in this Agreement are of the essence of this Agreement.

**1.1.4 Design Schedule.** Within thirty (30) days after the execution of this Agreement, the Architect shall submit to the Construction Manager a Design Schedule for the performance of the Architect's services which shall include allowances for reasonable periods of time required for the review and approval of items by the Commission and as applicable, for approvals of governmental authorities having jurisdiction over the Project. The Construction Manager shall review and coordinate the Design Schedule with the proposed Construction Schedule to produce a Project Schedule. Upon approval of the Project Schedule by the Architect and the Construction Manager, the Construction Manager shall submit the Project Schedule to the Commission for approval. The Project Schedule, when approved by the Commission, shall not be exceeded without notice and adjustment of the Project Schedule approved by the Commission.

**1.1.5 Personnel.** The identities of the principal persons, and the extent of their participation in performing the Architect's services as set forth in this Agreement, shall not be altered without the written consent of the Commission. The Commission identifies Andrew Maletz as a key person to provide on-going services consistent with the responsibilities set forth in this Agreement. It is specifically understood and agreed that in the event that Andrew Maletz ceases to perform on-going services consistent with the responsibilities that are set forth in this Agreement, the Architect agrees that the amount of Basic Fee shall be reduced by the amount of \$50,000, unless otherwise approved in writing by the Commission.

**1.1.6 Non-Discrimination.** In the hiring of employees for the Project by Architect, including without limitation employees to be hired by a subconsultant to Architect, the Architect or its subconsultant, and no person acting on behalf of the Architect Manager or subconsultant, shall, by reason of race, creed, sex, disability, or color, discriminate against any citizen of the State in the employment of workers who are qualified and available to perform the Work to which the employment relates. Architect further certifies that it, and any subconsultants working for it on the Project, are in compliance with all applicable federal and state laws, rules and regulations governing fair labor and employment practices and all equal employment opportunity requirements, including ORC Section 153.59.

**1.1.7 Consultants.** The Architect may provide services through one or more consultants employed by the Architect (the "Consultants"); provided the Architect shall remain responsible to the Commission for all duties and obligations of the Architect under this Agreement. Unless

waived or otherwise modified in writing by the Commission upon written request of the Architect, no Consultant shall be retained upon terms inconsistent with this Agreement. The identity of any Consultant, and the extent of such Consultant's participation in, performing the Architect's services shall not be altered without the consent of the Commission.

**1.1.8 Anti-Abuse of Drugs and Alcohol.** The Architect shall make a good faith effort to ensure that no employee of the Architect will purchase, transfer, use or possess, or be under the influence of alcohol or illegal drugs or abuse legally obtained drugs while on or about the Project. Except for the term "employee," terms in this Subparagraph are used as defined in Rule 123:1-76 of the Ohio Administrative Code.

**1.1.9 Ethics.** The Architect represents that it is familiar with all applicable ethics law requirements, including without limitation Sections 102.04 and 3517.13 of the Ohio Revised Code, and certifies that it is in compliance with such requirements. In accordance with Executive Order 2007-01S, the Architect, by signature on this document, certifies: (1) it has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands the Ohio ethics and conflict of interest laws, and (3) will take no action inconsistent with those laws and this order. The Architect understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this Agreement and may result in the loss of other Agreements with the State of Ohio.

**1.1.10 Ohio Services.** Unless otherwise authorized by the Commission, the Architect's services shall be performed within the State of Ohio.

**1.1.11 Limitation of Authority.** The Architect shall not have any authority to bind the Commission for the payment of any costs or expenses without the express written approval of the Commission or the Commission. The Architect shall have authority to act on behalf of the Commission only to the extent provided herein. The Architect's authority to act on behalf of the Commission shall be modified only by an amendment in accordance with Subparagraph 9.5.2.

**1.1.12 Approval or Disapproval of Architect's Work.** The Commission shall have the right to reasonably disapprove any portion of the Architect's work on the Project, including, without limitation, any design work or documents or Drawings prepared by the Architect. In the event that any portion of the Architect's work is disapproved by the Commission, the Architect shall proceed, when directed by the Commission, with corrections to the work, documents or Drawings prepared or performed for that Phase to attempt to satisfy the objections. Notwithstanding any provision of this Agreement to the contrary, the Commission is not required to perform a review of the Architect's work on the Project, or any information or documents that the Architect submits to the Commission for the purpose of identifying faults, defects, errors, omissions, or inconsistencies and the approval of any such work of the Architect by the Commission shall not relieve the Architect of the Architect's responsibility for the timely preparation, completeness, and accuracy of such work, documents and information.

**1.1.13 Ohio's Encouraging Diversity, Growth and Equity (EDGE) Program.** The Architect shall comply with or make a good faith effort to comply with the EDGE business enterprise participation goal of 5 percent of the total contract amount. Prior to the approval of the Agreement by the Commission, the Architect shall inform the Commission in writing of the dollar amount allocated for EDGE business enterprises. The Architect's compliance with the requirement to meet the EDGE participation goals or make a good faith effort to locate and engage the services of EDGE business enterprises in connection with the project shall be a factor in the Commission's approval of the Agreement. The Consultant EDGE Participation Declaration form to be executed by the Architect is attached to the signature page and labeled Exhibit 2. The Architect shall report the

actual amounts paid to EDGE business enterprises on the Architect's Pay Request or Invoice. Architect is encouraged to utilize services provided by certified Minority Business Enterprise and EDGE vendors.

**1.1.14 Unresolved Finding for Recovery.** The Architect represents that the Architect is not subject to a finding for recovery under Section 9.24, ORC, or that Architect has taken the appropriate remedial steps required under Section 9.24, ORC, or otherwise qualifies under this section.

**1.1.15 Declaration Regarding Material Assistance/Nonassistance to a Terrorist Organization.** For all contracts in excess of \$100,000, the Architect is required to certify that the Architect does not provide material assistance to any organization that is on the United States Department of State Terrorist Exclusion List. The Declaration Regarding Material Assistance/Nonassistant to a Terrorist Organization form to be executed by the Architect is attached to the signature page and labeled Exhibit 1.

## **ARTICLE II**

### **SCOPE OF ARCHITECT'S BASIC SERVICES**

#### **2.1 General**

##### **2.1.1 Basic Services.**

The Basis of design and construction includes conformance with the Ohio School Design Manual (unless otherwise waived by Commission approved variance) and the United States Green Building Council's Leadership in Energy and Environmental Design (LEED) - for Schools Silver Certification with a preferred investment in attaining points in the Energy and Atmosphere category. Basic Services to be provided by the Architect shall consist of the six (6) phases set forth in Paragraphs 2.1 through 2.7 inclusive, and include without limitation normal architectural, civil, structural, mechanical, electrical, technology, landscape design, engineering and close out services for the Project, and any necessary design and engineering services related to signage and graphics, acoustics, security systems, computers, communications (telephone and data), fixtures, furnishings, interior design and equipment. It is recognized on a Project that involves more than one building that the Commission's Program of Requirements may consist of multiple Pre-Design, Schematic Design, Design Development, Construction Document, Bidding/Negotiation, Construction Phases and Project Closeout. Attached to this Agreement and incorporated herein is Appendix A-AMENDED, Appendix B, Appendix C, Appendix D, Appendix E, and Appendix F setting forth the element of the minimum phase submission requirements for each of the design phases for the Project, the submittal requirements for technology, agreement Qualifications including Consultants, source of Project Funds-Architect fees details, and Architect compensation summary.

**2.1.2 Government Regulation.** At all appropriate times throughout the performance of the Basic Services, the Architect shall contact, meet, consult and otherwise coordinate with each of the various governmental and quasi-governmental entities with jurisdiction over the Project for the purpose of facilitating the design and construction of the project.

**2.1.3 LEED® Certification.** Architect shall design the Project in accordance with its professional standard of care in an effort to achieve, at least, a U. S. Green Building Council LEED®

Silver Certification, with an emphasis on attaining LEED® points in the Energy and Atmosphere Category. LEED® Submission Requirements, and the Elements necessary to attain the required LEED® Certification are incorporated into Appendix A. A LEED Responsibility Chart assigning LEED® related tasks among the Project Team is attached as Appendix C.

## **2.2 Pre-design Phase (Program Development/Confirmation)**

2.2.1 [See Interim Agreement #1 for Pre-Design Phase Professional Design Services]

## **2.3.1 Schematic Design Phase (Preliminary Drawings)**

2.3.1 [See Interim Agreement #1 for Schematic Design Phase Professional Design Services]

## **2.4 Design Development Phase (Basic Drawings)**

**2.4.1 Life Cycle Analysis.** In accordance with Section 123.011 of the Ohio Revised Code and Rule 123:4 of the Ohio Administrative Code, the Architect shall prepare and submit three (3) copies of a Life Cycle Cost Analysis to the Commission and submit copies to the Construction Manager. This subparagraph does not apply if the Architect utilizes a system set forth in the Design Manual. The applicable Life Cycle Analysis calculations have already been prepared for systems contained in the Design Manual.

**2.4.2 Design Development Documents.** Based on the approved Schematic Design Documents, the Program of Requirements, the approved Statement of Probable Construction Cost and the approved Project Schedule, the Architect shall prepare Design Development Documents consisting of drawings, outline specifications and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical, electrical and technology systems, materials, and such other essential elements as may be appropriate. Upon completion of the Design Development Phase, the Architect shall provide six (6) copies [one OSFC copy to be 15" X 22"] of the Design Development Document to the Construction Manager, the Commission. A meeting will then be held between the Architect, the Construction Manager, the Commission, at which the Construction Manager, the Commission, and the Commission may make comments or suggestions to the Architect. After receiving these comments and suggestions, the Architect shall submit an amended set of Design Development Documents to the Commission and obtain its approval in writing.

**2.4.3 Cost Estimate and Project Schedule.** Based upon the Program of Requirements and the Design Development Documents, the Architect shall assist the Construction Manager to prepare and submit a Detailed Estimate of Construction Cost and a Project Schedule indicating milestone completion dates for approval by the Commission. In establishing the Detailed Estimate of Construction Cost, the Construction Manager shall include reasonable contingencies for design, bidding and price escalation and determine in conjunction with the Commission and the Architect the materials, equipment, component systems and types of construction to be included in the Contract Documents. The Architect and the Construction Manager shall review any difference between the Construction Budget or the Statement of Probable Construction Cost and the Detailed Estimate of Construction Cost, identify reasons for any difference and recommend means to eliminate the difference, if necessary. The Architect, the Construction Manager and the Commission shall agree upon the means to eliminate any difference between the Construction Budget and the Detailed Estimate of Construction Cost, and the Construction Manager shall prepare a report describing the agreed upon means. The Architect and the Construction Manager shall review any differences

between the initial Project Schedule and the updated Project Schedule, identify reasons for the differences and recommend whether the differences should be eliminated and, the means to eliminate the differences. If the Architect, the Construction Manager and the Commission agree to eliminate any such differences, the Construction Manager shall prepare a report describing the agreed upon means. The Architect, the Construction Manager and the Commission shall make any necessary amendments to the Program of Requirements in accordance with Subparagraph 2.2.2.

## **2.5 Construction Documents Phase (Contract Documents)**

**2.5.1 Drawings and Specifications.** Based on the approved Design Development Documents, approved Detailed Estimate of Construction Cost, approved Project Schedule and any further revisions to the Program of Requirements, the Architect shall prepare the Construction Documents for approval by the Commission. The Construction Documents shall consist of Drawings and Specifications setting forth in detail the requirements for the construction of the Project. With the consent of the Commission, the Architect may include approved Alternates in the Construction Documents. The Drawings and Specifications shall encourage competition, shall provide for construction by multiple prime contractors as required by the Ohio Revised Code, and shall be complete and unambiguous and in accordance with all applicable codes, ordinances, statutes, laws, regulations, except to the extent stated otherwise in writing by the Architect for necessary variances and waivers at the time of submission thereof by the Architect to the Commission for approval. In preparing the Drawings and Specifications, the Architect shall consider the scope of the Work and general market conditions, including without limitation, any analysis of labor provided by the Construction Manager. The Architect shall not amend the Standard Conditions except by Special Conditions approved by the Commission in writing. From time to time, the Architect shall make any necessary revisions to the Drawings and Specifications. Upon completion of the Construction Documents for each phase of the Project, the Architect shall provide seven (7) copies of them to the Construction Manager who shall submit three (3) copies each to the Commission [one OSFC copy to be 15" X 22"] for review and approval. The Architect shall revise the Drawings and Specifications to incorporate comments from the Construction Manager, the Commission and shall submit a copy of the revised Drawings and Specifications to the Construction Manager, the Commission.

**2.5.2 Revisions to Cost Estimate and Project Schedule.** The Architect shall advise in writing to the Commission and the Construction Manager of the need for any changes in the Project requirements or in construction materials, systems or equipment as the Drawings and Specifications are developed and any adjustments required in the Detailed Estimate of Construction Cost and the Project Schedule. Upon approval of the Commission of any such changes or adjustments, the Architect shall assist the Construction Manager in preparing a revised Detailed Estimate of Construction Cost or a revised Project Schedule, as applicable, incorporating such changes or adjustments. The Construction Manager shall submit a copy of the revised Detailed Estimate of Construction Cost or the revised Project Schedule, as applicable, deliver the revisions to the Commission for approval.

**2.5.3 Bidding Documents.** The Architect shall assist the Construction Manager and Commissioning Authority, if any, in the preparation of all of the documents necessary for bidding of Contracts. The Architect shall review and provide comments to the Commission and the Construction Manager on all of the bidding documents. The Architect shall consult with, and provide recommendations to, the Construction Manager, with regard to the appropriate number and division of bid packages.

**2.5.4 Government Approvals.** In cooperation with the Construction Manager, the Architect shall submit to the Division of Code Compliance of the Department of Commerce of the State of Ohio or such local building department as determined pursuant to Section 4101:2-1-49 of the Ohio Administrative Code, such sets of the Drawings and Specifications as the Division or local building department may require for approval, together with any necessary completed applications and all required fees. The Architect, with the assistance of the Construction Manager, shall secure any necessary National Pollution Discharge Elimination System Storm Water General Permit by submitting a notice of intent application form to the Ohio Environmental Protection Agency at least forty-five (45) days prior to the commencement of the Construction Phase, shall prepare and certify a storm water pollution prevention plan to provide sediment and erosion controls at the Project and shall prepare and process the required notice of termination prior to Contract Completion. In cooperation with the Construction Manager, the Architect shall assist the Commission in filing documents with, and obtaining the necessary approvals of, all governmental authorities having jurisdiction over the Project, including without limitation, the provision and explanation of technical and design data and participation in consultations with appropriate officials.

**2.5.5 Additional Filings.** Upon approval of the governmental authorities pursuant to Section 2.5.4, the Architect shall obtain five (5) sets of corrected copies of the Drawings and Specifications bearing approval stamps of those authorities. The Architect shall retain one set and distribute the other corrected copies as follows:

- (a) Two sets to the Ohio State School for the Blind/Ohio School for the Deaf,
- (b) Two sets to the Construction Manager,
- (c) One set to the Commission.

**2.5.6 Labor Recommendations.** The Architect shall review and comment upon any analysis prepared by the Construction Manager of the types and quantities of labor required for the Project, the availability of appropriate categories of labor required for all Contracts and recommendations for actions designed to minimize adverse effects of labor shortages.

## **2.6 Bidding or Negotiation Phase (Bidding Assistance and Recommendation)**

**2.6.1 Addenda.** The Architect shall render interpretations and clarifications of the Contract Documents in Addenda and submit the proposed interpretations and clarifications to the Construction Manager for review and distribution.

**2.6.2 Pre-bid Conferences.** The Architect and the Architect's consultants shall attend and participate in the pre-bid conferences to be conducted by the Construction Manager for review of the Project scope with prospective bidders.

**2.6.3 Bid Review.** The Architect shall assist the Construction Manager, review all bids received for responsiveness, participate in investigating the responsibility of Bidders and deliver a written recommendation of the Architect and the Construction Manager to the Commission about the award of, or rejection of, any bid or bids for each Contract for the Project in accordance with applicable law. In making the recommendation, all applicable Alternates referenced in the Contract Documents shall be evaluated.

**2.6.4 Bid Substitutions.** Substitutions contained in the bid of any Bidder shall not be considered by the Architect in recommending the award of any Contract.

**2.6.5 Pre-award Conferences.** The Architect shall attend pre-award conferences between the Construction Manager and the apparently successful Bidders. The Construction Manager shall notify the Architect in a timely manner as to the schedule for the conferences.

**2.6.6 Subcontractor and Material Supplier Review.** The Architect, based upon review of the Contract Documents, any past experience and reasonable inquiry, shall assist the Construction Manager in investigating any Subcontractor or Material Supplier proposed by any Contractor and recommend approval or disapproval in accordance with the Standard Conditions.

**2.6.7 Over Budget Options.** If the Construction Budget is exceeded by the total of the lowest responsive and responsible bids and any legally negotiated prices for the Project, the Commission shall, at its option (1) approve in writing an increase in the Construction Budget; (2) authorize re-bidding or re-negotiation for some or all parts of the Project within a reasonable time without an increase in the Construction Budget; (3) abandon the Project, in whole or in part, and terminate this Agreement in accordance with Subparagraph 8.1.2 or Subparagraph 8.1.4, as applicable; or (4) cooperate in the revision of the Scope of the Project as defined in Subparagraph 2.2.2 to reduce the actual cost of construction to the Construction Budget. If the Commission elects option (1) and such increase in the Construction Budget is more than ten percent (10%), the Architect may request, in writing, an adjustment to the Basic Fee in accordance with Subparagraph 5.4.5 of this Agreement. If the Commission elects options (2), (3) or (4), the Architect shall modify the Program of Requirements, the Project Schedule and the Contract Documents and cooperate in any necessary bidding or negotiation without additional compensation.

**2.6.8 Further Revisions to Cost Estimate and Project Schedule.** The Architect and the Construction Manager shall advise the Commission of the need for any adjustments in the Detailed Estimate of Construction Cost and the Project Schedule. Upon approval of the Commission of any such adjustments, the Architect shall assist the Construction Manager in preparing a revised Detailed Estimate of Construction Cost or a revised Project Schedule, as applicable, incorporating such adjustments. The Construction Manager shall deliver the signed, revised Detailed Estimate of Construction Cost or Project Schedule to the Commission for approval.

**2.6.9 Contract Execution Notices.** The Architect shall assist the Construction Manager and Commission as needed in the preparation and issuance of Notices of Award and Notices to Proceed, preparation and execution of the Construction Contracts, preparation and issuance of Notices to Surety and the Notice of Commencement.

## **2.7 Construction Phase (Administration of Construction)**

**2.7.1 Duration; Extent, Access.** The Construction Phase will commence with the award of a Contract for any portion of the Project to a Contractor and will terminate upon the Final Acceptance of the Project by the Commission, provided that the Architect shall thereafter perform, as a part of Basic Services, such services as shall be reasonably necessary in connection with the correction by a Contractor or any subcontractor of any defects in the Project appearing during the applicable warranty periods and such services as may be necessary to correct any defects resulting from the Architect's failure to comply with the terms of this Agreement. The Architect shall provide its services during the Construction Phase in accordance with this Agreement and the Standard Conditions. The Architect and the Construction Manager shall at all reasonable times have access to the Project.

**2.7.2 Interpretations and General Responsibilities.** The Architect shall render interpretations of the Contract Documents necessary for the proper execution or progress of the Work on the Project. All interpretations shall be in writing, shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be delivered to the Construction Manager for distribution to the Commission and each applicable Contractor.

**2.7.3 Investigation of Condition of Facilities.** For renovation and remodeling, the Architect, with the assistance of the Construction Manager, shall, as portions of the Project become accessible and as reasonably necessary, investigate existing conditions and assist in determining the accuracy of information provided by the Commission, Ohio State School for the Blind/Ohio School for the Deaf about existing conditions.

**2.7.4 Site Visits and Inspections.** The Architect and appropriate Consultants shall visit the Project at appropriate intervals and, at such intervals as the Architect and the Commission agree, to review the Work of each Contractor for Defective Work, to become familiar with the progress and quality of the Work on the Project and to determine if the Work is proceeding in conformity with the Contract Documents. Such visits shall specifically include, without limitation, the observation of large excavations, observation of footings during placement of concrete and observation of masonry work, structural steel erection, roofing work and interior finishes. In all events, the Architect and appropriate Consultants shall be on the site of the Project for such purposes not less than 24 hours per week whenever any Work is in preparation or progress, unless otherwise expressly provided in writing by the Commission. If the Architect shall become aware, either through such visits or otherwise of any Defective Work on the Project, the Architect shall provide a written report of Defective Work to the Commission and the Construction Manager, together with recommendations for the correction thereof.

**2.7.5 Background Drawings.** The Architect shall provide, at no additional cost to the Commission, Commission or Contractor, an electronic copy of floor plan and reflected ceiling plan backgrounds for the purpose of facilitating the coordination of the drawing process as more fully described in Section 4.6.2 of the General Conditions of the Contract for Construction.

**2.7.6 Construction Schedule.** The Architect shall review and approve for conformance with the Contract Documents the Construction Schedule prepared by the Construction Manager. If conditions on the Project indicate that milestone completion dates shown on the Project Schedule may not be met, the Architect shall recommend corrective action to the Construction Manager. When the Project Schedule is revised or updated, the Construction Manager shall prepare a revised Project Schedule and obtain the Architect's signature thereon and deliver the revised Project Schedule to the Commission.

**2.7.7 Meetings.** The Architect shall participate in pre-construction, progress, quality control, commissioning, and special meetings with the Construction Manager, the Commission, potential Bidders and Bidders, appropriate Consultants, the Contractors and any other parties involved in the Project to discuss such matters as procedures, progress, problems, scheduling and coordination. The Architect shall participate in partnering meetings with the Construction Manager, the Commission, appropriate Consultants, the Contractors and other parties involved in the Project.

**2.7.8 Tests; Inspections.** The Architect shall advise and consult with the Construction Manager and the Commission during the Construction Phase as to the need for any special testing, inspections or approval of Work on the Project.

**2.7.9 Submittal Review.** The Architect shall receive from the Construction Manager, for the Architect's review, approval or other appropriate action, the Contractor submittals such as Shop Drawings, Product Data and Samples, for the purpose of checking for conformity with the Contract Documents. The Architect shall also review drawings, calculations and designs required of Contractors and provided with such submittals (except calculations and designs of manufacturers of original equipment and systems to be installed in the Project and except calculations and designs which the Contract Documents expressly make the sole responsibility of one or more Contractors, Subcontractors, Material Suppliers or other persons).

**2.7.10 Bulletins; Change Orders.** The Architect shall prepare Bulletins and other necessary documentation for changes in the Work and submit each Bulletin to the Construction Manager for review and processing. The Construction Manager shall keep a log of all requests for information, Field Work Orders, Bulletins, Contractor Proposals and Change Orders.

**2.7.11 Project Costs.** The Architect shall monitor Project costs on all Work performed by Contractors under unit costs, actual costs for labor and materials, or other appropriate basis. The Architect shall afford access to these records at all times to the Commission, the Commission and the Construction Manager.

**2.7.12 Contractor Payments.** Based upon the Architect's review of the Work and evaluations of the Contractor's Applications for Payment, the Architect shall review and approve, modify or reject the amounts shown on such Applications as being due to the Contractor in accordance with the Contract Documents. Each Application for Payment shall be signed by the Architect and the Construction Manager, then delivered to the Commission.

**2.7.13 Partial Occupancy.** The Architect shall assist the Construction Manager and the Commission in determining dates of Partial Occupancy of the Work or portions thereof designated by the Commission and shall assist in obtaining any necessary certificate from any applicable government authority. Prior to partial occupancy the Architect shall prepare lists of incomplete or unsatisfactory Work and submit them to the Commission and the Construction Manager.

**2.7.14 Contract Closeout.** The Architect shall assist the Construction Manager to determine the date or dates when the project is substantially completed and the date of Final Completion. The Architect shall assist the Construction Manager in conducting the Final Inspection. If applicable, the Architect shall prepare an Architect's Punch List and transmit it to the Construction Manager and the Contractor. The Architect shall transmit a copy of any guarantees, warranties, releases, bonds and waivers in its possession to the Commission. The original documents are public records to be provided to the Commission.

**2.7.15 Contractor Claims.** The Architect, as provided in the General Conditions, shall participate in the resolution of claims from Contractors for additional compensation and equitable adjustment of time.

**2.7.16 Record Drawings.** Based on marked-up prints, drawings or data provided by the Contractors and the As Built Drawings transmitted by the Construction Manager, the Architect shall prepare and furnish to the Commission one (1) set of Record Drawings in the form of reproducible Drawings correctly marked to show the Project as completed in the form of reproducible tracings, one (1) set of all other Contract Documents showing the Project as completed in the form of paper documents and one (1) set of all Contract Documents showing the Project as completed on a computer medium approved by the Commission. The Record Drawings, to the best of the Architect's knowledge based upon the As-Built Drawings delivered to the Architect by the Contractors and the Architect's observations during the progress of the Project, shall detail the actual

construction of the Project and contain such annotations by the Architect as may be necessary for someone unfamiliar with the Project to understand the changes that were made to the original Drawings. The Commission may request Record Drawings, by individual building, in same sequence as actual construction of the Project.

**2.7.17 Contractor Responsibilities.** The Architect shall not be responsible for and shall not have control or charge of construction means, methods, techniques, sequences, procedures or scheduling used by a Contractor to comply with the Contractor's obligations under its Contract for the Project or for safety precautions and programs in connection with the Work on the Project. The Architect shall not be responsible for or have control or charge over the acts or omissions of Contractors or Subcontractors or any of their agents or employees, or any other persons performing any Work on the Project. The Architect does have a duty to inform the Commission and the Construction Manager if work is not being completed according to the Construction Documents.

**2.7.18 Eleven-Month Inspection.** The Architect shall participate in a walk-through of the Project with the Commission one month prior to the expiration of the one year Guarantee provided by the Contractor. The Architect shall consult with the Construction Manager and the Commission to address any issue identified in the walk-through according to the procedures specified in the Standard Conditions.

### **ARTICLE III ADDITIONAL SERVICES**

#### **3.1 General**

**3.1.1** The following services are not included in Basic Services and must be approved in writing by the Commission. The following services shall be paid for as provided in this Agreement in addition to the compensation for Basic Services; provided, however, the Architect shall not be compensated for any of the following services made necessary by the act or omission of the Architect or any Consultant.

**3.1.2 Additional On-Site Services.** Providing administration or observation of construction beyond those services to be provided as Basic Services pursuant to Subparagraph 2.7.4.

**3.1.3 Scheduling Consultant.** Serving as a construction scheduling consultant.

**3.1.4 Perspectives, Models, Renderings.** Preparing professional perspectives, models or renderings, beyond those described in the Minimum Phase Submission Requirements Appendix A, that are not otherwise useful or necessary to the Architect in the provision of Basic Services hereunder at the written request of the Commission or the Commission.

**3.1.5 Grant Applications.** Preparing applications and supporting documents for governmental grants, loans or advances.

**3.1.6 Special Studies.** Providing planning, site evaluations, environmental studies, or comparative studies of prospective sites.

**3.1.7 Surveys.** Providing surveying services including land surveys and rights-of-way studies.

**3.1.8 Constructability and Cost Analyses.** Preparing analyses of the construction feasibility of the Project or of owning and operating costs or preparing detailed quantity surveys or inventories of material, equipment and labor beyond those services to be provided as Basic Services.

**3.1.9 Off-Site Services.** Providing planning or design services for off-site utilities which are not adjacent to the Project, building connections or roadways.

**3.1.10 Certain Revisions.** Making revisions in Drawings, Specifications or other Contract Documents when such revisions are inconsistent with written approvals or instructions previously given or are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents.

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

**3.1.12 Contractor Default.** Providing services made necessary by the default of a Contractor.

**3.1.13 Additional Documents.** Preparing more than the sets of Contract Documents required as Basic Services.

**3.1.14 Hazardous Materials.** Providing services related to identifying, surveying, remediating, removing or disposing of hazardous materials.

#### **ARTICLE IV RESPONSIBILITIES OF THE COMMISSION**

**4.1 Required Actions.** The Commission shall review, approve or take such actions as are required of them by this Agreement, the Contract Documents and applicable law in a reasonable and timely manner.

**4.2 Instructions to Contractors.** All instructions of the Commission or the Commission to Contractors shall be through, or in consultation with, the Construction Manager, with notice to the Architect.

**4.3 Commission's Requirements.** The Commission shall provide full information regarding their requirements for the Project including, without limitation, the Program of Requirements, any agreement related to the Project, design and construction standards and work rules which shall set forth the Commission's and the Commission's use, design, time and financial objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, time constraints imposed by fiscal and budgetary considerations, special equipment and systems and site requirements.

**4.4 Designated Representative.** If any party shall change its designated representative as set forth on Page 1 of this Agreement, they shall notify all other parties of that change immediately in writing.

**4.5 Site Description.** If reasonably requested by the Architect as necessary for the Project, the Commission shall furnish a legal description and a certified land survey of the site, giving as applicable, grades and lines of streets, alleys, pavements and adjoining property, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and complete data pertaining to existing building, other improvements and trees; and full information concerning available service and utility lines both public and private, above and below grade, including inverts and depths. Except to the extent of the Architect's negligence, the Architect shall be entitled to rely upon the accuracy and completeness of information provided by the Commission under this Paragraph.

**4.6 Notice to Architect.** If the Commission or the Commission observes or otherwise becomes aware of any Defective Work or other fault or defect in the Project, prompt notice thereof shall be given to the Architect and the Construction Manager.

**4.7 Legal Representation.** The Commission shall not be responsible to provide, or pay for, any legal representation of the Architect.

## **ARTICLE V COMPENSATION**

**5.1 Total Compensation.** The total compensation of the Architect and all Consultants shall consist of the Basic Fee and any approved Additional Services and shall not exceed the total amount of *Two Million Two Hundred Thirty Two Thousand Four Hundred Fourteen Dollars (\$2,232,414.00)*.

### **5.2 Basis of Compensation**

**5.2.1 Basic Fee.** The Commission agrees to pay the Architect a Basic Fee in the amount of *One Million Seven Hundred Seventy Three Thousand Eight Hundred Sixty-Nine Dollars (\$1,773,869.00)*. This Basic Fee represents 7.1 percent of the New Academic & Residential Facilities Construction Budget line item set forth in Subparagraph 1.1.2.2. A change in the Basic Fee may be made only by an amendment to this Agreement in accordance with Subparagraph 9.5.2.

**5.2.2 Extent of Basic Fee.** The Architect's Basic Fee includes all compensation for Basic Services, including without limitation, for salaries or other compensation of the Architect's employees at the principal office, branch offices and the field office, general operating expenses of the Architect's principal office, branch offices and the field office, any part of the Architect's capital expenses, including interest on the Architect's capital employed for the Project, overhead or expenses of any kind, any costs incurred due to the negligence of the Architect, the Architect's general advertising, federal, state or local income, sales or other taxes, state franchise taxes and qualification fees, and membership in trade, business or professional organizations.

### **5.3 Additional Fees**

**5.3.1 Fees For Additional Services.** The Commission shall pay the Architect the following Additional Fees for the following Additional Services:

**Additional Service**

**Fee Including Markups**

OSD &OSSB Existing Building Improvements	77,233
OSD & OSSB Assessments, Verifications, Schematic Design, Furnishings	94,750
<u>Supplemental Services: See Appendix F "Additional Services"</u>	<u>286,562</u>
<b>TOTAL:</b>	<b>\$ 458,545</b>

In all events, the total Additional fees shall not exceed the amount of *Four Hundred Fifty Eight Thousand Five Hundred Forty Five Dollars (\$458,545)* without an amendment to this Agreement in accordance with Subparagraph 9.5.2.

**5.4 Method and Terms of Payment**

**5.4.1 Basic Fee.** Payment of the Basic Fee shall be made monthly in proportion to services performed in each Phase of the Project in accordance with the following percentages of the Basic Fee:

<i>Pre-Design Phase</i>	5%	<i>See Previous Interim Agreement No. 1</i>
<i>Schematic Design Phase</i>	20%	<i>See Previous Interim Agreement No. 1</i>
<i>Design Development Phase - Partial A</i>	18.7%	<i>See Previous Interim Agreement No. 2</i>
<i>Design Development Phase - Partial B</i>	1.3%	
<i>Construction Documents Phase</i>	25%	
<i>Bidding or Negotiation Phase</i>	5%	
<i>Construction Phase</i>	20%	
<i>Project Closeout</i>	5%	

Any balance of the final 5% of the Basic Fee shall be paid upon Project Closeout as follows: one-half after preparation of all Punch-Lists and one-half after completion of all Punch-List items to the reasonable satisfaction of the Commission and receipt of Project Record Drawings by the Commission as provided in this Agreement. The Commission may waive the withholding of any final balance or part thereof, if the Architect has performed to the reasonable satisfaction of the Commission. Payment of the last twenty percent (20%) of the appropriate portion of the Basic Fee for the Pre-design Phase, the Schematic Design Phase, the Design Development Phase, the Construction Documents Phase, and the Bidding or Negotiation Phase shall be made only after all documents and Drawings required for the respective Phase have been submitted to the Commission or the Commission, as applicable, in form and substance reasonably satisfactory to the Commission. The Basic Fee, including without limitation the final 5% thereof, shall be subject to all setoffs in favor of the Commission for claims against the Architect. Payments for Basic Services shall be based upon a properly completed Architect's Pay Request and shall be made within the applicable time limits. The Architect's pay request shall be submitted to the Construction Manager for approval prior to payment. The Architect shall report the actual amounts paid to EDGE business enterprises on the Architect's Pay Request or Invoice.

**5.4.2 Additional Fees.** Payments of Additional Fees for Additional Services in accordance with Article III and Subparagraph 5.3.1 shall be made monthly based upon services performed, and as shown by a properly completed Architect's Pay Request or Invoice.

**5.4.3 Payments by Architect.** Within ten (10) business days of receipt of payment made pursuant to this Agreement, the Architect shall pay all portions thereof due to Consultants.

**5.4.4 Compensation for Extension of Project Time.** If the Architect notifies the Commission not less than thirty (30) days prior to the time for completion of the Project set by the Project Schedule approved pursuant to Subparagraph 2.6.8, that such time for completion is reasonably expected to be exceeded by more than ten percent (10%) through no fault of the Architect, the compensation, if any, for Basic Services to be rendered during such extended period shall be negotiated to the mutual reasonable satisfaction of the Commission and the Architect. If, as a result of such negotiation, the Commission agrees that the Architect shall be paid additional compensation, an amendment to that effect shall be executed in accordance with Subparagraph 9.5.2 before the Architect renders any services made necessary by such extension of the time of completion, unless otherwise agreed in writing by the Commission.

**5.4.5 Compensation for Change of Scope of Project or Construction Budget.** The Scope of the Project is defined by the Approved Program of Requirements as provided in Subparagraph 2.2.2. The Construction Budget is defined in Subparagraph 1.1.2. If the Commission materially changes the Scope of the Project or Construction Budget after the Schematic Design Phase through no fault of the Architect, any necessary adjustment in the compensation of the Architect shall be negotiated to the mutual reasonable satisfaction of the Commission and the Architect. If, as the result of such negotiation, the Commission agrees that the Architect shall be paid additional compensation, an amendment to that effect shall be executed in accordance with Subparagraph 9.5.2 before the Architect renders any services made necessary by such change in the Scope of the Project or the Construction Budget, unless otherwise agreed in writing by the Commission.

## **ARTICLE V INSURANCE AND INDEMNIFICATION**

### **6.1 Insurance**

**6.1.1 Casualty Insurance.** Except when a modification is requested in writing by the Architect and approved in writing by the Commission, the Architect shall carry and maintain at the Architect's cost, with companies authorized to do business in Ohio, all necessary liability insurance (which shall include as a minimum the requirements set forth below) during the term of this Agreement:

- a. Workers' Compensation and employer's liability insurance to the fullest extent required by applicable law;
- b. Commercial general liability coverage for bodily injury and property damage, including limited contractual liability coverage, in not less than the following amounts:
  - i. General Aggregate Limit:  
\$2,000,000 each occurrence;
  - ii. Each Occurrence Limit:  
\$1,000,000 each occurrence; and

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

**6.1.2 Professional Liability Insurance.** When the Commission does not elect to procure Project Professional Liability Insurance, and subject to the Commission's waiver or modification of Professional Liability Insurance upon written request of the Architect, the Architect shall maintain insurance to protect against claims arising from the performance of the Architect's services caused by any negligent acts, errors or omissions for which the Architect is legally liable ("Professional Liability Insurance"). Except when a waiver is approved by the Commission upon written request of the Architect, such Professional Liability Insurance shall be in an amount not less than \$1,000,000 per claim and in the annual aggregate. The Architect shall endeavor to keep such insurance in effect for so long as the Architect may be held liable for its performance of services for the Project. If the Professional Liability Insurance is written on a claims-made basis, such insurance shall have a retroactive date no later than the date on which the Architect commenced to perform services relating to the Project. The insurance company issuing the Professional Liability Insurance policy must be authorized to do business in Ohio and have a rating of at least A status as noted in the most recent edition of the Best's Insurance Reports.

**6.1.3 Certificates.** The Architect shall provide the Commission with certificates of insurance evidencing the required coverages and amounts, including without limitation any certificates of renewal of insurance. Each policy of insurance required to be purchased and maintained by the Architect, with the exception of worker's compensation and Professional Liability Insurance, shall name the Commission as additional insureds. The certificates of insurance shall contain a provision that the policy or policies will not be canceled without thirty (30) days prior written notice to the Commission.

## **6.2 Indemnification**

**6.2.1 Indemnification by Architect Generally.** To the fullest extent permitted by law, the Architect shall and does agree to indemnify and hold harmless the Commission, their members, officers, employees and representatives and agents from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, which (a) arise out of, are caused by or result from performance of the Architect's services hereunder and (b) are attributable to bodily injury, personal injury, sickness, disease or death of any person, or to damage to or destruction of property, including the loss of use and consequential damages resulting therefrom, but (c) only to the extent they are caused by any negligent acts, errors or omissions of the Architect, anyone directly or indirectly employed by the Architect or anyone for whose acts the Architect is legally liable. This Subparagraph is intended to be, and shall be construed as consistent with, and not in conflict with, Section 2305.31 of the Ohio Revised Code.

**6.2.2 Intellectual Property Indemnification.** To the fullest extent permitted by law, the Architect shall and does agree to indemnify and hold harmless the Commission, their members, officers, employees and representatives from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, which result from any claimed infringement of any copyright, patent or other intangible property right caused by the Architect, anyone directly or indirectly employed by the Architect or anyone for whose acts the Architect is legally liable. The Architect shall not be required to indemnify and hold harmless such persons for such matters when the claimed infringement occurs in materials provided by the Commission.

**ARTICLE VII  
DISPUTE RESOLUTION PROVISIONS**

**7.1 Mediation.** Instead of, or in addition to, the procedures set forth below, the Commission and the Architect may, by written agreement, submit any claims, requests, disputes or matters in question between or among them to mediation upon such terms as shall be mutually reasonably agreeable.

**7.2 Notice and Filing of Requests.** Any request by the Architect for Additional Fees shall be made in writing to the Commission and filed prior to payment of the final 5% of the Basic Fee. Failure of the Architect to timely make such a request shall constitute a waiver by the Architect of any request for such fees.

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

**7.4 Decision of the Commission.** If the Architect files a written request with the Commission pursuant to Paragraph 7.2, the Commission shall review the request and render a final decision in writing as between the Commission and the Architect. Any payment resulting from such decision must be approved by the Commission pursuant to an Amendment to this Agreement in accordance with subparagraph 9.5.2.

**7.5 Performance.** The Architect shall proceed with the Architect's performance of this Agreement during any dispute resolution process, unless otherwise agreed by the Architect and the Commission in writing. The Commission shall continue to make payment, in accordance with this Agreement, of any amounts not in dispute pending final resolution of any dispute in accordance with this Article. The decision of the Commission shall be conclusive and final.

**7.6 Delegation.** No provision of this Article shall prevent the Commission from delegating the duties or authorities of the Commission to any other person selected at the discretion of the Commission.

**ARTICLE VIII  
TERMINATION AND REMEDIES**

**8.1 Termination of Agreement**

**8.1.1 Means of Termination.** This Agreement may be terminated by either party upon seven (7) days written notice should the other party fail to perform in accordance with the terms of this Agreement; provided, however, the Architect shall not terminate this Agreement for non-payment if the Commission initiates the payment process for all reasonably undisputed amounts due to the Architect within ten (10) days of receipt of the Architect's written notice to terminate. This Agreement may be terminated by the Commission without cause upon fifteen (15) days written notice to the Architect. This Agreement may be terminated at any time upon the mutual consent of the Commission and the Architect.

**8.1.2 Architect's Remedies Upon Termination by the Commission Without Cause or Termination by Architect.** In the event of a termination which is not due to the failure of the Architect to perform in accordance with the terms of this Agreement, the Architect shall be compensated for all Basic Services of a completed Phase performed prior to the termination date in accordance with the percentages set forth in Subparagraph 5.4.1. In such event, for services rendered prior to the termination date in an uncompleted Phase and for Additional Services, the Architect shall receive compensation based on the percentages of completion of that Phase or those Additional Services, as applicable.

**8.1.3 Architect's Remedies Upon Termination by the Commission for Cause.** In the event of a termination which is due to the failure of the Architect to perform in accordance with the terms of this Agreement, the Architect shall be compensated only for Basic Services performed and paid for prior to the termination date in accordance with the percentages set forth in Subparagraph 5.5.1, together with Additional Services completely performed prior to the termination date.

**8.1.4 Architect's Remedies Upon Termination by Mutual Consent.** In the event of a termination upon the mutual consent of the Commission and the Architect, any compensation for Basic Services or for Additional Services shall be negotiated and set forth in an amendment to this Agreement in accordance with Subparagraph 9.5.2 prior to such termination.

**8.1.5 Post-Termination Matters.** If the Commission and the Architect agree that any services are to be performed for the Project by the Architect after any termination date, the amount of any compensation and the method and terms of payment of such compensation related to such services shall be negotiated and set forth in an amendment to this Agreement in accordance with Subparagraph 9.5.2 prior to the commencement of such services. Such amendment and any relevant obligations to be performed by the Architect under this Agreement will survive termination of this Agreement.

## **8.2 Remedies**

**8.2.1 Cumulative Remedies.** No remedy conferred upon the Commission by the terms of this Agreement is intended to be exclusive of any other remedy provided at law or in equity. Each and every remedy of the Commission shall be cumulative and shall be in addition to any other remedy given to the Commission hereunder or now or hereafter existing. Except as otherwise provided in this Agreement, no remedy conferred upon the Architect by the terms of this Agreement is intended to be exclusive of any other remedy provided at law or in equity. Except as otherwise provided in this Agreement, each and every remedy of the Architect shall be cumulative and shall be in addition to any other remedy given to the Architect hereunder or now or hereafter existing.

**8.2.2 Remedies Not Waived.** No delay, omission or forbearance to exercise any right, power or remedy accruing to the Commission or the Architect hereunder shall impair any such right, power or remedy or shall be construed to be a waiver of any breach hereof or default hereunder. Every such right, power or remedy may be exercised as often as deemed expedient.

## **ARTICLE IX MISCELLANEOUS PROVISIONS**

### **9.1 Ownership and Use of Documents**

**9.1.1 Property of the Ohio School State for the Blind/Ohio School for the Deaf.** Drawings, Specifications and other documents prepared by, or with the cooperation of, the Architect or any Consultant pursuant to this Agreement are the property of the Commission and the Ohio School State for the Blind/Ohio School whether or not the Project for which they are prepared is commenced or completed. The Architect or Consultant, as applicable, may retain copies, including reproducible copies of such Drawings, Specifications and other documents for information and reference. Such Drawings, Specifications or other documents may be used by the Commission or others employed by the Ohio School State for the Blind/Ohio School for reference in any completion, correction, remodeling, renovation, reconstruction, alteration, modification of or addition to the Project, without compensation to the Architect or Consultant. Unless the Project is a prototype, such Drawings, Specifications or other documents shall not be given or sold by the Commission to be used by others, on other Projects except by agreement in writing and with agreed upon appropriate compensation to the Architect or Consultant, as applicable. The Architect shall not be held liable if a third party receives the Architect's Drawings, Specifications or other Documents and either modifies, changes or uses the documents in a way not originally anticipated when the documents were created. If an event occurs for which the Architect or Consultant may be liable, the Commission shall notify the Architect or Consultant of such event as soon as practical after such event and shall provide access to the Project to the Architect or Consultant and their representatives. This Subparagraph shall survive termination of this Agreement.

**9.1.2 Architect's Intellectual Property.** Except as specified in Article 9.1.1 above, all inventions, patents, design patents and computer programs acquired or developed by the Architect in connection with or relation to the Project shall remain the property of the Architect and shall be protected by the Commission from use by others except by agreement in writing with appropriate and agreed upon compensation to the Architect.

**9.2 Public Relations.** Prior to completion of the Project, any public relations or publicity about the Project shall be within the control and with the consent of the Commission. The Architect shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect's promotional and professional materials. The Architect shall obtain the express approval of the Commission prior to making any application, or submitting for any design award, or acknowledgement of any kind for the Architect's services for the Project.

**9.3 Records.** The records of all of the Architect's compensation and payments to Consultants pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the Commission at all times and shall be maintained for seven (7) years after Final Acceptance of the Project by the Commission. All other records kept by the Architect related to the Project shall be available to the Commission at all times and shall be maintained for sixteen (16) years after Final Acceptance of the Project by the Commission.

**9.4 Successors and Assigns.** The Commission and the Architect, each bind themselves, their successors, assigns and legal representatives, to the other party to this Agreement and to the successors, assigns and legal representatives of the other party with respect to all terms of this Agreement. The Commission and the Architect each acknowledge that the Commission is an intended third-party beneficiary of this Agreement and a duty of trust and care is owed to the Commission as the third party beneficiary. The Architect shall not assign, or transfer any right, title or interest in this Agreement without the prior written consent of the Commission.

**9.5 Extent of Agreement**

**9.5.1 Entire Agreement.** This Agreement and the Contract Documents represent the entire and integrated agreement between the Commission and the Architect and supersede all prior negotiations, representations or agreements, either written or oral.

**9.5.2 Amendments.** This Agreement may be amended only by an amendment prepared by the Commission and signed by both the Architect and the Commission, with the concurrence of the Commission.

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

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

**9.5.5 Precedence.** If there are any inconsistencies between the provisions of this Agreement and the Contract Documents or any other documents, the provisions of this Agreement shall prevail. In addition, the Architect should refer to the Commission's Ohio School Design Manual, including without limitation all exhibits thereto, for applicable procedures, policies and forms.

**9.5.6 Conditions to Validity.** None of the rights, duties and obligations contained in this Agreement shall be binding on any party until all legal requirements have been complied with, including without limitation that the Director of Budget and Management of the State first certifies that there is a balance in the appropriation not already obligated to pay existing obligations, as required by Section 126.07, Ohio Revised Code, all necessary funds are available from the applicable state agencies or instrumentalities and, when required, the expenditure of such funds is approved by the Controlling Board of the State of Ohio or other applicable approving body. In addition, if federal funds are to be used to pay fees and expenses under this Agreement, none of the rights, duties and obligations contained in this Agreement shall be binding on any party until the Commission notifies the Architect in writing that such funds are available from the Commission's source.

## **9.6 Governing Law**

**9.6.1 Law of Ohio.** This Agreement shall be governed by the law of the State of Ohio to the exclusion of the law of any other jurisdiction and the State of Ohio shall have jurisdiction over any action hereunder or related to the Project to the exclusion of any other forum.

**9.6.2 Capitalized Terms.** Capitalized terms in this Agreement shall have the same meaning as those in the Standard Conditions, unless otherwise defined herein or unless another meaning is indicated by the context.

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

Intending to be legally bound, the Architect, acting herein by and through the person signing this Agreement on its behalf as a duly authorized agent, hereby assigns, sells, conveys and transfers to the Commission any and all right, title and interest in and to any and all claims and causes of action which the Architect may now have or hereafter acquire under the antitrust laws of the United States of America or the State

of Ohio, PROVIDED that the claims or causes of action relate to the particular goods, products, commodities, intangibles, or services purchased, procured, or acquired by, or rendered to, the Commission pursuant to this Agreement, and EXCEPT as to any claims or causes of action which result from antitrust violations commencing after the price is established under this Agreement and which are not passed on to the Commission by any means. In addition, the Architect warrants and represents that it will require any and all of its Consultants and suppliers to assign any and all federal and State antitrust claims and causes of action to the Commission, subject to the proviso and exception stated above. The provisions of this Subparagraph shall become effective at the time the Commission executes its concurrence to this Agreement without further acknowledgement by any of the parties.

## **9.8 Notices**

**9.8.1 Addresses.** All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be given if delivered or mailed to the contact person, identified on Page 1 of this Agreement.

**9.8.2 Additional Notices.** A copy of all notices, certificates, requests or other communications shall be sent to the Construction Manager.

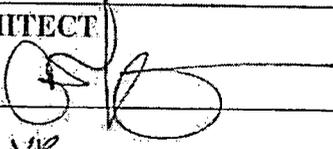
**9.8.3 Facsimiles.** For convenience of communication only, notices, certificates, requests or other communications hereunder of fewer than ten (10) pages, except requests for payment, may be sent by facsimile transmission. Notices, certificates, requests or other communications sent by facsimile transmission shall not be deemed to be given unless a counterpart is received or mailed in accordance with Subparagraph 9.8.1.

**9.8.4 Emergencies.** In the event of an emergency involving the Project, including, without limitation, a fatality, serious injury, fire, collapse, flood, utility or power loss to occupied facilities, explosion, or environmental damage, the Architect shall immediately notify the Construction Manager, and the Commission.

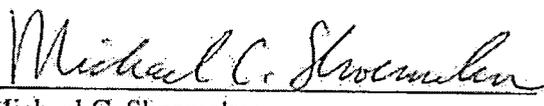
**9.8.5 Change of Address.** The Commission, or the Architect may, by notice given hereunder, designate any further or different addresses telephone numbers or facsimile numbers to which subsequent notices, certificates, requests or communications shall be sent.

**9.9 Severability.** If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein. Such invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

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

ARCHITECT  
By:   
Title: VP  
Date: 3-6-09, 2009

OHIO SCHOOL FACILITIES COMMISSION  
("Commission")

By:   
Michael C. Shoemaker  
Executive Director  
Date: 3/24, 2009

OHIO SCHOOL  
FACILITIES COMMISSION  
2009 MAR -9 AM 11:31



**EXHIBIT 1 -- Ohio Department of Public Safety**  
Division of Homeland Security  
<http://www.homelandsecurity.ohio.gov>

**GOVERNMENT BUSINESS AND FUNDING CONTRACTS**  
In accordance with section 2909.33 of the Ohio Revised Code

**DECLARATION REGARDING MATERIAL ASSISTANCE/NONASSISTANCE TO A TERRORIST ORGANIZATION**

This form serves as a declaration of the provision of material assistance to a terrorist organization or organization that supports terrorism as identified by the U.S. Department of State Terrorist Exclusion List (see the Ohio Homeland Security Division website for a reference copy of the Terrorist Exclusion List).

Any answer of "yes" to any question, or the failure to answer "no" to any question on this declaration shall serve as a disclosure that material assistance to an organization identified on the U.S. Department of State Terrorist Exclusion List has been provided. Failure to disclose the provision of material assistance to such an organization or knowingly making false statements regarding material assistance to such an organization is a felony of the fifth degree.

For the purposes of this declaration, "material support or resources" means currency, payment instruments, other financial securities, funds, transfer of funds, and financial services that are in excess of one hundred dollars, as well as communications, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

LAST NAME		FIRST NAME		MIDDLE INITIAL
HOME ADDRESS				
CITY	STATE	ZIP	COUNTY	
HOME PHONE		WORK PHONE		

**COMPLETE THIS SECTION ONLY IF YOU ARE A COMPANY, BUSINESS OR ORGANIZATION**

BUSINESS/ORGANIZATION NAME				
BUSINESS ADDRESS				
CITY	STATE	ZIP	COUNTY	
PHONE NUMBER				

<b>DECLARATION</b> In accordance with division (A)(2)(b) of section 2909.33 of the Ohio Revised Code	
For each question, indicate either "yes," or "no" in the space provided. Responses must be truthful to the best of your knowledge.	
1. Are you a member of an organization on the U.S. Department of State Terrorist Exclusion List?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Have you used any position of prominence you have with any country to persuade others to support an organization on the U.S. Department of State Terrorist Exclusion List?	<input type="checkbox"/> Yes <input type="checkbox"/> No

HLS 0038 2/08



**Appendix A - AMMENDED**

**POLICY ON  
MINIMUM PHASE SUBMISSION REQUIREMENTS**

**ELEMENTS OF SCHEMATIC DESIGN DOCUMENTS**

[See Interim Agreement No. 1]

**ELEMENTS OF DESIGN DEVELOPMENT DOCUMENTS**

- A copy of the project's USGBC registration.
  - A copy of the LEED point checklist indicating which points the owner and design team has selected as yes, possible and no. A copy of the Minutes from the Eco-Charrette.
  - Evidence of the initial parametric modeling of energy consumption.
  - Printout of EPA Target Finder Data Sheet
  - A narrative summary explaining how the additional project funding (3%) will contribute to the Energy Credits.
- 
- A copy of the LEED point checklist indicating which points the owner and design team has selected as yes, possible and no.
  - Printout of any changes to EPA Target Finder Data Sheet
  - Evidence of the most recent parametric modeling of energy consumption.
  - Most recent Monthly Energy Consumption by fuel by end use, from model.
  - Most recent Annual Energy Consumption by fuel by end use, from model.
  - Monthly Peak Demand by fuel by end use, from model.
  - Annual Peak Demand by fuel by end use, from model.
  - A narrative summary explaining how the additional project funding (3%) will contributed to the Energy Credits.
- 
- A copy of the LEED point checklist indicating which points the owner and design team has selected as yes, possible and no.
  - Printout of any changes to EPA Target Finder Data Sheet
  - Evidence of the most recent parametric modeling of energy consumption.
  - Most recent Monthly Energy Consumption by fuel by end use from Energy Model.
  - Most recent Annual Energy Consumption by fuel by end use from Energy Model.
  - Monthly Peak Demand by fuel by end use from Energy Model.
  - Annual Peak Demand by fuel by end use from Energy Model.

- A narrative summary explaining how the additional project funding (3%) will contribute to the Energy Credits.

### **ARCHITECTURAL**

- Dimensioned floor plans indicating structural bay sizes and overall building dimensions. Floor Plan should show dimensions and final partition locations including all openings.
- Exterior and core wall sections showing final dimensional relationships, materials and component relationships.
- Floor Plan should show all fixed and loose equipment, including exterior terraces and landings.
- Preliminary room finish schedule identifying all finishes.
- Exterior door and hardware schedule showing door, frame and hardware type.
- Preliminary development of details and large scale plans and sections.
- Plans, Sections and Details of the day lighting system including computer modeling analysis.
- Preliminary reflected ceiling including ceiling grid, light fixtures and all devices that penetrate or are mounted upon finished ceiling.
- Interior movable furniture, office equipment, demountable partitions and system furniture, layouts for all departments and floors including proposed building signage system.
- Gross and net area calculations by department to determine compliance with program of requirements.
- Outline specifications including selected acceptable manufacturers and suppliers.

### **LANDSCAPE ARCHITECTURAL – CIVIL ENGINEERING**

- Existing Site Conditions Plan – Show existing topography, above and below ground utilities including fuel storage tanks, vehicular roadways, pedestrian paths, service and loading areas, athletic fields and other site improvements, landmark trees, zoning classification, minimum code required parking space quantity and setbacks, easements, right-of-way limits, and Bill Moose Run conservation area limits.
- Proposed Site Plan with buildings and preliminary site development information including: buildings; terraces; COTA bus stop; heavy & light duty pavements; service/loading/waste removal area pavements; pedestrian walkways; grading scheme with proposed finished floor elevations, contours, storm water storage areas, storm sewer piping and drainage structures, retaining and screening walls; landmark trees to remain undisturbed; emergency vehicles access corridors; vehicular parking areas designated by users; athletic fields, perimeter fencing, spectator seating, scoreboards, lighting and associated out-buildings; accessible play equipment; landscape plantings; site lighting; signage; bus/service maintenance building including fueling area; site entry security checkpoint; outdoor education and therapy areas; oil interceptors; acid neutralization tanks; utility vaults, storm water management design including bio-swales, rain gardens, and rainwater harvesting equipment.
- Site Plan with proposed improvements in public right-of-ways including roadway pavements; curbs; sidewalks; bikeways; pavement markings; traffic signage and automated controls; relocated, replaced or newly installed utilities; bus shelter; and utility connection points or taps.
- Preliminary development of details, large scale plans, sections, and in-ground utility profiles.

• Preliminary documents for NPDES submission.

### ***STRUCTURAL***

- Floor plan with all structural members located and sized.
- Preliminary footing, beam, column and connection schedules.
- Establish final building elevations.
- Outline specifications including acceptable manufacturers.
- Foundation drawings
- Outline specifications including selected acceptable manufacturers.

### ***PLUMBING AND MECHANICAL***

- Heating and cooling load calculations for each individual space, include cooling requirements for heat loads generated by office equipment, personal computers, etc
- Mechanical equipment schedule indicating size and capacity.
- Plumbing fixtures schedule
- Floor plans showing mechanical equipment and plumbing fixtures. All equipment and fixtures should be shown and located.
- Floor plans showing main ductwork distribution, branch ductwork and plumbing piping. All ductwork and piping should be located and sized to coordinate with structural framing system.
- All ceiling mounted devices should be located.
- Legend showing all symbols used on drawings.
- Outline specifications including selected acceptable manufacturers.

### ***ELECTRICAL***

- Floor Plan locating all power consuming equipment with a description of the equipment load characteristics.
- Estimate total electric load; confirm Design Manual required excess capacity.
- Floor Plan showing all major electrical equipment (switchgear, distribution panels, emergency generator, transfer switches, UPS system, etc.) which shall be dimensioned and drawn to scale.
- Site Plan showing preliminary site lighting design with pole and fixture type designations.
- Floor plan showing lighting layout, power, telecommunications and office automation devices and switches with preliminary circuiting.
- Light fixture schedule should be finalized.
- Day lighting control system.
- Estimate interior electrical loads for systems furniture, receptacles, lighting, food service equipment and any other special use areas, etc.
- Preliminary Distribution Panel Schedule
- Outline specifications including selected acceptable manufacturers and suppliers.

## ***ELEMENTS OF CONSTRUCTION DOCUMENTS***

- A copy of the LEED point checklist indicating which points the owner and design team has selected as yes, possible and no.
- Printout of EPA Target Finder Data Sheet
- Evidence of the most recent parametric modeling of energy consumption.
- Most recent Monthly Energy Consumption by Fuel by End use from Energy Model.
- Most recent Annual Energy Consumption by Fuel by End use from Energy Model.
- Monthly Peak Demand by Fuel by End use from Energy Model.
- Annual Peak Demand by Fuel by End use from Energy Model.
- A narrative summary explaining how the additional project funding (3%) will contribute to the Energy Credits.
- A copy of the USGBC Design Review Comments.

### ***COVER SHEET(S)***

- Name, address of Commission, Construction Manager, Architect, Interior Designer, etc.
- Vicinity map.
- Legal description of property.
- Final Building Code type, occupancy information and zoning information.
- Gross and net area calculations of all departments and floors.
- Abbreviation and symbol glossary.
- Index to all drawings.

### ***LANDSCAPE ARCHITECTURAL – CIVIL ENGINEERING***

- A certified plot plan, (sealed by an Ohio licensed Land Surveyor).
- Existing Site Conditions Plan – Show existing topography, above and below ground utilities including fuel storage tanks, vehicular roadways, pedestrian paths, service and loading areas, athletic fields and other site improvements, landmark trees, zoning classification, minimum code required parking space quantity and setbacks, easements, right-of-way limits, and Bill Moose Run conservation area limits. Include existing electrical, gas, sewer, water, storm drainage, telephone and TV cable utilities.
- Site Coordination – Protection Plan including temporary requirements to protect existing trees to remain, fencing or barriers to protect: natural areas, pavements, play or athletic areas.
- Include site demolition and replacement-repair requirements as applicable.
- Proposed Site Plan with buildings and site development information including: buildings; terraces; COTA bus stop; heavy & light duty pavements; service/loading/waste removal area pavements; pedestrian walkways; stairs; ramps; grading scheme with proposed finished floor elevations, contours, storm water storage areas, storm sewer piping and drainage structures, retaining and screening walls; landmark trees to remain undisturbed; emergency vehicles access corridors; vehicular parking areas designated by users; athletic fields, perimeter fencing, spectator seating,

scoreboards, lighting and associated out-buildings; accessible play equipment; landscape plantings; site lighting; signage (site way-finding, building identification and traffic); bus/service maintenance building including fueling area; site entry security checkpoint; outdoor education and therapy areas; oil interceptors; acid neutralization tanks; utility vaults.

- Site Plan with proposed improvements in public right-of-ways including roadway pavements; curbs; sidewalks; bikeways; pavement markings; traffic signage and automated signals, detectors, controls; relocated, replaced or newly installed utilities; bus shelter; and utility connection points or taps.
- Details, large scale plans, sections, and in-ground utility profiles.
- All documents regarding City of Columbus right-of-way improvements or utilities to be prepared per City of Columbus guidelines including "CC" (sewers), "Drawer E," or other formats required for plan review, plan approvals, or final acceptance.
- Utility designs shall show plan, profile and all fittings and details required by code and local government standards for all the materials being permitted in the specifications.
- Local Government utility standard included in all utility details.
- An overall site plan showing plantings, irrigation and drainage system, site lighting and all site development features.
- Planting schedule.
- Seeding and sodding schedule.
- Final documents for NPDES submission including plans, details and profile diagrams including sediment control
- Plans and details of bio-swales, rain-gardens, constructed wetlands, etc.
- Existing and proposed electrical, gas, sewer, water, storm drainage, telephone and TV cable utilities shall be identified. Reference design information, by others, elsewhere in drawings.
- Utility designs shall show plan, profile and all fittings and details required by code and local government standards for all the materials being permitted in the specifications.
- Zoning Information such as mandated front yard, side yards and rear yard setbacks.
- Details and sections of all site development features, sidewalks, curbs, paving stones, bollards, ramps, exterior stairs, lawn areas showing seeding methods, etc.

## **ARCHITECTURAL**

- A basic floor plan of the entire facility showing minimal detail with a grid or column reference system showing overall building layout dimensions, core spaces, floor opening penetrations, etc. Fire ratings of all partitions, fire doors, etc. should be clearly denoted.
- A dimensioned floor plan locating all interior partitions and exterior wall partitions from the grid or column reference system. Floor plan should include room and workstation designations, interior and exterior door and window designations.
- A dimensioned floor plan showing wire management system with openings located for voice, data, video, and electrical outlet locations.

- Room wall elevations for all non-typical walls.
- Casework floor plan complete with schedule, details and elevations.
- Interior and exterior window, door and frame schedule complete with elevations and details for all head, jamb and sill conditions.
- Interior and exterior finish and color schedule (exposed finished mechanical and electrical items shall be clearly addressed).
- A reflected ceiling plan showing all grid, access doors, drapery tracks, light fixtures, day lighting elements, grills, diffusers, sprinkler heads, security devices, fire alarm devices, data projectors, intercom system, exit devices and acoustic treatment. Ceiling heights and type should be indicated on the reflected ceiling plan.
- Details shall be provided for transitions between finish materials and wall types.
- Major building sections in at least two directions.
- A sufficient number of details shall be provided to clearly indicate the method of construction for all building components and shall include but not be limited to the following; exterior wall, waterproofing systems, interface between exterior walls and roof structure, sectional ridge details, insulating systems, interior and exterior finishes, architectural details, interior stairs, elevators.
- Interior signage locations shall be shown on the floor plan complete with details and schedules.
- Final locations shall be shown on the floor plan with associated floor loadings being shown on the structural drawings.
- Partition type schedule and section details for all interior, exterior and floor wall conditions.
- Roof plan showing all roofing material, roof drains, overflows, access hatches, roof drainage slopes and elevations, solar-thermal systems, snow guards, scuppers, skylights, mechanical and plumbing penetrations. Details shall be provided for all edge, parapet and flashing conditions.
- All exterior building elevations showing finish materials, exterior door and window openings and designations, lights, louvers, grilles, sign age, speakers and other devices.
- All structural members included in, or enclosed by the architectural details shall be closely coordinated with and the size verified by the structural engineer. Details shall indicate the framing and furring method wherever appropriate.
- All mechanical/electrical elements included in, or enclosed by the architectural details shall be closely coordinated with and the size verified by the design engineer. Details shall indicate the framing and furring method wherever appropriate.
- Complete Technical Specification including acceptable manufacturers.

## **STRUCTURAL**

- A dimensioned foundation plan showing and locating in plan and in elevation all footing, foundations, foundation piers, caissons, grade beams, reinforcement with all layouts for masonry and anchor bolts.
- A dimensioned floor plan for each floor, showing all beams, beam sizes, duct and piping penetrations, construction joints, expansion joints, edge conditions, imbedded anchors and frames thickened slabs, recessed slabs stair penetrations, elevator shafts, floor loading, top of structure elevation and reinforcement.
- Footing, column, grade beam, caissons, piers, reinforcement and beam schedules.

- Dimensioned to scale details showing all conditions, connections and structural sizes.
- Shear walls clearly shown on plan and schedule if symbol code is used.
- Abbreviation and symbol glossary.
- Fastener/connection schedule.
- Elevations of all footings, elevations to top of all beams, columns, recesses and floors.
- Roof beam plan, elevator hoist beams.
- Complete Technical Specification including acceptable manufacturers.

## **MECHANICAL**

- Abbreviation and symbol glossary.
- Mechanical equipment schedule.
- Exterior louver schedule, as coordinated with architectural louvers.
- Floor plans indicating ductwork with sizes, ductwork mechanical devices, beams for floor above with ductwork penetrations.
- Reflected ceiling plan showing final location of all ceiling mounted mechanical devices which include but is not limited to; diffusers, return air grilles and thermostats.
- Floor plan indicating the sprinkler and standpipe riser systems including all required pumps and control devices.
- Fire damper schedule and individually shown on the floor plan at each required location.
- Ductwork sound attenuation schedule.
- Vibration isolation schedule.
- Terminal control box schedule, with electrical and air volume requirements.
- Chilled water, condenser, refrigerant, fuel oil, steam and gas riser piping floor plans and riser diagrams and schematics including pipe sizes. Piping schematics shall be in large enough scale to clearly indicate all control devices, valves, unions and miscellaneous appurtenances.
- Areas of concentrated mechanical equipment shall be enlarged from the basic floor plan to not less than 1/4" = 1'-0" illustrating detailed ductwork and equipment within the mechanical room in both plan and section views; coil access and filter access are to be shown to scale as verification of clearance.
- Access doors both wall and ceiling, shall be called out at each applicable location as coordinated with the architectural drawings (rated where applicable).
- Floor plans should indicate housekeeping pads and weight of concentrated loads.
- Duct/piping penetrations of all walls, floors, roofs, beams, columns and foundations shall be coordinated with and verified by the structural engineer, code complying firestopping will be detailed for penetrations through fire rated assemblies.
- Locate on the floor plans all controls system equipment and provide a panel and device schedule, indicator panel graphics complete with sequence of operation and control system program diagram.
- Complete Technical Specification including acceptable manufacturers.
- Special accommodations sensitive to needs of deaf or hearing-impaired occupants who utilize cochlear implant.

## ***PLUMBING***

- Fixture/connection schedule.
- Abbreviation/symbol glossary
- Floor plans indicating domestic hot and cold water, storm, waste, vent and gas piping plans, including all valves, unions, fixtures, pipe sizes, and riser diagrams etc.
- Piping and insulation jacket dimensions are to be coordinated with architectural finishes and casework; all exposed piping is to be verified with the architect.
- Plan drawing of all water and sanitary branch piping for installation of interior equipment and fixtures.
- Typical piping riser schematics for all gravity flow piping systems.
- Areas of concentrated plumbing equipment (hot water heaters, circulating pumps, etc.) shall be enlarged from the basic floor plan to not less than 1/4" = 1'-0" detail in both plan and section views.
- Access panels, doors and provisions in both walls and ceilings are to be shown on floor plans for all valves, cleanouts and caps, etc.
- Connections to existing and new building utilities shall be clearly shown; requirements of governing utilities shall be determined and clearly detailed and shown; connection details and elevations shall be checked and coordinated with applicable civil
- Design details
- Piping penetrations of all walls, floors, roofs, beams, columns and foundations shall be coordinated with and verified by the structural engineer; code complying firestopping will be detailed for penetrations through fire rated assemblies.
- Complete Technical Specification including acceptable manufacturers.

## ***ELECTRICAL***

- Lighting fixture schedule
- Lighting control schedule, switches, emergency lighting.
- Power riser diagram for interior lighting systems.
- Abbreviations and symbol glossary.
- Panel schedules with panel locations shown on floor.
- Fan/motor control schedule/diagram.
- Floor plan showing location of all fire alarm device/panel schedule and indicator graphics and riser diagram including activated hardware, pull stations, confirm activated hardware with hardware schedule.
- Floor plan showing location of all intercom devices, panel schedule and location, program, riser diagram.
- Floor plan showing location of all security devices, panel schedule and locations and riser diagram.
- Floor plan showing location of all intercom and TV. outlets and devices.
- Power riser diagram and main distribution panel layout in large enough scale so each run can be clearly seen.

- Telephone board schedule and riser diagram coordinated as to equipment size requirements and connection provisions with the governing telephone utility and owner requirements.
- TV. terminal/splitter and riser diagram coordinated as to equipment size requirements and connection provisions to antenna and cable TV. system.
- Floor plan indicating wire management wiring for power, receptacles, voice, video and data communications including circuiting, and connections to systems furniture, etc.
- Separate plans for power, voice and data shall be provided.
- Floor plan indicating power connections to all mechanical equipment.
- Reflected ceiling plan indicating above ceiling wiring and circuits for lighting/electrical switches, security, fire alarm, emergency exit lighting and intercom controls, etc.
- Main service entrance connection diagram as verified and coordinated with the governing power utility; locations of service entrances and transformers shall be verified with the architect.
- Areas of concentrated electrical equipment, and electric vault rooms in particular, shall be enlarged from the basic floor plan to not less than 1/4" = 1'-0" and shall be shown in plan and elevation.
- Sheet notes shall be applicable to each sheet standard notes and details shall be modified to specific conditions, non-applicable notes or details shall be deleted.
- Access to systems shall be verified, doors, panels or other provision shall be called out in all wall and ceiling locations for junction boxes, controls or any other device requiring access.
- Raceway penetrations of all walls, floors, roofs, beams, columns and foundations shall be coordinated with and verified by the structural engineer. Code complying fire-stopping will be detailed for penetrations through fire rated assemblies.
- Complete Technical Specification including acceptable manufacturers.
- Special appliances for communicating need for emergency building egress, school "lock-down" situation, or other special notification requirements for deaf and blind occupants.
- Special accommodations sensitive to needs of deaf or hearing-impaired occupants who utilize cochlear implant.

## **Appendix B**

### **TECHNOLOGY PHASED SUBMISSION CHECK LIST FOR COMMENTS**

#### ***Elements of Schematic Documents***

[See Interim Agreement No. 1]

#### ***Elements of Design Development Documents***

##### **Technology**

- Preliminary list of all T drawings as per OSFC specifications
- Technology consultant must coordinate with all other trades in order to ensure proper pathway sizes and locations
- Preliminary floor plans indicating the locations of all technology outlets throughout the building, including, but not limited to: data, voice, video, sound, paging, security, speakers, access control, and wireless.
- Preliminary connectivity codes for each type of communication outlet to be installed.
- Riser diagrams of all technology systems.
- Outline specifications including acceptable manufacturers.
- Preliminary engineering of any outside plant work to be performed
- Preliminary schematics of all technology systems showing connectivity schemes.
- Floor plans showing all technology pathways, including cable trays in hallways, and conduits in walls.
- Floor plans indicating the locations of all technology devices throughout the building, including, but not limited: rack/cabinet layouts, wall-fields, layer-2 and layer-3 network switches, routers, transceivers, PBX, servers, security system, media retrieval equipment, ATM switches, monitors, DVD players, patch panels, cross-connects, etc.
- CM's estimate.

#### ***Elements of Construction Documents***

##### **Technology**

- Complete list of T drawings as per OSFC specifications.
- Detailed CM's estimate.
- Detailed floor plans indicating the locations of all technology outlets throughout the building, including, but not limited to: data, voice, video, sound, paging, security, speakers, access control, and wireless.
- Detailed connectivity codes for each type of communication outlet to be installed.
- Detailed riser diagrams of all technology systems.
- Detailed specifications including acceptable manufacturers.
- Detailed engineering of any outside plant and inter-building work to be performed
- Detailed schematics of all technology showing the integration of all Technology systems. Schematics should include: component type, connecting cable type, transmission speed, circuit type, inter-/intra building connections, uplink connections, etc.
- Schematics shall show physical/logical connection between all integrated technology systems.

- Detailed floor plans indicating the locations of all technology devices throughout the building, including, but not limited: rack/cabinet layouts, wall-fields, layer-2 and layer-3 network switches, routers, transceivers, PBX, servers, security system, media retrieval equipment, ATM switches, monitors, DVD players, patch panels, cross-connects, etc.
- System Training Requirements
- Areas of concentrated technology equipment and telecommunication rooms, in particular, shall be enlarged from basic floor plan to not less than  $\frac{1}{4}'' = 1'-0''$ .
- Sheet notes shall be applicable to each sheet standard notes and details shall be modified to specific conditions, non-applicable notes or details shall be deleted.
- Provide scalable rack and wallfield details that indicate equipment locations and wire management

**Appendix C**

(See Chart on following page)

Task	P = Primary Responsibility			S = Support		
	Commission	Architect/ME	Commissioning Agent	Contractor	CM	UE
Assign LEED Accredited Professional		P	S		P	
Attend an Eco-Charette	P	P	P		P	
Designate a LEED point person	P	P			P	
Register the project with USGBC		P				
Apply the ANS/MTS 1.0 WSIP	S	P	S		S	
Conduct an Integrated Design Charrette	S	P	S		S	
Perform parametric analysis		P			S	
Summarize target credits	S	P			S	
Identify the design team members	S	P			S	
Confirm at each design phase (LEED points)	S	P			S	
Obtain the review and comments - Commissioning Agent		P	S		S	
Prepare the documentation - submit to USGBC	S	P			S	
Respond to the USGBC design review comments	S	P			S	
Research and submit Credit Interpretation Rulings		P				
Identify Project as LEED in Div. 1		P			S	
Specify the contractors' responsibilities regarding LEED		P			P	
Attend a construction Kick-off meeting		S	S	P	P	
Attend construction phase process meetings to review		P	S	P	P	
Manage and coordinate the LEED online management system	S	P			P	
Review comments for LEED credits given		P				
Conduct Pre bid conference with LEED		S			P	
Develop a management plan (Construction Phase)		S			P	
Obtain proper documentation from the contractors				P	P	
Maintain the LEED calculator (Construction Phase)					P	
Provide the Architect the LEED Construction Review Submittal					P	
Respond to the Architect					P	
Provide post occupancy monitoring & Documentation		S	P			S

## **Appendix D**

### **Agreement Qualifications**

1. Agreement shall include (maintain) the services of: **Winter + Company** represented by John C. Dickinson, AIA.
2. Agreement shall include (maintain) the services of: **Envision-Works, Inc.**, at both campuses, through all phases of services including Contract Administration and Close-out Phases for Site-Related matters including: Academic, Residential, Bridge Connector (w/pedestrian pathway), OSSB Sensory Garden (salvage existing & new with fountain), OSSB Rose Garden (salvage existing & new), OSSB Amphitheater, OSSB "Mobility Street", OSD Memorial Garden (salvage & new), OSD Decorative Fountain, Wetlands, Rain Gardens, and Site Signage/Graphics.
3. Agreement shall include (maintain) the services of: **Kleingers & Associates Engineers and Surveyors**. Services shall include attendance at public hearings and acquisition of local, state, federal government agency permits regarding proposed bridge connector. Consultant will attend the normal regulatory process meetings, including those required for public hearings and permitting. [If the process becomes protracted as a legal matter and additional meeting are required, Architect may request that extenuating services constitute an additional fee.]
4. Agreement shall include (maintains) the services of: **Berardi + Partners, Inc.** for the residential scope of this project.
5. Agreement shall include (maintain) the services of: **Dynamix Engineering Ltd.** through all phases of services including Contract Administration and Close-out Phases. Dynamix Engineering Ltd. shall designate one professional licensed engineer to serve as the senior project manager-liaison to oversee mechanical, electrical, plumbing, fire protection, and technology services for all project phases, throughout duration of the entire project.
6. **SHP Leading Design** (lead design professional) shall provide and maintain a licensed architect to oversee Contract Administration and Close-out Phases. The designated professional contract administrator shall remain assigned to project until completion of entire project.
7. Agreement shall include services of **American Sign Language ("ASL") Interpreter(s)** for meetings attended by deaf persons, including meetings attended by John C. Dickinson (unless, on meeting-by-meeting basis, OSD agrees to provide.)
8. Agreement shall include services for design of pedestrian pathway in vicinity of Indianola Avenue as requested by City of Columbus, Public Service Department, Transportation Division officials (discussed at meeting of November 20, 2007.)
9. Agreement shall include production of survey and civil engineering documents necessary for abandonment of existing easements and establishment of new easements regarding the OSD roadway servicing the existing City of Columbus water towers compound and any temporary easements required by governing agencies or utility companies during construction phase. [Agreement does not include services customarily provided by legal counsel.]
10. Agreement shall include initial site planning (only) recommendations for: (1) future Performing Arts Center - Outreach Center, and, (2) future Vision & Vocational Services Center. OSFC and schools will provide SHP with the anticipated scope to be included in these recommendations.

OSD & OSSB—12/08 (03/09)

***Appendix E***

*(see spreadsheet attachment – ledger size)*

***Appendix F***

*(see spreadsheet attachment – ledger size)*

**Appendix E - Services and Fees Overview**

Ohio School for the Deaf  
Ohio State School for the Blind  
O&B 03/02/2008

1 Source of Project Funds

Item	Fund Key	Dollar Amount
Am. Sub. H.B. 680 - OSFC Project		4,000,000
OSD/OSSB Funds to Be Redirected to OSFC Project		2,900,000
HB 562 (FY 09-10 Capital B4) - OSFC Project		37,080,000
	<b>A</b>	<b>43,980,000</b>
HB 562 (FY 09-10 Capital B4) - OSD		637,000
HB 562 (FY 09-10 Capital B4) - OSSB		574,500
	<b>B</b>	<b>1,211,500</b>
Miscellaneous OSD & OSSB Maintenance Funds (A/E Services, Only - Not include Construction)	<b>C</b>	<b>84,750</b>
<b>Total</b>		<b>45,286,250</b>

2 Design Professional Services

A-Funds (Basic Services)	Area SF	Unit Cost	Total Cost	HC %	85% Hard Costs	15% Soft Costs	A/E FEE %	A/E FEE
OSD Academic (new)	83,070	248.04	15,043,590	0.85	13,297,052	2,340,539	0.0725	964,038
OSD Residential (new)	21,105	207.55	4,380,261	0.85	3,723,222	657,039	0.065	242,009
OSSB Academic (new)	64,591	262.38	16,947,656	0.85	14,405,508	2,542,148	0.0725	1,044,399
OSSB Residential (new)	21,313	228.09	4,861,193	0.85	4,132,014	729,179	0.065	268,561
<b>Sub Total</b>	<b>170,079</b>				<b>35,557,795</b>		<b>0.071</b>	<b>2,519,026</b>
OSD Demolition, Non-Optional	25,740	5.03	129,284	0.85	109,811	23,287	0.050	6,588
OSSB Demolition, Non-Optional	32,293	5.03	162,444	0.85	138,117	29,205	0.050	8,276
OSD & OSSB Selective Demo, Exstg Bldgs. Tie-In	N/A	N/A	301,325	0.85	256,126	45,199	0.070	17,929
OSD & OSSB Easement Connector (Bridges)	N/A	N/A	1,000,000	0.85	850,000	150,000	0.120	102,000
OSD Gardens (Main Entry w/Fountain & Memorial Garden)	N/A	N/A	248,000	0.85	210,800	37,200	0.150	31,620
OSSB Gardens (Main Entry & Senory Garden w/Fountain)	N/A	N/A	248,000	0.85	210,800	37,200	0.150	31,620
<b>Total Available A-Funds vs. Budget "Dollar"</b>			<b>43,860,000</b>		<b>37,383,000</b>			<b>2,717,069</b>

Total 1, 2 & 3 Arch Agreements

Soft Cost Balance	CM FEE % Bud	CM FEE Budgeted	Soft Cost Balance
1,382,502	0.06	797,623	584,679
415,030	0.08	222,293	191,620
1,497,749	0.06	864,330	633,419
460,598	0.06	247,921	212,677
	<b>0.06</b>	<b>2,133,468</b>	
16,689	0.06	7,918	8,772
20,933	0.06	9,021	11,002
27,270	0.06	19,269	11,902
48,000	0.06	51,000	(3,000)
5,580	0.06	12,640	(7,068)
5,580	0.06	12,640	(7,068)
		<b>2,242,860</b>	<b>1,636,951</b>

Hard Costs Conting %	Hard Costs Contingency	Hard "Design Target"
0.05	664,853	12,632,199
0.05	188,161	3,537,061
0.05	770,275	13,685,232
0.05	206,601	3,925,413
		<b>33,779,905</b>
0.05	6,598	125,363
0.05	8,276	157,242
0.05	12,806	243,320
0.05	42,500	807,500
0.05	10,540	200,260
0.05	10,540	200,260
	<b>1,869,160</b>	<b>35,513,850</b>

Total 1, 2 & 3 Arch Agreements

B-Funds (Additional Services)	Area SF	Unit Cost	Total Cost	HC %	85% Hard Costs	15% Soft Costs	A/E FEE %	A/E FEE
OSD Existing Facilities Improvements	N/A	N/A	637,000	0.85	541,450	95,550	0.075	49,609
OSSB Existing Facilities Improvements	N/A	N/A	574,800	0.85	488,325	86,475	0.075	38,624
<b>Total Available B-Funds vs. Budget "Dollar"</b>			<b>1,211,800</b>		<b>1,029,775</b>			<b>77,233</b>

Soft Cost Balance	CM FEE % Bud	CM FEE Budgeted	Soft Cost Balance
54,941	0.06	32,407	22,454
49,551	0.06	29,300	20,251
		<b>61,707</b>	<b>42,705</b>

Hard Costs Conting %	Hard Costs Contingency	Hard "Design Target"
0.07	37,902	503,549
0.07	34,183	454,142
	<b>72,084</b>	<b>957,691</b>

**Appendix E - Services and Fees Overview (cont.)**

Ohio School for the Deaf  
Ohio State School for the Blind  
D&B 03/02/2009

5-Nov-08  
RPO

Total 1,2 & 3 Arch  
Agreements

C-Funds (Additional Services)	Area SF	Unit Cost	Total Cost	HC %	85% Hard Costs	15% Soft Costs	AE FEE %	A/E FEE
OSD & OSSB Assessment of Exstg. Bldgs.	148,100	0.10	N/A	N/A	N/A	N/A	N/A	14,810
OSD Field Measuring & OSSB Field Confirmation of Exsting Buildings	148,100	Lump	N/A	N/A	N/A	N/A	N/A	25,300
Schematic Design of OSD & OSSB Exsting Buildings	48,800	Lump	N/A	N/A	N/A	N/A	N/A	49,640
<small>(Approximation 48,800 sq ft X 0.85 Hard Costs = 41,548 X 0.25 SO Phase = 12,292 } 53,840                      67.00 per sq ft = 3,265,260 X = 0.75 AE Fee = 192,875</small>								
OSD & OSSB Exsting Furnishings Documentation		Lump						6,000
<b>Total Available C Funds vs. Budget "Data"</b>								<b>94,750</b>

Soft Cost Balance	CM FEE % Bud	CM FEE Budgeted	Soft Cost Balance
XXX	N/A	N/A	N/A
XXX	N/A	N/A	N/A
XXX	0.06	N/A	N/A
		N/A	N/A

Hard Costs Conting %	Hard Costs Contingency	Hard "Design Tolera"
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A
		N/A

**3 Soft Costs (Exclude AE and CM Fees for Base Services)**

A-Funds (Additional Services)	Typical Recommended OSFC % of Saw/Building Costs (0 Higher of New or Renov.)	Department	This Project AE Interim No. 1 Agrmt.	This Project CM Interim No. 1 Agrmt.	Current Overall Project Budget	AE Add'l Serv. FEE
Total 1,2 & 3 Arch Agreements: <b>1,538,951</b>						
Land Survey - Initial Services vs. Architect			53,438		75,000	AE 75,000
Land Survey - Final Design Services vs. Architect					8,500	AE 8,500
Surveys Total	0.0000	29,206			83,500	
Soil Borings - Pre-Design/Planning Phase			5,500		10,000	AE 10,000
Environmental Report			2,200		2,200	AE 2,200
Soil Borings - Design/Building Foundations	0.0010	37,383			20,000	AE 20,000
					37,200	
Soil Borings - Bridge Design Geotechnical Services	N/A	N/A			10,000	AE 10,000
Geothermal Borings	N/A	N/A			25,000	AE 25,000
Architect Additional CA Services (N/A Minimum / Week)	N/A	N/A			62,000	AE 62,000
Agency Approval Fees	0.0030	112,140			110,000	AE 110,000
Construction Testing	0.0050	108,816			110,000	
Printing-Bid Documents	0.0029	108,411			80,000	
Advertising for Bids	0.0003	11,215			12,000	
Bidders Risk Insurance	0.0027	82,243			82,243	
Commissioning (Including LEED)	0.0043	142,343			110,000	
Maintenance Plan Advisor	0.0011	30,114			17,000	
Non-Construction Contingency	0.0172	642,888		XXX	607,901	CM
					(w/above N CC)	
Asbestos Abatement - Consultant & Monitoring Fees	N/A	N/A			14,400	
Asbestos Abatement - Contractor	N/A	N/A			50,000	
Traffic Study No. 1	N/A	N/A	7,700		7,700	AE 7,700
Traffic Study No. 2	N/A	N/A			25,000	AE 25,000
Infrastructure Coordination (Tap Fees)	N/A	N/A			200,000	
OSD & OSSB Easement Connector (Bridge) Misc. Walkway Pedestrian & Improvements					60,000	
New Easement Maps & Boundry Survey Plat Diagrams						
<b>Total</b>		<b>1,229,666</b>	<b>68,838</b>		<b>1,538,952</b>	<b>355,400</b>

Available A Funds vs. Budget "Data"

Architect Maximum Fee, Agreements Nos. 1, 2, & 3 =  
Interim No. 1 Agreement  
Interim No. 2 Agreement  
Interim No. 3 Agreement

3,244,452 100  
612,038 0.19  
400,000 0.12  
2,232,414 0.68 Percentage

**Appendix F**

Ohio School for the Deaf  
Ohio State School for the Blind  
Architect Compensation Summary (Agreements 1,2 +3)  
DBB 03-02-09

Agreement	Amount		Total	Subcons <sup>1</sup>	Architect	Item
Interim No. 1	543,200	Basic Fee 5.2.1	53,438	48,560	4,858	Land Survey (total Services, Overall Compuses)
			5,500	5,000	500	Soil Borings (Pre-Design & Planning Phase)
			2,200	2,000	200	Environmental Report (Phase I Effluent Assessment)
			7,700	7,000	700	Traffic Study No. 1
			68,838	62,560	6,258	
		Additional Services 5.3.1	68,838	62,560	6,258	
Subtotal	612,038					
Interim No. 2	400,000	Basic Fee 5.2.1				
		0	0	0	(N/A)	
Subtotal	400,000					
No. 3 (Final)	1,773,869	Basic Fee 5.2.1	40,609	(N/A)	40,609	OSD Existing Facilities Improvements
			36,624	(N/A)	36,624	OSSB Existing Facilities Improvements
			14,810	(N/A)	14,810	OSD & OSSD Assessment of Exstg. Bldgs.
			25,300	(N/A)	25,300	OSD Field Measuring and OSSB Field Confirmation of Existing Buildings
			49,640		49,640	Schematic Design of OSD & OSSB Exstg. Bldgs.
			5,000		5,000	OSD & OSSB Exstg. Furnishings Documentation
			21,562	19,602	1,960	Land Survey (Overall Compuses, addback)
			8,500	7,727	773	Land Survey (Bridge Design)
			4,500	4,091	409	Soil Borings (Pre-Design & Planning Phase)
			20,000	18,182	1,818	Soil Borings (Design Bldgs. / Fines)
			10,000	9,091	909	Soil Borings (Bridge Design Geotechnical Services)
			25,000	22,727	2,273	Geotechnical Borings
			62,000	(N/A)	62,000	Additional CA Services
			110,000	110,000	(N/A)	Agency Approval Fees
			25,000	22,727	2,273	Traffic Study No. 2
			458,545	458,545	214,147	244,398
			Subtotal	2,232,414		
Total	3,244,452	2,717,009 (total fees interim 1,2+3 agreements)	527,383 (total additional services interim 1,2+3 agreements)	3,244,452		

**Appendix F (cont.)**

Ohio School for the Deaf  
Ohio State School for the Blind  
Architect Compensation Summary (Agreements 1,2 &3)  
0&B 03-02-09

**BASIC FEES**

Phase:	Interim Agreement No.	Processed		If Typical % 3	Revised to Cumulative Total Acknowledging 1 & 2 Figures 3 Adjusted	'Check' Sum after Arbitration	Corrected Sum of All 3 0 Typical % Formula	Deficit Adjustment Per Interim Agreement Sum 1,2 &3	Correction Update for DELTA
		1	2						
Pre-design	0.05	543,200	400,000	1,773,869	1,773,869	135,853	135,853	116,853	20,000
Schematic	0.20	100,640		80,093	434,774	543,414	543,414	463,414	80,000
Design Development	0.20	100,640	400,000	354,774	34,774	543,414	543,414	863,414	(320,000)
Construction Documents	0.25	135,800		443,487	543,487	678,267	678,267	578,267	100,000
Bid Phase	0.05	27,100		66,093	100,000	135,853	135,853	116,853	20,000
Construction	0.20	100,040		354,774	434,774	543,414	543,414	463,414	80,000
Close-out	0.05	27,100		66,093	100,000	135,853	135,853	116,853	20,000
<b>TOTAL</b>	<b>1.00</b>	<b>543,200</b>	<b>400,000</b>	<b>1,773,869</b>	<b>1,773,869</b>	<b>2,717,069</b>	<b>2,717,069</b>	<b>2,717,069</b>	<b>(NET '0')</b>

# EXHIBIT B

OHIO SCHOOL  
FACILITIES COMMISSION  
FINAL AGREEMENT  
FOR  
CONSTRUCTION MANAGEMENT SERVICES  
JAN - 4 PM 1:30

This Interim Agreement for Construction Management Services (this "Agreement"), is made as of November 18, 2009, by and between the State of Ohio through the *Ohio School Facilities Commission* (the "Commission"); whose contact person and address is set forth below, and *Bovis Lend Lease, Inc.* (the "Construction Manager"), whose contact person and address is set forth below.

The Commission, under the terms and conditions set forth herein, does employ the Construction Manager to provide management services with respect to the School and Residential Facilities for the Ohio State School for the Blind and Ohio School for the Deaf Project (the "Project").

The Construction Manager acknowledges that professional design services will be provided by *Steed Hammond Paul Inc.* (the "Architect"), whose contact person and address is set forth below:

**Project Name:** School and Residential Facilities for the Ohio State School for the Blind and Ohio School for the Deaf

**The Ohio School Facilities Commission:**

**Contact Person:** *Rob Grinch*  
**Address:** *10 W. Broad Street, 14<sup>th</sup> Floor*  
*Columbus, Ohio 43215*  
**Phone Number(s):** *(614) 466-6290*  
**Fax Number(s):** *(614) 995-9908*

**Construction Manager:**  
**Contact Person:** *Bovis Lend Lease, Inc.*  
**Address:** *111 West Rich Street, Suite 280*  
*Columbus, Ohio 43215*  
**Phone Number(s):** *614-621-4148*  
**Fax Number(s):** *614-621-4148*

**Architect:**  
**Contact Person:** *Andrew Maletz*  
**Address:** *1014 Vine Street, Suite 2100*  
*Cincinnati, Ohio 45202*  
**Phone Number(s):** *513-381-2112*  
**Fax Number(s):** *513-381-1521*



WHEREAS, the Ohio General Assembly has appropriated funds in Am. Sub. H.B. No 699 for the planning and design phase of the Project; and

WHEREAS, the Commission is administering the Project and desires to consult with designated representatives of the Ohio State School for the Blind and the Ohio School for the Deaf in accordance with a Memorandum of Understanding between them; and

WHEREAS, the Construction Manager desires, and is capable, to provide construction management services for the Project, including without limitation, services required to plan, schedule, coordinate, manage and administer the Project; and

WHEREAS, unless adjusted herein, all Direct Personnel Expenses, Basic Fees and Reimbursable Expenses and any Additional Fees payable to the Construction Manager under this Agreement will not exceed *One Million Nine Hundred Thirty Three Thousand and Thirteen Dollars (\$1,933,013)*. The amount of \$1,933,013 shown for this Agreement is the total amount for work associated with the Final Agreement only and is exclusive of Interim Agreement #1 and Interim Agreement #2.

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

**ARTICLE I**  
**RESPONSIBILITIES OF CONSTRUCTION MANAGER**

1.0 The Construction Manager shall obtain a copy of the Ohio School Design Manual ("Design Manual"). The Construction Manager shall endeavor to ensure that the plans and materials proposed for use in the project comply with the standards established by the Design Manual. The Construction Manager agrees that any variance from the Design Manual will be submitted to the Commission for approval. The Basis of design and construction includes the United States Green Building Council's Leadership in Energy and Environmental Design (LEED) - for Schools Silver Certification with a preferred investment in attaining points in the Energy and Atmosphere category.

1.1 Construction Manager's Services.

1.1.1 Scope of Services; Applicable Law. The Construction Manager shall provide construction management services for the Project in accordance with the terms of this Agreement. The Construction Manager shall provide such services in accordance with the applicable Sections of the Ohio Revised Code and any applicable State rules and regulations, any applicable federal and local statutes, ordinances, rules and regulations, and the Project's Program of Requirements (comprised of, without limitation, the Master Plan, Bracketing Forms, Project Budget and Cost Estimates) as incorporated by reference herein.

- 1.1.2 **Construction Budget.** The total amount available for the construction of the Project is estimated for purposes of this Agreement to be *Thirty Seven Million Three Hundred Eighty Three Thousand Dollars (\$37,383,000)* (the "Construction Budget"). The optional demolition budget is not included in the amount of the Construction Budget. Refer to Section 5.5 Optional Demolition/Abatement Expenses and Fees for the optional demolition budget. The Commission shall provide written notice to the Construction Manager and the Architect of any change in the Construction Budget. It is recognized that the Construction Manager, the Commission, and the Architect do not have control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the Construction Budget or from any estimate of cost or evaluation prepared by or agreed to by the Construction Manager.
- 1.1.3 **Timeliness; Standard of Care.** The Construction Manager shall perform services in accordance with professional standards of skill, care and diligence in a timely manner in accordance with the Project Schedule and so that the Project shall be completed as expeditiously and economically as possible within the Construction Budget and in the best interests of the Commission.
- 1.1.4 **Project Schedule.** Within thirty (30) days of receipt of the Architect's Design Schedule, the Construction Manager shall, in consultation with the Architect, merge the Design Schedule into a Project Schedule. Upon approval of the Project Schedule by the Architect and the Construction Manager, the Construction Manager shall submit the Project Schedule to the Commission for approval. It shall be the Construction Manager's responsibility to monitor, update, coordinate and seek adherence to the Project Schedule. The Project Schedule, when approved by the Commission, shall not be exceeded without notice and adjustment of the Project Schedule approved by the Commission.
- 1.1.5 **Personnel.** The identities of the principal persons, and the extent of their participation in performing the Construction Manager's services as set forth in an attachment to this Agreement, shall not be altered without the consent of the Commission.
- 1.1.6 **Non-Discrimination.** The Construction Manager represents that the Construction Manager is in compliance with all applicable equal employment opportunity requirements under law, as required by Section 153.59 of the Ohio Revised Code and/or any other applicable state or federal laws.
- 1.1.7 **Consultants.** The Construction Manager may provide services through one or more consultants employed by the Construction Manager (the "Consultants"); provided, the Construction Manager shall remain responsible to the Commission for all duties and obligations of the Construction Manager under this Agreement. Unless waived or otherwise modified in writing by the Commission upon written request of the Construction Manager, no Consultant shall be retained upon terms inconsistent with this Agreement. The identity of any Consultant and the extent of such Consultant's participation in performing the Construction Manager's services shall not be altered without the consent of the Commission.

- 1.1.8 **Anti-Abuse of Drugs and Alcohol.** The Construction Manager shall make a good faith effort to ensure that no employee of the Construction Manager will purchase, transfer, use or possess or be under the influence of alcohol or illegal drugs or abuse legally obtained drugs while on or about the Projects. Except for the term "employee," terms in this Subparagraph are used as defined in Rule 123:1-76 of the Ohio Administrative Code.
- 1.1.9 **Ethics.** The Construction Manager represents that it is familiar with all applicable ethics law requirements, including without limitation Sections 102.04 and 3517.13 of the Ohio Revised Code, and certifies that it is in compliance with such requirements.
- 1.1.10 **Ohio Services.** Unless otherwise authorized by the Commission, the Construction Manager's services shall be performed within the State of Ohio.
- 1.1.11 **Limitation of Authority.** The Construction Manager shall not have any authority to bind the Commission for the payment of any costs or expenses without the express written approval of the Commission. The Construction Manager shall have authority to act on behalf of the Commission only to the extent provided herein. In the event of an emergency affecting the safety of persons, the Project or adjacent property, the Construction Manager, without special instruction or authorization, shall act reasonably to prevent or minimize any threatened damage, injury or loss. The Construction Manager's authority to act on behalf of the Commission shall be modified only by an amendment in accordance with Subparagraph 9.5.2.
- 1.1.12 **Approval or Disapproval of Construction Manager's Services.** The Commission shall have the right to reasonably disapprove, by written notice stating the reasons for the disapproval, any portion of the Construction Manager's services for the Project. In the event that any of the Construction Manager's services are disapproved by the Commission, the Construction Manager shall proceed, when directed by the Commission, with corrections to the services to attempt to satisfy the objections. The Construction Manager acknowledges that any review or approval by the Commission of any services performed by the Construction Manager pursuant to this Agreement shall not relieve the Construction Manager of the Construction Manager's responsibility to properly and timely perform such services.
- 1.1.13 **Conflict of Interest.** Unless waived or otherwise modified in writing by the Commission upon written request of the Construction Manager, the Construction Manager and any consultant employed by the Construction Manager shall abstain from participating, either directly or indirectly, in any construction contract let in association with the Commission.
- 1.1.14 **Project Status Report.** Unless waived or otherwise modified in writing by the Commission, the Construction Manager shall, upon commencement of services through Project closeout, submit a project status report on a monthly basis to the Commission.

- 1.1.15 Project Website. The Construction Manager shall, upon commencement of services through Project closeout, maintain and summarize project information and reports as specified by the Commission on the Commission/Construction Manager website.
- 1.1.16 Unresolved Finding for Recovery. The Construction Manager represents that the Construction Manager is not subject to a finding for recovery under Section 9.24, ORC, or that Construction Manager has taken the appropriate remedial steps required under Section 9.24, ORC, or otherwise qualifies under this section.
- 1.1.17 Declaration Regarding Material Assistance/Nonassistance to a Terrorist Organization. For all contracts in excess of \$100,000, the Construction Manager is required to certify that the Construction Manager does not provide material assistance to any organization that is on the United States Department of State Terrorist Exclusion List. The Declaration Regarding Material Assistance/Nonassistant to a Terrorist Organization form to be executed by the Construction Manager is attached to the signature page and labeled Exhibit 1.
- 1.1.18 Ohio's Encouraging Diversity, Growth and Equity (EDGE) Program. Unless waived or otherwise modified in writing by the Commission upon written request of the Construction Manager, the Construction Manager shall comply with the EDGE business enterprise participation goal as indicated on the EDGE Participation Declaration. The Construction Manager shall report the actual amounts paid to EDGE business enterprises on the Construction Managers Invoice. Construction Manager is encouraged to utilize services provided by certified Minority Business Enterprise and EDGE vendors.
- 1.1.19 Drug Free Workplace. The Construction Manager is required to be enrolled and in good standing in an Ohio Bureau of Worker's Compensation (OBWC) Drug-Free Workplace Program (DFWP) or an equivalent OBWC-approved DFWP throughout the entire Project. Any consultant employed by the Construction Manager providing labor at the project site shall be enrolled and in good standing in the DFWP. The Construction Manager and any consultant employed by the Construction Manager that provide labor on the project site shall comply with the random testing requirements set forth in Section 153.03(B)(2)(b-c), Ohio Revised Code including the placement of its employees in a pool with a random drug testing rate of at least 5 percent. The Construction Manager certifies compliance with these requirements by signing this Agreement.

**ARTICLE II**  
**SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES**

**2.1 General.**

- 2.1.1 The Construction Manager shall provide the Basic Services set forth in Paragraphs 2.2 through 2.7, inclusive, including services customary and typical. The Construction Manager shall provide services according to an Implementation Plan approved by the Commission. It is recognized that the Project's Program of Requirements may consist

of multiple Pre-Design, Schematic Design, Design Development, Construction Document, Bidding/Negotiation and Construction Phases.

2.1.2 Construction Manager shall provide services to accommodate the Project's Commissioning Authority and Maintenance Plan Advisor.

## 2.2 Pre-design Phase (Program Validation).

2.2.1 Program of Requirements. The Construction Manager shall visit the Project site(s) with the Architect and review and comment upon the Architect's evaluation of the Project's Program of Requirements, schedule and budget requirements, including the Construction Budget, each in terms of the other.

2.2.2 Approved Program of Requirements and Revisions. The Construction Manager shall receive from the Architect a signed Program of Requirements; the Construction Manager shall deliver with comments the signed Program of Requirements to the Commission for approval. If any changes or adjustments to the Approved Program of Requirements are desired at any time after the Program of Requirements has been delivered to the Commission, the Architect shall prepare a written amendment to the Program of Requirements describing the changes or adjustments, and shall deliver the amendment to the Commission and the Construction Manager for review, comment and consent. The Approved Program of Requirements, as amended, shall determine the Scope of the Project.

2.2.3 Soil Testing. The Construction Manager shall assist the Commission in obtaining proposals to test surface and subsoil conditions at the site, obtaining additional borings, and carrying out any other test as deemed necessary.

## 2.3 Schematic Design Phase (Preliminary Drawings).

2.3.1 Review and Consultation. The Construction Manager shall assist the Architect's investigation of existing conditions.

2.3.2 Recommendations and Costs. The Construction Manager shall provide recommendations on constructability, logistics, availability of materials and labor, and time requirements for construction and factors related to the Commission Design Manual and the cost of the Project including costs of alternative designs or materials, preliminary budgets and possible economies.

2.3.3 Preliminary Life Cycle Analysis. The Construction Manager shall review any alternative design concepts for a Preliminary Life Cycle Analysis prepared or to be prepared by the Architect and provide recommendations thereon about the matters listed in Subparagraph 2.3.2 and forward a copy to the Commission.

2.3.4 Schematic Design Documents. The Construction Manager shall receive eight (8) copies of the Schematic Design Documents from the Architect. The Construction Manager will attend a meeting with the Architect and the Commission where those parties may make comments or suggestions to the Architect. After receiving

comments and suggestions, the Architect shall submit an amended set of Schematic Design Documents to the Construction Manager and obtain its approval in writing, then forward the approved amended set of Schematic Design Documents to the Commission for final review and approval.

**2.3.5 Preliminary Cost Estimate.** The Construction Manager shall, with the assistance of the Architect, prepare and submit a Statement of Probable Construction Cost based on current area volume and other unit costs, for approval of the Commission. The Construction Manager and the Architect shall review any difference between the Construction Budget and the Statement of Probable Construction Cost, identify reasons for any difference and recommend means to eliminate the difference. The Construction Manager shall prepare a report describing the agreed upon means and submit the report to the Commission.

#### **2.4 Design Development Phase (Basic Drawings).**

**2.4.1 Life Cycle Analysis.** The Construction Manager shall review any Life Cycle Cost Analysis, provide recommendations thereon about the matters listed in Subparagraph 2.3.2 and forward a copy to the Commission. This section does not apply if the Architect utilizes a system set forth in the Design Manual. The applicable Life Cycle Analysis calculations have already been prepared for systems contained in the Design Manual.

**2.4.2 Design Development Documents.** The Construction Manager shall receive eight (8) copies of the Design Development Documents from the Architect. The Construction Manager will attend a meeting with the Architect and the Commission where those parties may make comments or suggestions to the Architect. After receiving comments and suggestions, the Architect shall submit an amended set of Design Development Documents to the Commission for approval.

2.4.3 **Cost Estimate and Project Schedule.** Upon completion of the Design Development Phase for each phase of the Project or appropriate portion thereof, the Construction Manager, with the assistance of the Architect, shall prepare and submit a Detailed Estimate of Construction Cost and a Project Schedule indicating milestone completion dates for approval by the Commission. In establishing the Detailed Estimate of Construction Cost, the Construction Manager shall include reasonable contingencies for design, bidding and price escalation and determine in conjunction with the Architect the materials, equipment, component systems and types of construction to be included in the Contract Documents. The Construction Manager and the Architect shall review any difference between the Construction Budget or the Statement of Probable Construction Cost and the Detailed Estimate of Construction Cost, identify reasons for any difference and recommend means to eliminate the difference. The Construction Manager, the Architect, and the Commission shall agree upon the means to eliminate any difference between the Construction Budget and the Detailed Estimate of Construction Cost, and the Construction Manager shall prepare a report describing the agreed upon means. The Construction Manager and the Architect shall review any differences between the initial Project Schedule and the updated Project Schedule, identify reasons for the differences and recommend whether the differences should be eliminated and, means to eliminate the differences. If the parties agree to eliminate any such differences, the Construction Manager shall prepare a report describing the agreed upon means. The Construction Manager and the Architect shall make any necessary amendments to the Approved Program of Requirements in accordance with Subparagraph 2.2.2.

**2.5 Construction Documents Phase (Construction Drawings and Specifications).**

2.5.1 **Final Construction Documents, Drawings and Specifications.** The Construction Manager shall prepare the Scope of Work for inclusion by the Architect in the Drawings and Specifications, taking into consideration factors including, but not limited to, time of performance, availability of labor, overlapping trade jurisdictions, provision of training for start-up and maintenance, provision of operation and maintenance manuals and provisions for temporary facilities, and to eliminate areas of conflict and overlapping in the Work to be performed by the various Contractors. The Construction Manager shall receive all Drawings and Technical Specifications from the Architect, review them and transmit them to the Commission for approval with recommendations thereon about the matters listed in Subparagraph 2.3.2 and possible Alternates.

2.5.2 **Cost Estimate and Project Schedule.** The Construction Manager shall inform the Architect and the Commission of the need for any changes in Project requirements or in construction materials, systems or equipment as the Drawings and Specifications are developed and of the need for any adjustments in the Detailed Estimate of Construction Cost and the Project Schedule. Upon approval of Commission of any such changes or adjustments, the Construction Manager, with the assistance of the Architect, shall prepare a revised Detailed Estimate of Construction Cost or a revised Project Schedule, as applicable, incorporating such changes or adjustments and provide a copy to the Commission.

2.5.3 **Bidding Documents.** With the aid of the Architect and Commissioning Authority, the Construction Manager shall prepare documents necessary for bidding of Contracts by

reviewing those documents and making recommendations about the division of Work and matters to be included in the Special Conditions. The Architect shall review and provide comments to the Construction Manager on bid packages. Additionally, the Construction Manager shall work with the Architect to divide the Work into an appropriate number of bid packages so as to effect the greatest possible benefit, taking into full account the Construction Manager's responsibilities herein to schedule, coordinate and monitor the multiple Contractors.

2.5.4 Government Approvals. The Construction Manager shall cooperate with the Architect in submitting to the Division of Code Compliance of the Ohio Department of Commerce (the "Division"), such sets of the Drawings and Specifications as the Division may require for approval, together with any necessary completed applications. The Construction Manager shall assist the Architect to secure any necessary National Pollution Discharge Elimination System Storm Water General Permit by submitting a notice of intent application form to the Ohio Environmental Protection Agency at least forty-five (45) days prior to the commencement of the Construction Phase, to prepare and certify a storm water pollution prevention plan to provide sediment and erosion controls at the Project and to prepare and process the required notice of termination prior to Contract Completion. In addition, the Construction Manager shall cooperate with the Architect with filing of documents required for the approval of any other governmental authorities having jurisdiction over the Project.

2.5.5 Additional Filings. Upon approval of the Division of the Drawings and Specifications, the Construction Manager shall receive from the Architect one (1) set of corrected copies of the Drawings and Specifications bearing approval stamps of the Division.

2.5.6 Special Items. The Construction Manager shall schedule any necessary meetings with the Architect and the Commission and provide recommendations and information to the Architect and the Commission for discussion at such meetings regarding the assignment of responsibilities for refuse removal and for safety precautions and programs; temporary Project facilities and utilities, weather protection, fire protection and scaffolding; and equipment, materials and services for common use of Contractors, if any. The Construction Manager shall also review the Contract Documents to verify that the requirements for and assignment of responsibilities are included in the Contract Documents.

2.5.7 Labor Recommendations. The Construction Manager shall provide to the Architect an analysis of the types and quantities of labor required for the Project, review the availability of appropriate categories of labor required for all Contracts and shall make recommendations for actions designed to minimize adverse effects of labor shortages.

## 2.6 Bidding or Negotiation Phase (Bidding Assistance and Recommendation).

2.6.1 Obtaining Bids. The Construction Manager shall assist with the development of and make recommendations for bidding criteria, bidding schedules and bidding information and shall develop Bidders' interest in the Project.

- 2.6.2 **Prebid Conferences.** The Construction Manager, with the assistance of the Architect, shall conduct prebid conferences with prospective Bidders to familiarize Bidders with the Contract Documents, any special requirements of the Contract Documents and equal employment opportunity and set aside requirements. The Construction Manager shall obtain responses from the Architect to all questions at prebid conferences and review Addenda prepared by the Architect to incorporate those responses. The Construction Manager shall prepare a record of the questions and answers discussed at the prebid conferences, which shall be used by the Architect to prepare Addenda.
- 2.6.3 **Bid Packages and Addenda.** The Construction Manager shall assemble the Contract Documents into appropriate packages and shall distribute the packages to prospective Bidders and other appropriate persons, including without limitation any applicable local or regional plan room organizations. The Construction Manager shall review any Addenda and provide a copy to each person of record holding Drawings and Specifications.
- 2.6.4 **Bid Review.** The Construction Manager, with the assistance of the Architect and the Commission, shall coordinate the bid opening and the review of all bids received for responsiveness, participate in investigating the responsibility of Bidders and deliver a written recommendation of the Construction Manager and the Architect to the Commission about the award of, or rejection of, any bid or bids for each Contract for the Project in accordance with applicable law. In making the recommendation, the Construction Manager and the Architect shall evaluate all applicable Alternates referenced in the Contract Documents.
- 2.6.5 **Bid Substitutions.** Substitutions contained in the bid of any Bidder shall not be considered by the Construction Manager in recommending the award of any Contract.
- 2.6.6 **Pre-award Conferences.** The Construction Manager, with the assistance of the Architect, shall conduct pre-award conferences with apparently successful Bidders and shall gather documentation for contract execution from such Bidders. Upon the failure of a Bidder to provide such documentation in a timely manner, the Construction Manager shall assist the Commission in considering whether an extension of time for submitting such documentation is appropriate.
- 2.6.7 **Subcontractor and Material Supplier Review.** The Construction Manager, based upon review of the Contract Documents, any past experience and reasonable inquiry, shall participate in investigating any Subcontractor or Material Supplier proposed by any Contractor and recommend approval or disapproval in accordance with the Standard Conditions.
- 2.6.8 **Over Budget Options.** If the Construction Budget is exceeded by the total of the lowest responsive and responsible bids and any legally negotiated prices for the Project, the Commission shall, at its option (1) approve in writing an increase in the Construction Budget; (2) authorize 2.6.8 rebidding or renegotiation for some or all parts of the Project within a reasonable time without an increase in the Construction Budget; (3) abandon the Project, in whole or in part, and terminate this Agreement in accordance with Subparagraph 8.1.2 or Subparagraph 8.1.4, as applicable; or (4) cooperate in the revision of the Scope of the Project as defined in Subparagraph

2.2.2 to reduce the actual cost of construction to the Construction Budget. If the Commission adopts option (1) and such increase in the Construction Budget is more than ten percent (10%), the Construction Manager may request, in writing, an adjustment to the Basic Fee in accordance with Subparagraph 5.6.5. If the Commission adopts options (2), (3) or (4), the Construction Manager, with the assistance of the Architect, shall modify the Approved Program of Requirements, the Project Schedule and the Contract Documents and cooperate in any necessary bidding or negotiation without additional charge.

2.6.9 Further Revisions to Cost Estimate and Project Schedule. If necessary, the Construction Manager shall inform deliver the signed, revised Detailed Estimate of Construction Cost or Project Schedule to the Commission and inform the Architect and the Commission of the need for any adjustments in the Detailed Estimate of Construction Cost and the Project Schedule. Upon approval of the Commission of any such adjustments, the Construction Manager, with the assistance of the Architect, shall prepare a revised Detailed Estimate of Construction Cost or a revised Project Schedule, as applicable, incorporating such adjustments and deliver the signed, revised Detailed Estimate of Construction Cost or Project Schedule to the Commission.

2.6.10 Contract Execution/Notices. The Construction Manager, with the assistance of the Architect, shall prepare and issue Notices of Award and Notices to Proceed, the Construction Contracts, Notices to Surety and the Notice of Commencement.

## 2.7 Construction Phase (Administration of Construction).

2.7.1 Duration; Extent, Access. The Construction Phase will commence with the award of a Contract for the Project to a Contractor and will terminate upon Final Acceptance of the Project by the Commission. The Construction Manager shall at all times have access to the Project whenever any Work is in preparation or in progress.

2.7.2 Duties Generally. The Construction Manager shall provide administration of the Project, scheduling of Work and coordination of the Contractors and any other persons on the site of the Project. Unless otherwise waived in writing by the Commission, the Construction Manager shall maintain a competent staff at the Project in preparation of progress on the Project and shall establish and implement on-site organization and authority so that the Work on the Project may be accomplished timely and efficiently. The Construction Manager shall refer all questions for interpretation of the Contract Documents to the Architect. The Construction Manager's duties shall not, and shall not be deemed to, require the Construction Manager to undertake any of the Contractor's Responsibilities as set forth in Subparagraph 2.7.18.

2.7.3 Investigation of Conditions for Renovation or Remodeling. For renovation and remodeling, the Construction Manager, with the assistance of the Architect, shall, as portions of the Project become accessible and as reasonably necessary, investigate existing conditions and assist in determining the accuracy of information provided by the Commission about existing conditions.

- 2.7.4 **Inspections.** The Construction Manager shall inspect the Work of each Contractor for Defective Work. If, through inspection or otherwise, the Construction Manager shall become aware of any Defective Work on the Project, the Construction Manager shall report all Defective Work to the Commission and the Architect, together with recommendations for the correction thereof, and shall notify any applicable Contractor to correct such Defective Work.
- 2.7.5 **Progress and Records.** The Construction Manager shall record the progress of the Project and provide written reports to the Commission on a monthly basis unless otherwise agreed in writing. Such reports shall include, without limitation, information about variations between actual and budgeted or estimated costs and information on each Contractor's Work, as well as completion status on the entire Project, showing percentages of completion. The Construction Manager shall require each Contractor to submit a safety program. The Construction Manager shall review those safety programs for the purpose of coordinating them with each other. The Construction Manager's responsibilities to coordinate the safety programs shall not require the Construction Manager to control the acts of Contractors, Subcontractors or any other persons not employees of the Construction Manager. The Construction Manager shall keep a log containing a daily record of weather, number of workers on site for each Contractor, identification of equipment, work accomplished, problems encountered and other similar relevant data. The Construction Manager shall provide for the maintenance at the Project site, on a current basis of records of all Contracts, Drawings, Specifications, Shop Drawings, Product Data, Samples, purchase orders, materials, equipment, maintenance and operating manuals and instructions, and other construction-related documents, including all revisions. The Construction Manager shall maintain records of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations to the extent certified by a qualified surveyor or professional engineer and any test results, make all such records available to the Architect, the Contractors, and the Commission at all times and at the completion of the Project deliver all such records to the Commission.
- 2.7.6 **Construction Schedule.** The Construction Manager shall, with the cooperation of the Architect and the Contractors, prepare the Construction Schedule in accordance with the Standard Conditions. The Construction Manager shall provide copies of the Construction Schedule and schedule of submittals to the Architect and the Commission and incorporate the Construction Schedule and schedule of submittals into the Project Schedule so that the Project Schedule includes a Critical Path for the Project and provides for each scope of Work, including without limitation, phasing of construction, times for commencement and completion required of each Contractor and ordering and delivery of materials requiring long lead-time. The Construction Manager shall require each Contractor to provide records for any materials that require long lead-time and to certify to the Construction Manager that such materials have been ordered for timely delivery to the Project. The Construction Manager shall, if requested by the Commission, provide a priority of occupancy in accordance with the Standard Conditions. The Construction Manager shall review the sufficiency of the Contractors' workforce and the number and types of equipment assigned and provided by each Contractor to the Project and shall make recommendations to the Commission about the adequacy of such workforce and equipment. The Construction Manager shall periodically inform the Architect and the Commission of the need to update the Project Schedule as required to show current conditions, including without

limitation, to conform to the Construction Schedule, as updated from time to time. If such conditions indicate that milestone completion dates shown on the Project Schedule may not be met, the Construction Manager shall recommend corrective action to the Architect and the Commission and carry out the directions of the Commission so that the milestone completion dates may be met, unless the Commission agrees in writing to revise the milestone completion dates. Whenever the Project Schedule is revised or updated as provided in this Subparagraph, the Construction Manager, with the assistance of the Architect, shall prepare a revised Project Schedule, and deliver the revised Project Schedule to the Commission.

- 2.7.7 **Meetings.** The Construction Manager shall schedule, conduct and participate in preconstruction, progress, quality control, commissioning and special meetings with the Architect, the Commission appropriate Consultants, the Contractors and any other parties involved in the Project to discuss such matters as procedures, progress, problems and scheduling. The Construction Manager shall prepare and distribute minutes of all such meetings to the Architect, the Commission, the Contractors and any other parties involved. The Construction Manager shall initiate and coordinate partnering meetings with the Architect, the Commission, appropriate Consultants, the Contractors and other parties involved in the Project.
- 2.7.8 **Tests; Inspections.** The Construction Manager shall advise and consult with the Architect and the Commission during the Construction Phase as to the need for any special testing, inspections or approval of Work on the Project.
- 2.7.9 **Submittal Review.** The Construction Manager shall receive, review for completeness and responsiveness the Contractors' submittals such as Shop Drawings, Product Data and Samples and shall deliver them to the Architect for review and approval as provided in the Standard Conditions.
- 2.7.10 **Bulletins; Change Orders.** The Construction Manager shall recommend necessary or desirable changes in the Project to the Commission and the Architect, review any Bulletins prepared by the Architect prior to their issuance, review Contractor proposals and submit recommendations thereon to the Commission and the Architect, assist in negotiating Change Orders in accordance with the Standard Conditions for authorization and execution by the Commission and the Architect. The Construction Manager shall keep a log of all requests for information, Field Work Orders, Bulletins, Contractor Proposals and Change Orders.
- 2.7.11 **Project Costs.** The Construction Manager shall maintain Project cost accounting records on Work performed by Contractors under unit costs, actual costs for labor and materials, or other appropriate basis and afford the Commission access to these records at all times. The Construction Manager shall approve all invoices to be paid from the Project Construction Fund and maintain a log to track and record each approved expenditure. The Construction Manager shall review and reconcile the Construction Manager's log with records maintained by the Commission on a quarterly basis and submit a report to the Commission.
- 2.7.12 **Contractor Payments.** Based upon the Construction Manager's review of the applicable Work and evaluations of the applicable Contractor's Applications for Payment, the Construction Manager shall review and recommend for approval,

modification or rejection the amounts shown on such Applications as being due to the applicable Contractor in accordance with the Contract Documents. Each Application for Payment shall be signed by the Architect, the Construction Manager and the Commission, as applicable.

- 2.7.13 **Partial Occupancy and Maintenance Plan.** The Construction Manager shall assist the Commission in determining dates of Partial Occupancy of the Work or portions thereof designated by the Commission and shall assist in obtaining any necessary temporary occupancy certificate or other certificate from any applicable government authority. The Construction Manager shall review any lists prepared by the Architect of incomplete or unsatisfactory Work and prepare schedules for the completion or correction of such Work. The Construction Manager will initiate the process for developing a preventative maintenance and capital planning program for the completed facilities. The Construction Manager will collect and organize the facility equipment information in accordance with procedures and instructions provided in Appendix B to this Agreement.
- 2.7.14 **Contract Closeout.** Upon receipt of a Contractor's Punch List, the Construction Manager shall provide written notice to the Commission and the Architect that the Work is ready for Final Inspection, notify the Contractor of acceptance or rejection of the request for Final Inspection, conduct the Final Inspection with the concurrence of the Architect, review an Architect's Punch List, if applicable, and prepare and process a Certificate of Contract Completion in accordance with the Standard Conditions. Upon Contract Completion, the Construction Manager shall receive, review for conformity with the requirements of the Contract Documents and transmit to the Commission any affidavits and turn over any keys, manuals and the originals of any guarantees, warranties, releases, bonds and waivers. The Construction Manager shall assist the Commission with the check out of utilities and of operations systems and equipment for readiness and shall assist the Commission in the initial start-up and testing of such equipment and systems including coordinating the training of the staff on the operation and maintenance of new systems.
- 2.7.15 **Contractor Claims.** The Construction Manager shall endeavor to timely and proactively identify, address and resolve matters involving persons, entities or events which may give rise to a request for equitable adjustment of the Contract. The Construction Manager shall properly document and review claims from Contractors for additional compensation or time extension in accordance with the provisions set forth in the Standard Conditions. In the event the field level review does not resolve the issues brought forth by the Contractor, the Construction Manager shall make arrangements for, and attend dispute resolution or partnering intervention meetings related to each claim.
- 2.7.16 **Record Drawings.** The Construction Manager shall review the As-Built Drawings provided by the Contractors and verify that the As-Built Drawings, to the best of the Construction Manager's knowledge based upon the Construction Manager's observations during the progress of the Project, detail the actual construction of the Project. The Construction Manager shall transmit the verified As-Built Drawings to the Architect for the preparation of Record Drawings.

- 2.7.17 Eleven-Month Inspection and Project Close Out. The Construction Manager shall schedule and conduct a walk-through of the Project with the Commission one month prior to the expiration of the one year Guarantee provided by the Contractor. The Construction Manager shall consult with the Architect and the Commission to address any issue identified in the walk-through according to the procedures specified in the Standard Conditions. The Construction Manager will assist the Commission to provide a final accounting of the Project Construction Fund, including a total cost and total revenue for all funds related to the Project.
- 2.7.18 Contractor Responsibilities. The Construction Manager shall not be responsible for and shall not have control or charge of construction means, methods, techniques, sequences, procedures or scheduling used by a Contractor to comply with the Contractor's obligations under its Contract for the Project or for safety precautions and programs in connection with the Work on the Project. The Construction Manager shall not be responsible for or have control or charge over the acts or omissions of Contractors or Subcontractors or any of their agents or employees, or any other persons performing any Work on the Project. The Construction Manager shall not be responsible for the presence, handling, exposure or disposal of hazardous materials or mold at the Project site.

**ARTICLE III  
ADDITIONAL SERVICES**

**3.1 General.**

- 3.1.1 Basic Services. The following services are not included in Basic Services and shall be provided only if approved by the Commission in writing. The following services shall be paid for as provided in this Agreement in addition to the compensation for Basic Services; provided, however, the Construction Manager shall not be compensated for any of the following services made necessary by the act or omission of the Construction Manager or any Consultant. Unless waived by the Commission in writing, authorization to provide Additional Services must be obtained prior to providing the Additional Services.
- 3.1.2 Specialized Services. Providing any service not included in this Agreement or not ordinarily furnished in accordance with customary practice.
- 3.1.3 Partnering Facilitator. Serving as a partnering facilitator.
- 3.1.4 Grant Applications. Preparing applications and supporting documents for governmental grants, loans or advances.
- 3.1.5 Replacement Work. Providing consultation concerning replacement of any Work on the Project damaged by fire, casualty or other cause not due to negligence of the Construction Manager or any Consultant and furnishing services as may be required in connection with the replacement of such Work.
- 3.1.6 Special Studies. Providing Planning Site Evaluations, Environmental Studies or Comparative Studies of alternative sites and preparing special surveys, studies and