

Roof Renovation at Heritage Hall
169 East Church St.
Marion, OH 43302

Bid Date: November 16, 2023
Bid Time: 10:00 AM

Bid Specification Packet

For

Marion County Historical Society
169 East Church St.
Marion, OH 43302

By

Omness Design, Inc.
140 Fairfax Rd.
Marion, OH 43302

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BID SOLICITATION

Sealed bids will be received by:

The Marion County Historical Society
169 E. Church Street
Marion, OH 43302

for the following Project:

Roofing Replacement
at Heritage Hall
169 E. Center Street
Marion, OH 43302

in accordance with the Contract Documents prepared by:

Omness Design, Inc.
140 Fairfax Rd.
Marion, OH 43302
Paul Omness
Email: odi.paul@omnessdesign.com

Bidders may submit requests for consideration of a proposed Substitution for a specified product, equipment, or service to the Architect/Engineer (“A/E”) no later than 10 days prior to the bid opening. Additional products, equipment, and services may be accepted as approved Substitutions only by written Addendum.

From time to time, the Commission issues new editions of the “State of Ohio Standard Requirements for Public Facility Construction” and may issue interim changes. Bidders must submit Bids that comply with the version of the Standard Requirements included in the Contract Documents.

Prevailing Wage rates and Equal Employment Opportunity requirements are applicable to this Project.

The Bidder must indicate on the Bid Form, the locations where its services will be performed in the spaces provided or by attachment in accordance with the requirements of Executive Order 2019-12D related to providing services only within the United States and the requirements of Executive Order 2022-02D prohibiting purchases from or investment in any Russian institution or company. Failure to do so may cause the Bid to be rejected as non-responsive.

DOMESTIC STEEL USE REQUIREMENTS AS SPECIFIED IN OHIO REVISED CODE SECTION 153.011 APPLY TO THIS PROJECT. COPIES OF OHIO REVISED CODE SECTION 153.011 CAN BE OBTAINED FROM ANY OF THE OFFICES OF THE OHIO FACILITIES CONSTRUCTION COMMISSION.

Bidders are encouraged to be enrolled in and to be in good standing in a Drug-Free Safety Program (“DFSP”) approved by the Ohio Bureau of Workers' Compensation (“OBWC”) prior to submitting a Bid and provide, on the Bid Form with its Bid, certain information relative to their enrollment in such a program; and, if awarded a Contract, shall comply with other DFSP criteria described in **Section 1.6** of the **General Conditions**.

Bids will be received for:

<u>Trade</u>	<u>Estimate</u>
Roofing Contract	\$195,000.00
Alternate A	\$40,000.00
Alternate B	\$3,500.00
Alternate C	\$1,500.00

until November 16, 2023, at 10:00 AM when all Bids will be opened and read aloud.

All Bidders are strongly encouraged to attend the Pre-Bid Meeting on November 9, 2023, at 10:00 AM at 169 East Center St., Marion, OH, Marion County Historical Society building.

The Contractor is responsible for scheduling the Project, coordinating the Subcontractors, and providing other services identified in the Contract Documents.

The Contract Documents are available electronically from the architect, email: odi.paul@omnessdesign.com.

The Contract Documents may be reviewed for bidding purposes without charge during business hours at the office of the architect and the Marion County Historical Society.

END OF DOCUMENT

Document 00 21 13 - Instructions to Bidders (Limited Scope Project)

State of Ohio Standard Requirements for Public Facility Construction

ARTICLE 1 - GENERAL INSTRUCTIONS

1.1 Applicable Law and Forum

1.1.1 The rights of any Bidder or any party to a subsequent Contract shall be governed by the laws of the state of Ohio and only Ohio courts shall have jurisdiction over any action or proceeding related to the Bid or any subsequent Contract. The Bidder irrevocably consents to such jurisdiction.

1.2 Project Scheduling and Coordination

1.2.1 When the Contract Documents refer to a period of time by a number of days, it excludes the first day and includes the last day of the period. If the last day of the period falls on a Saturday, Sunday, or legal holiday, that day shall be omitted and the period shall end on the next day which is not a Saturday, Sunday, or legal holiday.

1.2.2 The time for completion of the Project indicated on the **Bid Form** is the time for Substantial Completion of all Work applicable to the Bidder.

1.2.3 The Contractor is responsible for scheduling the Project, coordinating Subcontractors, and providing other services identified in the Contract Documents.

1.2.4 By submitting its Bid, the Bidder indicates its understanding that the Contract Sum, based on its Bid and as amended by Change Orders, includes all costs that the Owner owes the Bidder.

1.3 Written Notice

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

1.3.2 Notices provided to one project participant from another shall be simultaneously copied to the prospective Bidders, Owner and A/E.

ARTICLE 2 - BIDDING PROCEDURES

2.1 Examination of Contract Documents and the Site

2.1.1 Before submitting a Bid, the Bidder shall examine all Contract Documents, including, but not limited to, the Drawings, Specifications, and Addenda for all divisions of Work for the Project, noting in particular all requirements that may affect its Work in any way.

2.1.2 The Bidder's failure to become acquainted with the extent and nature of Work required to complete any portion of the Work in conformity with the requirements of the Contract Documents, shall not be a basis for additional compensation.

2.1.3 Before submitting a Bid, the Bidder should not only examine and evaluate the Site and related Project conditions where the Work will be performed, but shall also consider when the Work will be performed including, but not limited to, the following: condition, layout, and nature of the Site and surrounding area; availability and cost of labor; availability and cost of materials, supplies, and equipment; cost of temporary utilities required in the Bid; cost of any permit or license required by a local or regional authority having jurisdiction over the Project; usual weather conditions of the Project location; conditions bearing upon transportation, disposal, handling, and storage of equipment, materials, and waste; and subsurface and concealed physical conditions and related information provided in the Contract Documents.

2.2 Pre-Bid Meeting

2.2.1 The Bidder is encouraged to attend the pre-bid meeting, where the A/E and Owner will receive questions regarding the Contract Documents. If not given in **Document 00 10 00 - Solicitation**, the A/E shall issue notice of the time and place of any pre-bid meeting to each registered Plan Holder.

2.2.2 The A/E shall prepare minutes of the pre-bid meeting for the Project record. If questions raised by the prospective Bidders require changes to, or clarifications of, the Contract Documents, the A/E shall issue the changes by written Addendum, along with a list of pre-bid meeting attendees.

2.2.3 Additional compensation shall not be based upon the Bidder's failure to attend the pre-bid meeting, which results in the Bidder's incomplete knowledge and familiarity of the Project requirements.

2.3 Request for Interpretation

2.3.1 If the Bidder finds any perceived ambiguity, conflict, error, omission, or discrepancy within the Contract Documents, including the Drawings, Specifications, and Addenda, or between any of the Contract Documents and Applicable Law, the Bidder shall submit a written Request for Interpretation ("RFI") to the A/E for an interpretation or clarification. The Bidder is responsible for prompt delivery of the RFI. The A/E shall respond to RFIs received more than 7 days before the bid opening.

2.3.2 The A/E shall issue Addenda in response to RFIs that modify or clarify the Contract Documents. Any Addenda issued within 72 hours before any bid opening (excluding Saturdays, Sundays, and legal holidays) shall extend the bid opening date by 7 days pursuant to **Section 3.3.1**. Addenda may be delivered via facsimile or e-mail, posted to a web or FTP site, or otherwise furnished to each registered Plan Holder.

2.3.3 Any interpretation or clarification of the Contract Documents made by any Person other than the A/E, in any manner other than a written Addendum, shall not be binding, and the Bidder shall not rely upon the interpretation or clarification.

2.3.4 The successful Bidder shall not be compensated for a claim alleging insufficient data, incomplete, ambiguous, conflicting, or erroneous Contract Documents or proposed Contract Documents, or assumed conditions regarding the nature, extent, or character of the Work, if the Bidder did not submit a related RFI prior to the bid opening.

2.4 Substitutions Prior to Bid Opening

2.4.1 If the Bidder proposes to use an article, device, material, equipment, form of construction, fixture, or item other than the components named in the Specifications, the Bidder shall certify that the proposed item is equal in quality and all aspects of performance and appearance, to the item specified. If approval of a Substitution requires changes to the Contract Documents or affects the work of other trades, the Bidder is responsible for the additional costs, including, but not limited to, changes to the design by the A/E.

2.4.2 The Bidder shall submit its request for Substitution to the A/E no later than 10 days prior to the bid opening, which must include: **(1)** the name and complete description of the proposed Substitution, including Drawings, performance and test data, and other information necessary for a complete evaluation; and **(2)** a statement setting forth any changes that the Proposed Substitution will require in the Contract Documents or the Project.

2.4.3 If the A/E approves the Proposed Substitution, the A/E shall issue an Addendum.

2.4.4 If the A/E does not approve the Proposed Substitution, the A/E shall inform the Bidder of its decision, which is final. The A/E may reject a proposed Substitution because the Bidder failed to provide sufficient information to enable the A/E to completely evaluate the Proposed Substitution without causing a delay in the scheduled bid opening.

2.4.5 Proposed Substitutions received by the A/E less than 10 days prior to the bid opening shall not be considered.

2.5 Bid Form

2.5.1 Each Bid shall be submitted on the **Bid Form** and sealed in an envelope clearly marked as containing a Bid, indicating the Owner's Project number and name, and the date and time of the bid opening on the envelope. Refer to **Section 3.1.2** for requirements related to envelope markings.

2.5.1.1 Any change, alteration, omission, or addition in the wording of the **Bid Form** shall cause the Bid to be rejected as non-responsive.

2.5.1.2 All pages of the **Bid Form**, including a completed "Bidder Affirmation and Disclosure" page acknowledging that the Bidder affirms, understands, and will abide by the requirements of Executive Order 2019-12D related to providing services only within the United States and Executive Order 2022-02D prohibiting purchases from or investment in any Russian institution or company, and a completed "Commitment to Participate in the EDGE Business Assistance Program" page, shall be submitted with the Bid. Failure to do so may cause the Bid to be rejected as non-responsive. If the names, locations, and service locations of Subcontractors are not known at the time of the Bid Opening, the Bidder must provide the information requested with its **Subcontractor and Material Supplier Declaration** form.

2.5.1.3 Unless the Bidder withdraws the Bid as provided in **Article 4**, the Bidder is required to comply with all requirements of the Contract Documents, regardless of whether the Bidder had actual knowledge of the requirements and regardless of any statement or omission made by the Bidder that might indicate a contrary intention.

2.5.2 The Bidder shall fill in all relevant blank spaces on the **Bid Form** by printing in ink or by typewriting, and not in pencil.

2.5.2.1 The Bidder shall show all bid amounts in both words and figures. In the case of a conflict between the words and figures, the amount shown in words shall govern, where the words are not ambiguous. When the Bidder's intention and the meaning of the words are clear, omissions or misspellings of words shall not render the words ambiguous.

2.5.2.2 The Bidder shall initial alteration or erasure of items filled in on the **Bid Form**.

2.5.3 An officer, partner or principal of the Bidder shall print or type the legal name of the Bidder on the line provided, and sign the **Bid Form**. All signatures must be original.

2.6 Allowances

2.6.1 If Allowances are provided on the **Bid Form**, the amount of each Allowance shall be included in the Base Bid amount. Allowances shall be used solely for the purpose of determining the adjustment to the Contract Sum for the difference between the amount of the Allowance and the actual cost of the related Work provided. Allowances shall not include the Contractor's Fee.

2.7 Unit Prices

2.7.1 If Unit Prices are requested on the **Bid Form**, the amount of the scheduled quantities shall be included in the Base Bid amount. Unit prices shall be used solely for the purpose of determining the adjustment to the Contract Sum for the difference between the estimated quantities on the **Bid Form** and the actual quantities provided.

2.7.2 Unit Prices shall include all materials, equipment, labor, delivery, installation, and any other cost or expense, in connection with, or incidental to, the performance of that portion of the Work. Unit Prices shall not include the Contractor's Fee on account of the associated Unit Price Work. The Bidder shall submit Unit Prices for all items listed.

2.8 Alternates

2.8.1 If an Alternate is listed on the **Bid Form**, the Bidder shall fill in the applicable blank with an increased or decreased bid amount and indicate which by circling the word "ADD" or the word "DEDUCT" as applicable. The Owner reserves the right to accept or reject any or all bid amounts for Alternates, in whole or in part, and in any order.

2.8.1.1 If no change in the bid amount is required, indicate "No Change" or "\$0."

2.8.1.2 Failure to make an entry or an entry of "No Bid," "N/A," or similar entry on any Alternate shall cause the Bid to be rejected as non-responsive if that Alternate is selected.

2.8.1.3 Failure to indicate a negative number by circling "DEDUCT," preceding the number by a minus sign, or enclosing the number in parentheses will indicate the Bidder's intent to increase the Base Bid by the amount entered in the applicable blank.

2.8.1.4 If an Alternate is not selected, an entry as listed in **Section 2.8.1.2** on that Alternate shall not, by itself, render a Bid non-responsive.

2.9 Submittals with Bid Form

2.9.1 The Owner shall reject a Bid as non-responsive if the Bidder fails to submit the following with the Bid Form in a sealed envelope: Bid Guaranty as provided in **Article 5**, meeting the requirements of ORC Sections 153.54 and 153.571.

2.9.2 If the apparent low Bidder does not submit a valid Power of Attorney of the agent signing for the Surety with its Bid, the Owner shall direct the apparent low Bidder to deliver a valid and appropriate Power of Attorney to the Owner within a period determined by the Owner. The Owner shall not enter into a Contract without a valid Power of Attorney.

2.9.3 The Bidder is encouraged to submit background information with its Bid using the **Bidder's Qualifications** form and including, but not limited to, the information listed in this **Section 2.9**. If the apparent low Bidder does not submit the **Bidder's Qualifications** form and related information with its Bid, the Bidder shall provide it upon request in accordance with **Section 3.5.4**, including, but not limited to:

- 2.9.3.1** the overall experience of the Bidder, including number of years in business under present and former business names;
- 2.9.3.2** a complete listing of all the Bidder's ongoing construction projects and a listing of construction projects which are similar in cost and type to the Project completed by the Bidder in the last 5 years. Include information of the scope of work and value of each contract, a description of Encouraging Diversity Growth and Equity ("EDGE") participation and performance, and a project name/contact Person/address/phone number for the owner and the architect or engineer for each project;
- 2.9.3.3** a Certificate of Compliance with Affirmative Action Programs, issued pursuant to ORC Section 9.47, by the Equal Opportunity Coordinator of the Department of Administrative Services;
- 2.9.3.4** a complete listing of Affirmative Action and EDGE program violations in the last 5 years;
- 2.9.3.5** a complete listing of Prevailing Wage, EPA, OSHA, or other regulatory entity issues or violations in the last 5 years;
- 2.9.3.6** a complete listing of judgments, claims, arbitration proceedings or suits pending or outstanding in the last 5 years;
- 2.9.3.7** a complete listing of Drug-Free Workplace Program and Drug-Free Safety Program ("DFSP") violations in the last 5 years;
- 2.9.3.8** a description of the Bidder's relevant facilities and major equipment, whether leased or owned;
- 2.9.3.9** a description of the management experience of the Bidder's project manager(s) and superintendent(s) and a comprehensive resume for each;
- 2.9.3.10** a description of the EDGE-certified Business Enterprises the Bidder proposes as Subcontractors and Material Suppliers for this Project by attaching a fully completed EDGE Affidavit for each EDGE-certified Business Enterprise;
- 2.9.3.11** to support a Bond, a current and signed Certificate of Compliance issued by the Ohio Department of Insurance, showing the Surety is licensed to do business as a surety in Ohio;
- 2.9.3.12** a current Ohio Workers' Compensation Certificate;
- 2.9.3.13** if the Bidder is a foreign corporation not incorporated under the laws of Ohio, a Certificate of Good Standing from the Ohio Secretary of State; or, if the Bidder is a foreign person or partnership, evidence that the Bidder filed, with the Ohio Secretary of State, a Power of Attorney designating the Ohio Secretary of State as the Bidder's agent for the purpose of accepting service of summons in any action brought under ORC Section 153.05 or under ORC Sections 4123.01 to 4123.94, inclusive;
- 2.9.3.14** evidence that the Bidder is enrolled in, and in good standing in, a DFSP approved by the Ohio Bureau of Workers' Compensation ("OBWC"); and
- 2.9.3.15** any other data or information which the A/E may request concerning the responsibility of the Bidder.

2.10 Changes in the Bid Amount

- 2.10.1** Any change to a previously submitted Bid shall be in writing and received by the Owner before the time scheduled for the bid opening.
- 2.10.2** Changes shall provide an amount to be added to, or subtracted from, the bid amount, so that the final bid amount may be determined only after the sealed envelope is opened.
- 2.10.3** If the Bidder's written instruction reveals the bid amount in any way prior to the bid opening, the Owner may, in its sole discretion, reject the Bid as non-responsive.

ARTICLE 3 - BID OPENING AND EVALUATION

3.1 Delivery of Bid

- 3.1.1** The Bidder shall submit its Bid to the Owner at the location indicated in **Document 00 10 00 - Solicitation** prior to the time scheduled for the bid opening.
- 3.1.2** If the sealed bid envelope is enclosed in another envelope for the purpose of delivery, the exterior envelope shall also be clearly marked as containing a Bid with the Project name and Project number, construction trade of the Bid, and the date and time of the bid opening shown on the envelope.

3.1.3 Bids that arrive at the location designated in **Document 00 10 00 - Solicitation** after the time set for the bid opening shall not be opened or considered.

3.2 Bid Opening

3.2.1 Sealed Bids shall be received at the location designated in **Document 00 10 00 - Solicitation** until the time stated when all Bids shall be opened, read aloud, and the tabulation made public.

3.2.2 The public opening and reading of Bids is for informational purposes only and is not to be construed as an acceptance or rejection of any Bid submitted.

3.2.3 The contents of the bid envelope are public records and open for inspection, upon request, at any time after the bid opening, except for any information that is not defined as a public record under Ohio law.

3.3 Bid Opening Extension

3.3.1 If an Addendum is issued within 72 hours prior to the published time for the bid opening, excluding Saturdays, Sundays and legal holidays, the bid opening shall be extended 7 days. If the Owner approves, the bid opening may be extended for more than 7 days, and consideration for additional advertising may be recommended.

3.3.2 As part of issuing any Addendum earlier than 72 hours prior to the published time for the bid opening, excluding Saturdays, Sundays and legal holidays, only the Owner may approve a revised bid opening date or additional advertising.

3.4 Bid Evaluation Criteria

3.4.1 The Owner reserves the right to accept or reject any or all Bids, in whole or in part, and reserves the right to award the Contract to any remaining Bidder the Owner determines, in its sole discretion, to have submitted the lowest responsive and responsible Bid.

3.4.2 The Owner reserves the right to accept or reject any or all Alternates. Alternates may be accepted or rejected in any order.

3.4.3 If any Bidder has engaged in collusive bidding, the Owner shall reject that Bidder's Bid as non-responsive for the Contract. A collusive bidder may also be debarred from future State Contracts.

3.4.4 The Owner reserves the right to waive, or to allow any Bidder a reasonable opportunity to cure a minor irregularity or technical deficiency in a Bid, provided the irregularity or deficiency does not affect the bid amount, or otherwise give the Bidder a competitive advantage. Noncompliance with any material requirements of the Contract Documents shall cause a Bid to be rejected as non-responsive.

3.4.5 If, in the opinion of the Owner, the award of the Contract to the lowest Bidder is not in the best interest of the State, the Owner may accept, in its discretion, another Bid so opened, or the Owner may reject all Bids and advertise for other Bids. The advertisement shall be for the period, in the form, and in the publications directed by the Owner.

3.5 Bid Evaluation Procedure

3.5.1 The Contract shall be awarded to the lowest responsive and responsible Bidder as determined in the discretion of the Owner, or all Bids may be rejected in accordance with Applicable Law.

3.5.1.1 In determining which Bid is the lowest, the Owner shall consider the Base Bid and the bid amounts for any Alternate, or Alternates, which the Owner decides, in its sole discretion, to accept.

3.5.1.2 The total of the bid amounts for the accepted Alternate (s) shall be added to, or deducted from, the Base Bid, as applicable, for determining the lowest Bidder.

3.5.1.3 If two Bidders submit the same bid amount and both are determined to be responsive and responsible, the Owner may select one Bidder by the flip of a coin, which shall be conducted in the presence of both Bidders and shall be final. If one of the Bidders refuses to participate in, or fails to be present at, the flip of a coin, the remaining Bidder shall be selected.

3.5.2 A Bidder for a Contract shall be considered responsive if the Bidder's Bid responds to the Contract Documents in all material respects and contains no irregularities or deviations from the Contract Documents that would affect the amount of the Bid or otherwise give the Bidder a competitive advantage.

3.5.2.1 A Bid shall be rejected as non-responsive if the Bid contains a Bid Guaranty executed by a Surety not licensed in Ohio or a Bid Guaranty that is otherwise determined to be insufficient by the Owner.

3.5.2.2 If the lowest Bidder is non-responsive, the Bidder shall be notified according to **Section 3.6**.

3.5.3 In determining whether a Bidder is responsible, factors to be considered include, without limitation:

3.5.3.1 preferences required by law, where applicable;

3.5.3.2 the experience of the Bidder;

3.5.3.3 the financial condition of the Bidder;

3.5.3.4 the conduct and performance of the Bidder on previous Contracts, including compliance with Equal Employment Opportunity in the Construction Industry Administrative Rules, OSHA and Prevailing Wage laws, and demonstration of good faith effort to participate in the EDGE Business Development program, or actual participation in the EDGE Business Development program, or both, as indicated in the ORC and the Ohio Administrative Code;

3.5.3.5 the facilities of the Bidder;

3.5.3.6 the management skills of the Bidder, including the capability of the Bidder to construct and manage the entire Project, including but not limited to the plumbing, fire protection, heating, ventilating and air conditioning, and electrical branches or classes of the Work; and

3.5.3.7 the Bidder's ability to execute the Contract properly, including past performance of the Bidder and the Subcontractors that the Bidder proposes to use on the Project.

3.5.4 The A/E shall obtain from the lowest responsive Bidder any information the Owner determines appropriate to consideration of factors showing responsibility. If the lowest responsive Bidder is responsible, the Contract shall be awarded to that Bidder, unless all Bids are rejected. The Bidder shall provide all requested information within 3 days of a request from the A/E, or a longer period, if the Owner consents in writing.

3.5.5 If the lowest responsive Bidder is not responsible, the Owner shall evaluate the next lowest Bidder according to the procedures set forth in this **Section 3.5** until the Contract is awarded, all Bids are rejected, or all responsive Bidders are determined to be not responsible.

3.6 Rejection of Bid

3.6.1 If the lowest Bidder is not responsive or responsible, the Owner shall reject the Bid and notify the Bidder in writing by Certified Mail of the finding and the reasons for the finding.

3.6.2 If the lowest responsive and responsible Bid for the Contract, including the Base Bid and accepted Alternates if any, exceeds an amount 10 percent greater than the published Estimated Construction Cost for the Contract, the Owner shall reject all Bids.

3.6.3 A Bidder notified in accordance with **Section 3.6.1** may object to its rejection by filing a written protest, which must be received by the Owner within 5 days of the notification provided pursuant to **Section 3.6.1**.

3.6.4 Upon receipt of a timely protest, the Owner shall meet with the protesting Bidder to hear its objections. ORC Chapter 119 administrative hearing requirements are not applicable to the bid protest meeting.

3.6.4.1 No Contract award shall become final until after the Owner has met with all Bidders who have timely filed protests and the award of the Contract is affirmed by the Owner.

3.6.4.2 If all protests are rejected, the Contract shall be awarded to the lowest responsive and responsible Bidder, or all Bids shall be rejected.

3.7 Notice of Intent to Award

3.7.1 The Owner shall notify the apparent successful Bidder that upon satisfactory compliance with all conditions precedent for execution of the Contract, within the time specified, the Bidder shall be awarded the Contract.

3.7.2 The Owner reserves the right to rescind any Notice of Intent to Award if the Owner determines it issued the Notice of Intent to Award in error, or if the conditions precedent for execution of Contract set forth in **Article 6** are not met.

ARTICLE 4 - WITHDRAWAL OF BID

4.1 Withdrawal prior to Bid Opening

4.1.1 A Bidder may withdraw a Bid after the Owner receives the Bid, provided the Bidder makes a request in writing and the Owner receives the request prior to the time of the bid opening, as determined by the Owner.

4.2 Withdrawal after Bid Opening

4.2.1 The Bid shall remain valid and open for acceptance for a period of 60 days after the bid opening; provided, however, a Bidder may withdraw a Bid from consideration after the bid opening if the bid amount was substantially lower than the amounts of other Bids, providing the Bid was submitted in good faith, and the reason for the bid amount being substantially lower was a clerical mistake, as opposed to a judgment mistake, and was actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of Work, labor, or material made directly in the compilation of the bid amount.

4.2.1.1 Notice of a request to withdraw a Bid shall be made in writing filed with the Owner within 2 business days after the bid opening. The Owner reserves the right to request the Bidder to submit evidence substantiating the Bidder's request to withdraw the Bid.

4.2.1.2 No Bid may be withdrawn under **Section 4.2.1** which would result in awarding a Contract involving the same item on another Bid to the same Bidder.

4.2.2 If a Bidder withdraws its Bid under **Section 4.2.1**, the Owner may award the Contract to the next lowest responsive and responsible Bidder, or reject all Bids and advertise for other Bids. In the event the Owner advertises for other Bids, the withdrawing Bidder shall pay the costs, in connection with the re-bidding, of printing new Contract Documents, required advertising, and printing and mailing of notices to prospective Bidders, if the Owner finds that these costs would not have been incurred but for the withdrawal.

4.2.3 A Bidder may withdraw the Bidder's Bid at any time after the 60-day period described in **Section 4.2.1** by giving written notice to the Owner.

4.3 Refusal to Accept Withdrawal

4.3.1 If the Owner contests the right of a Bidder to withdraw a Bid pursuant to **Section 4.2.1**, a hearing shall be held within 10 days after the bid opening and the Owner shall issue an order allowing or denying the claim of this right within 5 days after the hearing is concluded. The Owner shall give the withdrawing Bidder timely notice of the time and place of the hearing.

4.3.1.1 The Owner shall make a stenographic record of all testimony, other evidence, and rulings on the admissibility of evidence presented at the hearing. The Bidder shall pay the costs of the hearing.

4.3.1.2 Pursuant to ORC Section 119.12, the Bidder may appeal the order of the Owner required by **Section 4.3.1**.

4.4 Refusal to Perform

4.4.1 In the event the Owner denies the request for withdrawal and the Bidder refuses to perform the Contract, the Owner may reject all Bids or award the Contract to the next lowest responsive and responsible Bidder.

4.5 Effect of Withdrawal

4.5.1 A Bidder, who is permitted to withdraw a Bid under **Section 4.2.1**, shall not supply material or labor to, or perform a subcontract or other work for, the Person to whom the Contract is awarded; or otherwise benefit, directly or indirectly, from the performance of the Project for which the withdrawn Bid was submitted; without the Owner's prior written consent.

ARTICLE 5 - BID GUARANTY AND BOND

5.1 Bid Guaranty

5.1.1 The Bidder shall submit a Bid Guaranty with the Bidder's Bid, payable to the Owner, in the form of either:

5.1.1.1 the signed **Document 00 43 13 - Bid Security Form** contained in the Contract Documents for the amount of the Base Bid plus all additive Alternates; or

5.1.1.2 a certified check, cashier's check, or letter of credit, for 10 percent of the Base Bid, plus all additive Alternates – a letter of credit shall expressly provide that it is revocable only by the Owner.

5.1.2 The Bid Guaranty shall be in form and substance satisfactory to the Owner and shall serve as an assurance that upon acceptance of the Bid, the Bidder shall comply with all conditions precedent for Contract execution, within the time specified by the Owner.

5.1.3 If the blank line on the **Bid Security Form** is not filled in, the penal sum shall be the full amount of the Base Bid plus all additive Alternates. If the blank line is filled in, the amount shall not be less than the full amount of the Base Bid

plus all additive Alternates, stated in dollars and cents. A percentage is not acceptable. In the event the blank line is filled in for an amount less than the full amount of the Base Bid plus all additive alternates, the Bid shall be rejected as non-responsive.

5.1.4 An authorized agent must sign the **Bid Security Form**, and the Bidder shall provide a Power of Attorney from the Surety. A Surety authorized by the Ohio Department of Insurance to transact business in Ohio must issue the **Bid Security Form**.

5.1.5 The requirements of ORC Section 3901.86 may be applicable requiring an Ohio resident agent countersign the **Bid Security Form**. The Bidder shall determine the applicability of this provision.

5.1.6 Bid Guaranties in the form of a certified check, cashier's check, or letter of credit shall be returned to unsuccessful Bidders 60 days after the bid opening. Bid Guaranties in the form of a certified check, cashier's check, or letter of credit shall be returned to the successful Bidder upon providing **Document 00 61 13 - Performance and Payment Bond Form** from a Surety satisfactory to the Owner.

5.2 Forfeiture of Bid Guaranty

5.2.1 If for any reason, other than as authorized by **Section 4.2.1** or **Section 5.3**, the Bidder fails to execute the Agreement, and the Owner awards the Contract to another Bidder, which the Owner determines is the lowest responsive and responsible Bidder:

5.2.1.1 The Bidder who failed to execute the Agreement is liable to the State for the difference between its Bid and the Bid of the next lowest responsive and responsible Bidder, or for a penal sum not to exceed ten percent of the bid amount, whichever is less.

5.2.2 If the Owner then awards a Contract to another Bidder, which the Owner determines is the lowest responsive and responsible Bidder and that Bidder fails or refuses to execute the Agreement:

5.2.2.1 The liability of the lowest responsive and responsible Bidder shall be the difference between the bid amount of the lowest responsive and responsible Bidder and another Bidder which the Owner determines is the lowest responsive and responsible Bidder, except as provided in **Section 5.3**, but not in excess of the liability specified in **Section 4.2.2**.

5.2.2.2 The liability on account of an award to the lowest responsive and responsible Bidder beyond the third lowest responsive and responsible Bidder shall be determined in like manner.

5.2.3 If the Owner does not award the Contract to another Bidder under **Section 5.2.2**, but submits the Project for re-bidding:

5.2.3.1 The Bidder failing or refusing to execute the Agreement is liable to the State for a penal sum not to exceed 10 percent of the Bidder's bid amount or the costs in connection with the resubmission of printing new Contract Documents, required advertising, and printing and mailing notices to prospective Bidders, whichever is less, except as provided in **Section 5.3**.

5.3 Exception to Forfeiture

5.3.1 A Bidder for a Contract with the State costing less than \$500,000 may withdraw its Bid from consideration if its Bid for another Contract with the State for less than \$500,000 has already been accepted if:

5.3.1.1 the Bidder certifies in good faith that the total amount of its current contracts is less than \$500,000; and

5.3.1.2 the Bidder's Surety certifies in good faith that the Bidder is unable to perform the subsequent Contract because such performance would exceed the Bidder's bonding capacity.

5.3.2 If a Bid is withdrawn pursuant to **Section 5.3.1: (1)** the Owner may award the Contract to another Bidder which the Owner determines is the lowest responsive and responsible Bidder or reject all Bids and submit the Project for re-bidding; and **(2)** neither the withdrawing Bidder nor the Bidder's Surety shall be liable for the difference between the Bidder's Bid and that of the next lowest responsive and responsible Bidder for a penal sum, or for the costs of printing new Contract Documents, required advertising, and printing and mailing notices to prospective Bidders.

5.4 Bond

5.4.1 Prior to signing the Agreement, the Bidder shall provide the Bond required by law in form and substance satisfactory to the Owner, and from a Surety licensed to do business in the state of Ohio and satisfactory to the Owner.

5.4.1.1 If the Bidder provided **Document 00 43 13 - Bid Security Form**, described in **Section 5.1.1.1**, as its Bid Guaranty then that form shall be the Bond.

5.4.1.2 If the Bidder provided another form of Bid Guaranty, described in **Section 5.1.1.2**, then **Document 00 61 13 - Performance and Payment Bond Form**, described in **Section 5.1.6**, shall be the Bond.

5.4.1.3 The Bidder shall not be required to provide both forms described above.

5.4.2 The Bond must be in the full amount of the Contract to indemnify the State against all direct and consequential damages suffered by failure of the Contractor to perform according to the provisions of the Contract and in accordance with the Plans, Specifications, details, and bills of material therefore and pay all lawful claims of Subcontractors, Material Suppliers, and laborers for labor performed or materials furnished in performing and completing the Contract.

ARTICLE 6 - CONTRACT AWARD AND EXECUTION

6.1 Conditions Precedent for Execution of Contract

6.1.1 The successful Bidder must submit the items in this **Section 6.1** to the Owner before executing the Agreement.

6.1.2 Bond, and to support the Bond, a Certificate of Compliance issued by the Ohio Department of Insurance, showing the Surety is licensed to do business in the state of Ohio.

6.1.3 Ohio Workers' Compensation Certificate

6.1.4 Certificate of Compliance with Affirmative Action Programs, issued by the Equal Opportunity Coordinator. The form must be submitted through the Ohio Business Gateway: <http://business.ohio.gov/efiling/>.

6.1.5 Certificate of Insurance (ACORD form is acceptable) and copy of additional insured or loss payee endorsement. The Owner reserves the right to request and receive a certified copy of the Contractor's insurance policies.

6.1.6 If a Bidder is a foreign corporation (e.g., not incorporated under the laws of Ohio) it must submit a Certificate of Good Standing from the Ohio Secretary of State showing the right of the Bidder to do business in the state of Ohio.

6.1.7 If a Bidder is an individual or partnership, nonresident of the State, it must submit a Power of Attorney designating the Ohio Secretary of State as the Bidder's agent for accepting service of summons in any action brought under ORC Section 153.05 or under ORC Sections 4123.01 to 4123.94, inclusive.

6.1.8 If the Contract includes plumbing; electrical; hydronics; refrigeration; and heating, ventilating and air conditioning ("HVAC") Work, the Contractor or its Subcontractors must submit proof of current licensing pursuant to Applicable Law.

6.1.9 Evidence that the Bidder is enrolled in, and in good standing in, a DFSP approved by the OBWC.

6.1.10 By submitting its Bid, the Bidder warrants that it is not subject to an unresolved findings for recovery under ORC Section 9.24. ORC Section 9.24 prohibits the State from awarding a Contract to any Bidder against whom the Auditor of State has issued a finding for recovery if the finding for recovery is unresolved at the time of award. If the Contract is awarded to a Bidder subject to an unresolved finding for recovery under ORC Section 9.24, the Contract is void on its face and the Contractor shall immediately repay to the Owner any funds paid under the Contract.

6.1.11 The Bidder shall provide evidence acceptable to the Owner of the Bidder's participation in the EDGE Program by contracting with EDGE-certified Business Enterprise(s) for the Project by submitting a fully completed EDGE Affidavit for each EDGE-certified Business Enterprise, by requesting a waiver or partial waiver of the advertised EDGE Program participation goal for the Project on the Bidder's company letterhead including full documentation of the Bidder's good faith effort to contract with EDGE-certified Business Enterprise(s) for this Project, or both.

6.2 Non-compliance with Conditions Precedent

6.2.1 The award of the Contract and execution of the Agreement require the Contractor to comply with: **(1)** all conditions precedent for execution of the Contract within 10 days of the date of the Notice of Intent to Award; and **(2)** submission of the **Bidder's Qualifications** form, including a fully completed **EDGE Affidavit** for each EDGE-certified Business Enterprise, not previously provided within 3 business days of receiving the Owner's request.

6.2.2 Non-compliance with the conditions precedent for execution of the Contract as stated in **Section 6.1** within the timelines stated in **Section 6.2.1** following the date of the Notice of Intent to Award shall be sufficient cause to permit the Owner to cancel the Notice of Intent to Award, for the Bidder's lack of responsibility and award the Contract to another Bidder, which the Owner determines is the lowest responsive and responsible Bidder; or the Owner may re-bid the Work at its sole discretion.

6.2.3 The Owner may extend the time for complying with the conditions precedent for execution of the Contract for good cause. The extension is not a waiver of the conditions precedent for execution of the Contract.

6.3 Time Limits

6.3.1 The Owner's failure to award the Contract and execute the Agreement within 60 days of the bid opening invalidates the entire bid process and all Bids submitted, unless the time is extended by written consent of the apparent lowest responsive and responsible Bidder and the Owner.

6.3.1.1 If the Owner awards the Contract within 60 days of the bid opening, increases in material, labor, and subcontract costs shall be borne by the Bidder.

6.3.1.2 If failure to execute the Contract within 60 days of the bid opening is due to matters for which the State is solely responsible, the Contractor is entitled to a Change Order authorizing payment of verifiable increased costs in materials, labor, or subcontracts. This increase shall not exceed the difference in price between the successful Bidder and the price of the next lowest responsive and responsible Bidder.

6.3.1.3 If failure to execute the Contract within 60 days of the bid opening is due to matters for which the Contractor is responsible, the Owner shall not grant a request for increased costs.

6.4 Notice to Proceed

6.4.1 The Owner shall issue a Notice to Proceed to the Contractor, which establishes the date for commencement and the calendar days allocated for Substantial Completion of all Work. Within 10 days of the date of the Notice to Proceed, or other period as mutually agreed by the Contractor and Owner, the Contractor shall furnish the following submittals to the A/E: **(1)** Schedule of Values; **(2)** preliminary schedule of Shop Drawings and other submittals; **(3) Subcontractor and Material Supplier Declaration** form, with completed "Bidder Affirmation and Disclosure" forms acknowledging that the Contractor affirms, understands, and will abide by the requirements of Executive Order 2019-12D and Executive Order 2022-02D for Subcontractors that were not identified in the **Bid Form**; **(4)** qualifications of proposed project manager(s) and superintendent(s) and a comprehensive resume of each; and **(5)** evidence that an authorization agreement for automatic deposit of state warrants has been submitted to Ohio Shared Services using the electronic funds transfer form provided on the Internet at <http://supplier.ohio.gov>.

6.5 Prevailing Wage Rates

6.5.1 The Bidder shall base its Bid upon the prevailing rates of wages as ascertained by the Ohio Department of Commerce, Wage and Hour Bureau for the Project as provided in ORC Sections 4115.03 through 4115.14.

6.5.2 The Bidder shall not be entitled to an increase in the Contract Sum on account of an increase in prevailing wage rates, except as otherwise provided by Applicable Law. The Bidder is responsible for compliance of its Subcontractors with prevailing wage requirements.

6.5.3 Within 10 days of the date of the Notice to Proceed, the Contractor shall provide the Owner's Prevailing Wage Coordinator with a schedule of dates during the term of the Contract when the Contractor shall pay wages to its employees for the Project.

ARTICLE 7 - DEFINED TERMS AND ABBREVIATIONS

7.1 For the purposes of these Instructions, the words, terms, and abbreviations set forth below have the following meanings:

7.1.1 "Addenda" or "Addendum" means a written or graphic instrument issued prior to the bid opening which modifies or interprets the proposed Contract Documents by additions, deletions, clarifications, or corrections.

7.1.2 "Alternate" means a written or graphic instrument issued prior to the bid opening which modifies or interprets the proposed Contract Documents by additions, deletions, clarifications, or corrections.

7.1.3 "Architect/Engineer" or "A/E" means the Person responsible for providing professional design services and construction contract administration for the Project as provided in the Contract Documents.

7.1.4 "Applicable Law" means all federal, state, and local codes, statutes, ordinances, and regulations that apply to the performance of the Work or the A/E's Services on the Project.

7.1.5 "Base Bid" means the amount stated in a Bid as the sum for which the Bidder offers to perform the Work in a particular trade or other category, which is described in the Contract Documents, excluding Alternates.

7.1.6 “Bid” means a written proposal to perform a Contract, submitted on a completed Bid Form, accompanied by other required documents. The term Bid includes a proposal that has been digitally signed, encrypted, and submitted through the State’s electronic bidding application pursuant to OAC Section 153:1-8-01.

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

7.1.8 “Bid Form” means a form furnished by the Owner with the proposed Contract Documents that is to be completed, signed, and submitted containing the Bidder’s Bid.

7.1.9 “Bid Guaranty” means a bid bond or other instrument of security authorized by ORC Section 153.54 submitted with the Bid to provide assurance that the Bidder will execute the Agreement.

7.1.10 “Bond” means a performance and payment bond in the format specified by ORC Section 153.57 submitted by the Contractor to provide assurance that the Contractor will perform the Work of the Contract, including making required payments to Subcontractors and Materials Suppliers.

7.1.11 “Change Order” means a document executed by the Owner and Contractor that modifies the Contract.

7.1.12 “Claim” means a demand or assertion, initiated by written notice, certified by one of the parties to the Contract seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract.

7.1.13 “Commission” means the Ohio Facilities Construction Commission, the authorized contracting agent for public improvement projects in accordance with ORC Chapters 123 and 153, acting by and through its Executive Director.

7.1.14 “Construction Progress Schedule” means the schedule for performance of the Contract; showing the time for completing the Work within the Contract Times; the planned sequence for performing the various components of the Work; and the interrelationship between the activities of the Contractor, A/E, and Owner; as periodically updated during the performance of the Work.

7.1.15 “Contract” means the state of legal obligation entered into by the State and the Contractor, whereby they have agreed to an exchange of certain acts, materials, equipment, and services for certain monetary consideration, under all terms and conditions specified in the Contract Documents, which shall remain in full force and effect until such time as all obligations under the Contract have been lawfully and completely discharged, or the Contract is terminated under other conditions specified in the Contract Documents.

7.1.16 “Contract Completion” means the schedule Milestone when the Work is completed in accordance with the terms of the Contract Documents and Contractor has satisfied all of its other obligations under the Contract Documents, including but not limited to **(1)** all governmental authorities have given final, written approval of the Work, **(2)** a final unconditional certificate of occupancy has been granted and issued to the Owner by the appropriate governmental authorities, **(3)** the Contractor’s Work is 100 percent complete, and **(4)** all Punch List items have been completed or corrected, and **(5)** the Contractor has complied with conditions precedent to final payment and release of retained funds.

7.1.17 “Contract Documents” means collectively, the documents that constitute the substance of the Contract including but not limited to Drawings, Specifications, Addenda if any, General Conditions, Supplementary Conditions if any, Bid Form, Wage Rates; and the executed Agreement, Bid Guaranty and Contract Bond, and executed Change Orders if any.

7.1.18 “Contract Sum” means the Contractor’s entire compensation for the Contractor’s proper, timely, and complete performance of the Work and is subject to adjustment as provided in the Contract.

7.1.19 “Contract Time” means the period stipulated in the Contract for the achievement of Substantial Completion, in consecutive days, beginning on the date established by the Notice to Proceed, including adjustments authorized by executed Change Orders.

7.1.20 “Contractor” means a firm, which is party to the Contract for the performance of Work on the Project in accordance with the Contract Documents.

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

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

- 7.1.23** “Liquidated Damages” means a sum established in the Contract Documents, pursuant to the statutory delay forfeiture authorized under ORC Section 153.19, to be paid to the Owner due to the Contractor’s failure to complete the Work within the Contract Time for achievement of Substantial Completion, or any applicable portion of the Work on or prior to any Milestone date stated on the Agreement.
- 7.1.24** “Milestone” means a principal event specified in the Contract relating to an intermediate date or time prior to Substantial Completion.
- 7.1.25** “Modification” means a Change Order or an order for a minor change in the Work.
- 7.1.26** “Notice of Commencement” means a notice prepared by the Owner identifying the Project, the Contractor, the Surety for the Contractor, and the name of the Owner’s representative upon whom a claim affidavit may be served.
- 7.1.27** “Notice to Proceed” means written notice provided by the Owner authorizing the Contractor to proceed with the Work and establishing the dates for commencement and completion of the Work.
- 7.1.28** “Owner” means the state of Ohio agency, institution of higher education or division thereof, school district board, or other instrumentality for whom the Project is being constructed.
- 7.1.29** “Person” means an individual, corporation, business trust, estate, partnership, association, or other public or private entity.
- 7.1.30** “Plan Holder” means a prospective Bidder that received a set of Contract Documents prior to the bid opening.
- 7.1.31** “Product Data” means a manufacturer’s standard illustrations, schedules, diagrams, performance charts, instructions, and brochures that illustrate physical appearance, size, and other characteristics of materials and equipment.
- 7.1.32** “Project” means the public improvement, of which the Work performed under the Contract Documents may be the whole or a part.
- 7.1.33** “Request for Interpretation” or “RFI” means a written request to the A/E seeking an interpretation or clarification of the Contract Documents.
- 7.1.34** “Samples” means physical examples, color selection items, field samples, and mock-ups furnished by the Contractor to illustrate functional and aesthetic characteristics of products, materials, equipment, or workmanship and establish criteria by which the Work shall be judged.
- 7.1.35** “Schedule of Values” means a full, accurate, and detailed statement furnished by the Contractor reflecting a defined breakdown of the Contract Sum.
- 7.1.36** “Shop Drawings” means drawings, diagrams, illustrations, and schedules specifically prepared for the Project provided by the Contractor or a Subcontractor to illustrate some portion of the Work. Shop Drawings are not Contract Documents.
- 7.1.37** “Site” means the location designated for the Project.
- 7.1.38** “Specifications” means those portions of the Contract Documents consisting of detailed written administrative, procedural, and technical requirements for the construction of the Work, whether physically on the Drawings or bound in separate volumes, including identification of acceptable materials, methods, equipment, quality, and workmanship.
- 7.1.39** “State” means the government of Ohio, including any organized body, office, or agency established by the laws of this state for the exercise of any function of state government, any state institution of higher education as defined in ORC Section 3345.011, or any school district board as defined in ORC Section 3318.01.
- 7.1.40** “Subcontract” means any contract or agreement between the Contractor and a Subcontractor for performance of a portion of the Work.
- 7.1.41** “Subcontractor” means a Person who undertakes to perform any part of the Work on the Project under a contract with a Contractor or with any Person other than the State, including all such Persons in any tier. The term “Subcontractor” includes material suppliers.
- 7.1.42** “Substantial Completion” means the stage when the Work is sufficiently complete in accordance with the Contract that the Owner can utilize the Work for its intended use, as determined by the A/E. The issuance of a certificate of occupancy (if applicable) is a condition precedent to the achievement of Substantial Completion.
- 7.1.43** “Substitution” means an article, device, material, equipment, form of construction, or other item, proposed prior to the bid opening and approved by the A/E by Addendum, for incorporation or use in the Work as being functionally and qualitatively equivalent to essential attributes of a component specified in the proposed Contract Documents.

7.1.44 “Supplementary Conditions” means amendments to the General Conditions, issued as a separate document, which describe conditions of the Contract unique to a particular Owner or Project.

7.1.45 “Surety” means a Person providing a Bid Guaranty or a Bond to a Bidder or a Contractor, as applicable, to indemnify the State against all direct and consequential damages suffered by failure of the Bidder to execute the Contract, or of the Contractor to perform the Contract and to pay all lawful claims of Subcontractors, material suppliers and laborers, as applicable.

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

END OF DOCUMENT

BID FORM

Sealed bids will be received by the Marion County Historical Society at 169 E. Center Street, Marion, OH 43302 for:

**Project
Roof Removal & Replacement**

at

**169 E. Center Street
Marion, OH 43302**

for the

Marion County Historical Society

The time for Substantial Completion of all Work is one hundred twenty consecutive days from the Notice to Proceed.

Having read and examined the proposed Contract Documents prepared by the Architect/Engineer for the above-referenced Project and the following Addenda:

Addendum Number	Date Received
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

The undersigned Bidder proposes to perform all Work for the applicable Contract in accordance with the proposed Contract Documents, for the following sum(s):

ROOFING CONTRACT

BASE BID:

ALL LABOR AND MATERIALS, for the sum of \$ _____

Sum in words: _____

_____ and _____ /100 dollars.

Alternate A (Circle appropriate choice below and insert amount)

If Alternate is accepted, ADD TO / DEDUCT FROM Base Bid: \$ _____

Sum in words: _____ and _____ /100 dollars.

Alternate B (Circle appropriate choice below and insert amount)

If Alternate is accepted, ADD TO / DEDUCT FROM Base Bid: \$ _____

Sum in words: _____ and _____ /100 dollars.

Alternate C (Circle appropriate choice below and insert amount)

If Alternate is accepted, ADD TO / DEDUCT FROM Base Bid: \$ _____

Sum in words: _____ and _____ /100 dollars.

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BIDDER AFFIRMATION AND DISCLOSURE

Bidder acknowledges that by signing the Bid Form on the Bidder Signature and Information page, that it has read and understands the applicable Executive Orders regarding the prohibitions of performance of offshore services, locating State data offshore in any way, or purchasing from Russian institutions or companies. If awarded a Contract, the Bidder will become the Contractor and affirms that both the Contractor and its Subcontractors shall perform no services requested under this Contract outside of the United States.

The Bidder shall provide the locations where services under this Contract will be performed in the spaces provided below or by attachment. Failure to provide this information as part of its Bid may cause the Bidder to be deemed non-responsive and no further consideration will be given to its Bid. If the Bidder will not be using Subcontractors, indicate "Not Applicable" in the appropriate spaces.

1. Principal business location of Contractor:

(Contractor Address)	(City, State, Zip)
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Name / Principal location of business of Subcontractor(s), if known at time of Bid Opening:

(Subcontractor Name)	(Address, City, State, Zip)
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(Subcontractor Name)	(Address, City, State, Zip)
----------------------	-----------------------------

(Subcontractor Name)	(Address, City, State, Zip)
----------------------	-----------------------------

(Subcontractor Name)	(Address, City, State, Zip)
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2. Location where services will be performed by Contractor (Project Sites):

(Address)	(City, State, Zip)
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(Address)	(City, State, Zip)
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Name(s) / Location(s) where services will be performed by Subcontractors (Project Sites):

(Subcontractor Name)	(Address, City, State, Zip)
----------------------	-----------------------------

(Subcontractor Name)	(Address, City, State, Zip)
----------------------	-----------------------------

(Subcontractor Name)	(Address, City, State, Zip)
----------------------	-----------------------------

(Subcontractor Name)	(Address, City, State, Zip)
----------------------	-----------------------------

3. Location where State data will be located by Contractor:

(Address)

(City, State, Zip)

Locations where State data will be located by Subcontractor(s), if known at time of Bid Opening:

(Subcontractor Name)

(Address, City, State, Zip)

(Subcontractor Name)

(Address, City, State, Zip)

(Subcontractor Name)

(Address, City, State, Zip)

(Subcontractor Name)

(Address, City, State, Zip)

(Subcontractor Name)

(Address, City, State, Zip)

Bidder also affirms, understands and agrees that Bidder and its subcontractors are under a duty to disclose to the State any change or shift in location of services performed by Bidder or its subcontractors before, during and after execution of any Contract with the State. Bidder agrees it shall so notify the State immediately of any such change or shift in location of its services. The State has the right to immediately terminate the contract, unless a duly signed waiver from the State has been attained by the Bidder to perform the services outside the United States.

On behalf of the Bidder, I acknowledge that I am duly authorized to execute this Bid Form including this Bidder Affirmation and Disclosure form and have read and understand that this form is a part of any Contract that Bidder may enter into with the State and is incorporated therein.

BIDDER'S CERTIFICATIONS

The Bidder hereby acknowledges that the following representations in this Bid are material and not mere recitals:

1. The Bidder has read and understands the proposed Contract Documents and agrees to comply with all requirements of the proposed Contract Documents, regardless of whether the Bidder has actual knowledge of the requirements and regardless of any statement or omission made by the Bidder, which might indicate a contrary intention.
2. The Bidder represents that the Bid is based upon the components specified by the proposed Contract Documents.
3. The Bidder has visited the Site, become familiar with local conditions, and has correlated personal observations about the requirements of the proposed Contract Documents. The Bidder has no outstanding questions regarding the interpretation or clarification of the proposed Contract Documents.
4. The Bidder understands that the execution of the Project will require sequential, coordinated, and interrelated operations, which may involve interference, disruption, hindrance, or delay in the progress of the Bidder's Work. The Bidder agrees that the Contract Sum, as amended from time to time, shall cover all amounts due from the State resulting from interference, disruption, hindrance, or delay that is not caused by the State or its agents and employees. The Bidder agrees that any such interference, disruption, hindrance, or delay is within the contemplation of the Bidder and the State and that the Contractor's sole remedy from the State for any such interference, disruption, hindrance, or delay shall be an extension of time in accordance with the proposed Contract Documents.
5. During the performance of the Contract, the Bidder agrees to comply with Ohio Administrative Code ("OAC") Chapters 123:2-3 through 123:2-9 and agrees to incorporate the monthly reporting provisions of OAC Section 123:2-9-01 into all subcontracts on the Project, regardless of tier. The Bidder understands the State's Equal Opportunity Coordinator or the Owner may conduct pre-award and post-award compliance reviews to determine if the Bidder maintains nondiscriminatory employment practices, maintains an affirmative action program, and is exerting good faith efforts to accomplish the goals of the affirmative action program. For a full statement of the rules regarding Equal Employment Opportunity in the Construction Industry, see OAC Chapters 123:2-1 through 123:2-9.
6. The Bidder and each Person signing on behalf of the Bidder certifies, and in the case of a Bid by a joint venture each member thereof certifies as to such member's entity, under penalty of perjury, that to the best of the undersigned's knowledge and belief: **(a)** the Base Bid and any Alternate bid in the Bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition as to any matter relating to such Base Bid or Alternate bid with any other Bidder; **(b)** unless otherwise required by law, the Base Bid and any Alternate bid in the Bid have not been knowingly disclosed by the Bidder and shall not knowingly be disclosed by the Bidder prior to the bid opening, directly or indirectly, to any other Bidder who would have any interest in the Base Bid or Alternate bid; **(c)** no attempt has been made or shall be made by the Bidder to induce any other Person to submit or not to submit a Bid for the purpose of restricting competition.
7. The Bidder understands that the Contract is subject to all the provisions, duties, obligations, remedies and penalties of Ohio Revised Code Chapter 4115 and that the Bidder shall pay any wage increase in the locality during the term of the Contract.
8. The Bidder shall execute the Agreement with the Owner, if a Contract is awarded on the basis of this Bid, and if the Bidder does not execute the Agreement for any reason, other than as authorized by law, the Bidder and the Bidder's Surety are liable to the State as provided in **Article 5** of the Instructions to Bidders.
9. The Bidder certifies that upon the award of a Contract, as the Contractor it shall make a good faith effort to ensure that all of the Contractor's employees, while working on the Site, shall not purchase, transfer, use, or possess illegal drugs or alcohol or abuse prescription drugs in any way.
10. The Bidder acknowledges that it read all of the **Instructions to Bidders**, and in particular, **Section 2.10 - Submittals With Bid Form**, and by submitting its Bid certifies that it has read the Instructions to Bidders and it understands and agrees to the terms and conditions stated in them.
11. The Bidder agrees to furnish any information requested by the Owner or Architect/Engineer to evaluate the responsibility of the Bidder.

12. The Bidder agrees to furnish the submittals required by **Section 6.1** of the **Instructions to Bidders** for execution of the Agreement within 10 days of the date of the Notice of Intent to Award.
13. An officer, partner or principal of the Bidder, as applicable, shall print or type the legal name of the Bidder on the line provided, and **sign the Bid Form**.
14. Bidder acknowledges that by signing the Bid Form on the following Bidder Signature and Information page that it is signing the actual Bid and when submitted as a part of its bid package, shall serve as the Bidder's authorization for the further consideration and activity in the bidding and contract process.
15. All signatures must be original.

BIDDER SIGNATURE AND INFORMATION

Bidder's Authorized Signature: _____

Please print or type the following:

Name of Bidder's Authorized Signatory _____

Title: _____

Company Name: _____

Mailing Address: _____

Telephone Number: _____

Facsimile Number: _____

Email Address: _____

State of Incorporation: _____

Federal Tax ID Number: _____

Date enrolled in an OBWC-approved DFSP (month/date/year): _____ / _____ / _____

Contact person for Contract processing: _____

President's or Chief Executive Officer's Name / Title: _____

END OF DOCUMENT

Document 00 43 13 - Bid Security Form
State of Ohio Standard Requirements for Public Facility Construction

(Form of combined Bid Guaranty and Bond prescribed by Ohio Revised Code Section 153.571)

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned _____,
_____, as Principal,
and _____ as Sureties,
are hereby held and firmly bound unto _____
_____ as Obligee(s), in the penal sum of the dollar amount of the Bid submitted by the Principal
to the Obligee on _____ (date) to undertake the Project known as:

Project Number: _____

Project Name: _____

Contract Description: _____
(e.g., General Contractor/Trades, Plumbing, HVAC, Electrical)

The penal sum, referred to herein, shall be the dollar amount of the Principal's Bid to the Obligee, incorporating any additive alternate Bids made by the Principal on the date referred to above to the Obligee, which are accepted by the Obligee. In no case shall the penal sum exceed the amount of dollars (\$_____). (If the preceding line is left blank, the penal sum will be the full amount of the Principal's Bid, including add alternates. Alternatively, if completed, the amount stated shall not be less than the full amount of the Bid, including Alternates, in dollars and cents. A percentage is not acceptable.) For the payment of the penal sum well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above-named Principal has submitted a Bid for the above referenced Project;

NOW, THEREFORE, if the Obligee accepts the Bid of the Principal, and the Principal fails to enter into a proper contract in accordance with the Bid, Plans, Specifications, details, and bills of material; and in the event the Principal pays to the Obligee the difference, not to exceed ten percent of the penal sum hereof between the amount specified in the Bid and such larger amount for which the Obligee may in good faith contract with the Bidder determined by the Obligee to be the next lowest responsive and responsible to perform the Work covered by the Bid; or in the event the Obligee does not award the Contract to such next lowest responsive and responsible Bidder and resubmits the Project for bidding, the Principal pays to the Obligee the difference not to exceed ten percent of the penal sum hereof between the amount specified in the Bid, or the costs, in connection with the resubmission, of printing new Contract Documents, required advertising and printing and mailing notices to prospective Bidders, whichever is less, then this obligation shall be null and void, otherwise to remain in full force and effect. If the Obligee accepts the Bid of the Principal, and the Principal, within 10 days after the awarding of the Contract, enters into a proper contract and executes the Agreement Form in accordance with the Contract Documents, including without limitation the Bid, Plans, Specifications, details, and bills of material, which said Contract is made a part of this Bond the same as though set forth herein; and

NOW ALSO, IF THE SAID Principal shall well and faithfully perform each and every condition of such Contract; and indemnify the Obligee against all damage suffered by failure to perform such Contract according to the provisions thereof and in accordance with the Contract Documents, including without limitation Plans, Specifications, details, and bills of material therefore; and shall pay all lawful claims of Subcontractors, Material Suppliers and laborers for labor performed and materials furnished in the carrying forward, performing or completing of said Contract; we, agreeing and assenting that this undertaking shall be for the benefit of any Subcontractor, Material Suppliers or laborer having a just claim, as well as for the Obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

THE SAID Surety hereby stipulates and agrees that no modifications, omissions or additions, in or to the terms of said Contract, the Work thereunder or the Contract Documents, including without limitation the Plans and Specifications, therefore, shall in any way affect the obligations of said Surety on its bond, and it does hereby waive notice of any such modifications, omissions or additions in or to the terms of the Contract, the Work, or the Contract Documents, including without limitation the Plans and Specifications.

SIGNED AND SEALED this _____ day of _____, _____.

PRINCIPAL:

SURETY:

Signature

Signature

By: _____
Name

By: _____
Attorney-in-Fact

Title

SURETY INFORMATION:

SURETY AGENT'S INFORMATION:

Name

Name

Address 1

Address 1

Address 2

Address 2

City State Zip

City State Zip

Telephone

Telephone

Email

Email

END OF DOCUMENT

Document 00 45 13 - Bidder's Qualifications
State of Ohio Standard Requirements for Public Facility Construction

Project Number: _____

Project Name: _____

1. Company Name: _____

Physical Address: _____
Street, Building, Unit

City, State, Zip

Mailing Address (if different): _____
P.O. Box

City, State, Zip

Telephone Number (w/ Area Code): (_____) _____

Fax Number (w/ Area Code): (_____) _____

Email address: _____

2. Overall Experience. Indicate Bidder's overall experience performing the trades bid, including the years in business performing the trade under present and former business names.

3. Financial. The apparent low Bidder shall submit, upon request of the Contracting Authority, either:

- a) An annual financial statement prepared within the 12 months prior to the bid opening by an independent licensed accounting firm; and the name, address, contact person and phone number of the bank normally used by the Bidder for its primary banking; or,
- b) A financial report generated within 30 days prior to the bid opening from Standard and Poor, Dun and Bradstreet or a similar company acceptable to the Contracting Authority documenting the financial condition of the Bidder; and the name, address, contact person and phone number of the bank normally used by the Bidder for its primary banking;

This information is not a public record under Ohio Revised Code Section 149.43; and shall remain confidential, except under proper order of a court.

e) EPA/OSHA violations

f) Liquidated damages and Statutory Delay Forfeiture assessed

g) Drug-Free Safety Program and Drug Free Workplace Program violations

7. **Management.** Identify individuals assigned to this Project.

Principal _____ Years with firm _____ Total Exp. _____

Project Manager _____ Years with firm _____ Total Exp. _____

Field Superintendent _____ Years with firm _____ Total Exp. _____

8. **EDGE Participation.** Identify EDGE-certified Business Enterprises proposed as Subcontractors and Material Suppliers for this Project. Attach a fully completed Document 00 45 39 - "EDGE Affidavit" for each EDGE-certified Business Enterprise.

9. **Certification.** I hereby certify that the information in this entire Bidder's Qualifications form, including all attachments and referenced information, is factual and complete.

Company Name _____

Authorized Official (please print or type) _____

Signature of Authorized Official _____ Date _____

END OF DOCUMENT

CONTRACT

This Agreement is made as of the date set forth below between the State of Ohio, acting by and through the Owner, and the Contractor in connection with the Project.

Project Number:
Project Name: Roof Removal & Replacement
Site Address: 169 E. Center Street
 Marion, OH 43302 (Marion County)

Owner: The Marion County Historical Society
Owner’s Representative: Brandi Wilson, Director
Address: 169 E. Center Street
 Marion, OH 43302

Contractor: <insert name>
Contractor’s Principal Contact: <insert name>
Address: <insert street address>
 <insert city, state zip code>

Architect/Engineer (“A/E”): Omness Design, Inc.
A/E’s Principal Contact: Paul Omness
Address: 140 Fairfax Road
 Marion, OH 43302

ARTICLE 1 - SCOPE OF WORK; EDGE COMMITMENT

- 1.1 The Contractor shall perform and provide all of the Work described in the Contract.
- 1.2 The project delivery method for this Project shall be General Contracting (Limited Scope Project).

ARTICLE 2 - COMPENSATION

2.1 The Owner shall pay the Contractor the Contract Sum for the Contractor’s proper, timely, and complete performance of the Contract. The Contract Sum is \$<insert amount>, subject to Modifications as provided in the Contract Documents. The Contract Sum is comprised of the following:

- 2.1.1 Base Bid:\$<Insert Base Bid Amount>
- 2.1.2 Alternate A\$<Insert Alternate Amount>
- 2.1.3 Alternate B.....\$<Insert Alternate Amount>
- 2.1.4 Alternate C.....\$<Insert Alternate Amount>

ARTICLE 3 - CONTRACT TIME

3.1 The Contract Time is the period established in the following table for the achievement of Substantial Completion:

Construction Stage Milestone(s) to which Liquidated Damages apply	Contract Time	Projected Date (as of the date of this Agreement)
Substantial Completion of all Work	One hundred twenty (120) days	<insert date>

3.1.1 The projected date listed under “Projected Date (as of the date of this Agreement)” is provided only for convenient reference during consideration of this Agreement. The duration listed under “Contract Time” defines the Contract Time for Substantial Completion of all Work and takes precedence over the projected date.

ARTICLE 4 - KEY PERSONNEL

4.1 The Contractor's key personnel for the Project are:

4.1.1 «insert name», Project Manager;

4.1.2 «insert name», General Superintendent.

4.2 The Contractor's key personnel are authorized to act on the Contractor's behalf with respect to the Project and all matters concerning the Project.

ARTICLE 5 - GENERAL PROVISIONS

5.1 Effectiveness.

5.1.1 It is expressly understood by the Contractor that none of the rights, duties, and obligations described in the Contract Documents shall be valid and enforceable unless the Director of the Office of Budget and Management first certifies that there is a balance in the Owner's appropriation not already encumbered to pay existing obligations and until all relevant statutory provisions of the Ohio Revised Code, including ORC Section 126.07, have been complied with, and until such time as all necessary funds are available or encumbered and, when required, such expenditure of such funds is approved by the State Controlling Board, or other applicable approving body.

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

5.1.3 Subject to **Section 5.1.1**, the Contract shall become binding and effective upon execution by the Owner and Contractor, and if the total estimated Project cost is \$215,000 or more, upon approval of the Ohio Attorney General.

5.1.4 This Agreement may be executed in several counterparts, each of which shall constitute a complete original Agreement, which may be introduced in evidence or used for any other purpose without production of any other counterparts.

5.2 Representations.

5.2.1 The Contractor represents and warrants that it is not subject to an unresolved finding for recovery under ORC Section 9.24. If this representation and warranty is found to be false, the Contract is void, and the Contractor shall immediately repay to the Owner any funds paid under this Contract.

5.2.2 The Contractor hereby certifies that neither the Contractor nor any of the Contractor's partners, officers, directors, shareholders nor the spouses of any such person have made contributions in excess of the limitations specified in ORC Section 3517.13.

5.2.3 The Contractor, by signature on this Agreement, certifies that it is currently in compliance with, and will continue to adhere to, the requirements of Ohio ethics laws and conflict of interest laws and will take no action inconsistent with those laws.

5.2.4 The Contractor affirms to have read and understands Executive Order 2019-12D and shall abide by those requirements in the performance of this Contract. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in this Contract.

5.2.5 Pursuant to ORC Section 9.76(B), the Contractor warrants that it is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the term of this Contract.

ARTICLE 6 - Enumeration of Documents

6.1 The Contract Documents constitute the substance of the Contract, and include this Agreement, Drawings, Specifications, Addenda if any, **General Conditions**, Supplementary Conditions if any, **Bid Form, Bid Guaranty and Contract Bond** or **Performance and Payment Bond** (if applicable), and Change Orders if any.

SIGNATURES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth below:

CONTRACTOR

MARION COUNTY HISTORICAL SOCIETY

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

END OF DOCUMENT

Document 00 61 13 - Performance and Payment Bond Form
State of Ohio Standard Requirements for Public Facility Construction

(Form of Bond prescribed by Ohio Revised Code Section 153.57 - Not to be used as Bid Guaranty)

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned _____,
_____, as Principal,
and _____ as Sureties,
are hereby held and firmly bound unto _____
_____ as Obligee(s), in the penal sum of _____ dollars,
for the payment of which well and truly to be made, we jointly and severally bind ourselves, our heirs, executors,
administrators, successors, and assigns.

SIGNED AND SEALED this _____ day of _____, _____.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above-named Principal did on the
_____ day of _____, _____, enter into a Contract with the Obligee, which said Contract is
made a part of this Bond the same as though set forth herein and which is more fully described as:

Project Number: _____

Project Name: _____

Contract Description: _____
(e.g., General Trades, Plumbing, HVAC, Electrical)

NOW, THEREFORE, if the above-named Principal shall well and faithfully do and perform the things agreed by the
Obligee to be done and performed according to the terms of said Contract; and shall pay all lawful claims of Subcontractors,
Material Suppliers, and laborers, for labor performed and materials furnished in the carrying forward, performing, or
completing of said Contract; we agreeing and assenting that this undertaking shall be for the benefit of any Subcontractor,
Material Supplier or laborer having a just claim as well as for the Obligee herein; then this obligation shall be void; otherwise
the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the Sureties for
any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

THE SAID Surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of
the said Contract or in or to the Plans and Specifications therefor shall in any wise affect the obligations of said Surety on its
bond, and it does hereby waive notice of any such modifications, omissions or additions in or to the terms of the Contract, the
Work or the Contract Documents, including without limitation the Plans and Specifications.

PRINCIPAL:

Principal Signature

By: _____

Title: _____

SURETY:

Surety Signature

By: _____
Attorney-in-Fact

SURETY INFORMATION:

Street

City State Zip

Telephone Number

SURETY AGENT'S INFORMATION:

Agency Name

Street

City State Zip

Telephone Number

Email Address

END OF DOCUMENT

Document 00 72 13 - General Conditions (Limited Scope Project)

State of Ohio Standard Requirements for Public Facility Construction

ARTICLE 1 - CONTRACTOR'S RESPONSIBILITIES

1.1 Nondiscrimination

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

1.1.1.1 As required under ORC Section 153.59, the Contractor agrees to both of the following: **(1)** "in the hiring of employees for the performance of work under the contract or any subcontract, no contractor, subcontractor, or any person acting on a contractor's or subcontractor's behalf, by reason of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color, shall discriminate against any citizen of the state in the employment of labor or workers who is qualified and available to perform the work to which the employment relates; and" **(2)** "no contractor, subcontractor, or any person on a contractor's or subcontractor's behalf, in any manner, shall discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color."

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

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

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

1.1.2 Any provision of a hiring hall contract or agreement which obligates the Contractor to hire, if available, only employees referred to the Contractor by a labor organization shall be void as against public policy and unenforceable with respect to employment under any public improvement contract unless at the date of execution of the hiring hall contract or agreement, or within 30 days thereafter, the labor organization has procedures in effect for referring qualified employees for hire without regard to race, color, religion, national origin, military status as defined in ORC Section 4112.01, or ancestry and unless the labor organization includes in its apprentice and journeyman's membership, or otherwise has available for job referral without discrimination, qualified employees, both whites and non-whites (including African-Americans).

1.1.3 The Contractor and Subcontractors shall comply with the State's Equal Employment Opportunity requirements described under OAC Sections 123:2-3 through 123:2-9 that include the requirements described under this **Section 1.1.3**. The Contractor shall demonstrate its good faith efforts to comply with the utilization goals currently established for minority and women employees and submit documentation to the EOC. By the 10th day of each month, the Contractor and Subcontractors shall submit to the EOC via the internet a completed Ohio Construction Contract Information Report - Input Form 29 (I-29) for the preceding month. The form shall be submitted through the Ohio Business Gateway: <http://business.ohio.gov/efiling/>.

1.2 Prevailing Wages

1.2.1 If the total Contract Sum is \$75,000 or more, the Contractor shall comply with the provisions, duties, obligations, and is subject to the remedies and penalties of the State's prevailing wage requirements described under ORC Chapter 4115 that include the requirements described under this **Section 1.2**.

1.2.2 If the Project is subject to payment of prevailing wage rates, the Contractor shall: **(1)** pay to laborers and mechanics performing Work on the Project the prevailing wage rates of the Project locality, as determined by the Ohio Department of Commerce, Wage and Hour Bureau; **(2)** post in a prominent place readily accessible by all workers on the Site, a legible listing of the current classifications of laborers, workers, and mechanics employed under this Contract; **(3)** ensure that the rates posted are current and remain posted in legible condition during the period of the Contract; and **(4)** not be entitled to an increase in the Contract Sum on account of an increase in prevailing wage rates, except as otherwise provided by Applicable Law.

1.2.3 The Contractor may access the Ohio Department of Commerce, Wage & Hour Bureau at its website, <https://wagehour.com.ohio.gov/w3/webwh.nsf/wrlogin/?openform>, to obtain the current wage rates.

1.2.4 If the Contractor or its Subcontractors fail to comply with ORC Chapter 4115, the Owner may withhold payment pursuant to **Section 9.8**. The Contractor is liable for violations committed by its Subcontractors to the extent provided in ORC Chapter 4115.

1.2.5 By executing a Contract, the Contractor certifies that it based its Bid upon the prevailing rates of wages as ascertained by the Ohio Department of Commerce, Wage and Hour Bureau for the Project as provided in ORC Sections 4115.03 through 4115.14, which are inserted at the end of this Document.

1.2.6 The Owner shall, within 7 business days after receipt of a notice of a change in the prevailing wage rates, notify the Contractor of the change.

1.2.7 Within 10 days of the date of the Notice to Proceed, the Contractor shall provide the Owner's Prevailing Wage Coordinator a schedule of dates during the term of the Contract on which wages shall be paid to employees for the Project.

1.2.8 The Contractor shall submit payroll reports with each Contractor Payment Request for all of the employees of the Contractor and its Subcontractors, which reports shall be certified by the Contractor that the payroll is correct and complete and the wage rates shown are not less than those required by the Contract.

1.2.8.1 Each payroll report shall indicate the period covered and include a list containing the name, address and social security number of each employee of the Contractor and its Subcontractors paid for the Work.

1.2.8.2 Each payroll report shall list the number of hours each employee worked each day on the Project during the reporting period, the total hours each week on the Project, the employee's hourly rate of pay, job classification, hourly rate of fringe benefits, and all deductions from wages and net pay.

1.2.8.3 Each payroll report shall list each fringe benefit and state if it is paid as cash to the employee or to a named plan.

1.2.8.4 The Contractor and its Subcontractors shall submit apprenticeship agreements for all apprentices utilized on the Project with the first payroll report from the Contractor or its Subcontractor that includes apprentices.

1.3 Use of Domestic Steel

1.3.1 The Contractor is required by law to supply domestically produced steel products used for load bearing structural purposes on all projects funded in whole or in part with State funds. The Contractor and Subcontractors shall comply with [ORC Section 153.011](#) regarding the use of domestically produced steel products.

1.4 Drug Free Safety Program Participation

1.4.1 Throughout the performance of the Work, the Contractor shall be enrolled in and remain in good standing in the Ohio Bureau of Workers' Compensation ("OBWC") Drug-Free Safety Program ("DFSP") or a comparable program approved by the OBWC that meets the requirements specified in ORC Section 153.03 ("OBWC-approved DFSP").

1.4.2 As required under ORC Section 153.03(E):

1.4.2.1 "Each contractor shall require all subcontractors with whom the contractor is in contract for the public improvement to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to a subcontractor providing labor at the project site of the public improvement."

1.4.2.2 "Each subcontractor shall require all lower-tier subcontractors with whom the subcontractor is in contract for the public improvement to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to a lower-tier subcontractor providing labor at the project site of the public improvement."

1.4.2.3 "Failure of a contractor to require a subcontractor to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to the time that the subcontractor provides labor at the project site will result in the contractor being found in breach of the contract and that breach shall be used in the responsibility analysis of that contractor or the subcontractor who was not enrolled in a program for future contracts with the State for 5 years after the date of the breach."

1.4.2.4 "Failure of a subcontractor to require a lower-tier subcontractor to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to the time that the lower-

tier subcontractor provides labor at the project site will result in the subcontractor being found in breach of the contract and that breach shall be used in the responsibility analysis of that subcontractor or the lower-tier subcontractor who was not enrolled in a program for future contracts with the State for 5 years after the date of the breach.”

1.4.3 Prior to authorizing a Subcontractor to commence Work on the Site, the Contractor shall obtain the Owner’s approval, and shall also submit written confirmation of the Subcontractor’s enrollment on the **Subcontractor and Material Supplier Declaration** form to the A/E.

1.4.4 In addition to OBWC-approved DFSP Basic requirements, the Contractor and each Subcontractor that provides labor on the Site shall participate in a pool that performs random drug testing of at least 5 percent of its employees who perform labor on the Site. The random drug testing percentage shall also include the on-site supervisors of the Contractor and Subcontractors. Basic random drug testing shall otherwise comply with the same testing guidelines and criteria as required for OBWC-approved advanced testing. The Contractor and Subcontractor shall provide evidence of required testing to the Owner upon request.

1.5 Use of the State’s Web-based Project Management Software

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

1.6 EDGE Participation and Reporting

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

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

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

1.6.4 The Contractor shall provide the EDGE Participation Reports in detail and form acceptable to the Owner. Failure to timely submit EDGE Participation Reports may result in withholding payment in accordance with **Section 9.8**.

1.6.5 The Contractor shall cooperate fully with requests for additional EDGE information and documentation from the EOC or Owner.

1.7 Owner Work Rules

1.7.1 The Contractor shall consult with the Owner to obtain full knowledge of the Owner’s rules, regulations, or requirements affecting the Project.

1.8 Emergency

1.8.1 In the event of an emergency affecting the safety of the Project, other property, or individuals, the Contractor, without special instruction or authorization, shall act to prevent the threatened damage, injury, or loss. If the Contractor believes that it is entitled to an adjustment of the Contract Sum or Contract Time, or both, on account of its actions in response to an emergency, the Contractor may request a Modification by giving written notice under **Section 7.3.2**.

1.9 Contractor’s Standard of Care

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

1.10 Limit of Contractor’s Responsibility

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

ARTICLE 2 - STATE’S RIGHTS AND RESPONSIBILITIES

2.1 Owner

2.1.1 The Owner shall: **(1)** designate a representative authorized to act on behalf of the Owner during the Project; **(2)** furnish information and services required of it in a timely manner; **(3)** have access to the Work at all times whenever

the Project is in preparation or progress; and (4) upon issuance of the Notice to Proceed, provide the Site to the Contractor in a condition to permit the Contractor to perform the Work.

2.1.2 The Owner may request a change in the Work if the A/E recommends the change.

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

2.2 Approval of Owner and State

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

ARTICLE 3 - A/E'S RESPONSIBILITIES

3.1 The A/E's Contract Administration Duties

3.1.1 The A/E shall administer the Contract as provided in the Contract Documents and Architect/Engineer Agreement, including performance of the functions described as follows:

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

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

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

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

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

3.2 Site Visits and Observation

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

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

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

3.3 Testing and Inspection Services

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

3.4 Approval of A/E

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

3.5 Limitation of A/E's Authority

3.5.1 Under no circumstances is the A/E authorized to: (1) bind the Owner to any authorizations under, modifications of, or amendments to any contract other than as expressly described under **Section 3.1.1.2**; (2) accept any defective or non-conforming services, Work, or vendor-furnished items; (3) make any settlements on behalf of the Owner; or (4) assume any responsibilities of the Contractor or Subcontractors.

ARTICLE 4 - SUBCONTRACTORS

4.1 Evaluation and Approval

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

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

4.1.3 If the Owner rejects any proposed Subcontractor, the Contractor shall propose a replacement Subcontractor. The proposed replacement Subcontractor will be evaluated as described above.

4.2 Form of Subcontract

4.2.1 All Subcontracts shall be on the **State of Ohio Subcontract Form** prescribed by OAC Section 153:1-03-02.

4.3 Replacement of Subcontractors

4.3.1 The Contractor shall not replace any Subcontractor after execution of the Subcontract without the prior written approval of the Owner.

4.4 Contractor's Responsibility

4.4.1 The Contractor is fully responsible for all acts and omissions of its Subcontractors and is responsible for scheduling and coordinating the Work of its Subcontractors. The Contractor is fully responsible for any delay, interference, disruption, or hindrance attributable to the Contractor's Subcontractors. The Contractor shall bind its Subcontractors to the terms of the Contract Documents, so far as applicable to the Work of the Subcontractor, and shall not agree to any provision, which seeks to bind the State to terms inconsistent with or at variance from the Contract Documents.

4.5 Contingent Assignment of Subcontracts

4.5.1 The Contractor hereby assigns its agreement with each Subcontractor to the Owner provided that the assignment is effective only after termination of the Contract by the Owner and only for those agreements that the Owner accepts by notifying the Contractor and applicable Subcontractor in writing. The Owner may re-assign accepted agreements.

ARTICLE 5 - PRECONSTRUCTION ACTIVITIES

5.1 Building and Trade Permits and Licenses

5.1.1 The A/E shall secure the required structural, plumbing, HVAC, and electrical plan approvals. The Contractor shall schedule and attend all intermediate and final inspections required for any permit applicable to the Work. The Contractor shall schedule the State Fire Marshal or local fire authority for the life safety inspection for occupancy permits. The Contractor shall give the A/E and Owner reasonable notice of the dates and times arranged for inspections. The Contractor shall pay for any reinspections required as a result of the Contractor's failure to receive approval of its Work.

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

5.1.3 The Contractor shall secure and pay the fees for any permits, inspections, licenses, capacity charges, or tap fees required by local authorities having jurisdiction over the Project. The Contractor shall give the A/E and Owner reasonable notice of the date arranged for inspections.

ARTICLE 6 - CONSTRUCTION AND CLOSEOUT

6.1 Commencement of Work on the Site

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

6.2 Responsibility of the Contractor

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

6.2.2 The Contractor shall supervise the Work.

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

6.2.4 The Contractor shall develop and keep current the Construction Progress Schedule in accordance with **Section 6.5**, and prepare and keep current a schedule of submittals that is coordinated with the Construction Progress Schedule, for the A/E and Owner's acceptance.

6.2.5 The Construction Progress Schedule shall not exceed the time limits current under the Contract Documents, shall provide for reasonable, efficient, and economical execution of the Project, and shall relate to the entire Project to the extent required by the Contract Documents.

6.2.6 The Contractor shall use the Construction Progress Schedule to plan, organize, and execute the Project, record and report actual performance and progress, and show how it plans to coordinate and complete all remaining work by Contract Completion.

6.2.7 The Contractor shall monitor the progress of the Work for conformance with the Construction Progress Schedule and shall initiate revisions as required by **Section 6.5.8**.

6.2.8 The Contractor shall establish the Project's regular working hours, subject to approval by the A/E and the Owner.

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

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

6.2.11 The Contractor shall remove all snow and ice as may be required for reasonably safe access to the Project including building entries, driveways, parking lots, and sidewalks.

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

6.3 Construction Procedures

6.3.1 The Contractor is solely responsible for and has control over all construction means, methods, manners, techniques, sequences, and procedures, for safety precautions and programs in connection with the Work, and for coordinating all portions of the Work.

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

6.3.3 The Contractor shall perform all cutting, fitting, or patching required for the Work and shall not endanger the Project by cutting, excavating, or otherwise altering the Project, or any part of it. The Contractor's patching shall match and blend with the existing or adjacent surface(s).

6.3.4 The Contractor shall comply with ORC Sections 3781.25 through 3781.32. In addition, before starting excavation or trenching, the Contractor shall determine the location of any underground utilities and notify any public authority or utility having jurisdiction over the Project and secure any required approval.

6.3.5 The Contractor shall install all Work in accordance with the Contract Documents and any installation recommendations of the manufacturer, including required temperature and humidity limits for installation of the various materials.

6.3.6 The Contractor shall communicate with the Owner through the A/E.

6.4 Construction Supervision

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

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

6.4.3 The Contractor shall submit an outline of the qualifications and experience of the Contractor's proposed superintendent, including references, to the Owner no less than 10 days after the Notice to Proceed. The Owner may reject the Contractor's proposed superintendent. If the Owner does not notify the Contractor of the rejection within 30 days after receiving the required information, it shall indicate that the Owner has no objection, but does not affect the Owner's rights under **Section 6.10.2** or any other provision relative to that superintendent. If the Owner rejects the Contractor's proposed superintendent, the Contractor shall replace its superintendent with someone acceptable to the Owner at no additional cost.

6.4.4 The Contractor shall not replace its superintendent without prior written approval of the Owner.

6.5 Construction Progress Schedule

6.5.1 The Contractor shall develop the Construction Progress Schedule using commercially available, personal computer software acceptable to the Owner.

6.5.2 The Construction Progress Schedule shall not exceed the time limits current under the Contract Documents, shall provide for reasonable, efficient, and economical execution of the Project, and shall relate to the entire Project to the extent required by the Contract Documents.

6.5.3 The Contractor shall use the Construction Progress Schedule to plan, organize, and execute the Project, record and report actual performance and progress, and show how it plans to coordinate and complete all remaining Work within applicable Milestones. The Project participants shall use the Construction Progress Schedule as a tool for scheduling and reporting sequenced progress of the Work. Each submission shall show the Owner's Project number and Project name, and provide a signature approval and date line for the Contractor.

6.5.4 Within 30 days of the date of the Notice to Proceed, the Contractor shall submit to the A/E a proposed Construction Progress Schedule approved by the Contractor. The Contractor shall submit all updates of the Construction Progress Schedule to the A/E. With each schedule update, the Contractor shall include a list of all changes to the previously approved baseline or updated schedule.

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

6.5.6 For each progress meeting, the Contractor shall provide a 2-week look-ahead schedule.

6.5.7 The Contractor shall provide monthly progress status reports to the A/E and Owner, which shall include recommendations for adjusting the Construction Progress Schedule to meet Milestone dates and the Substantial Completion date.

6.5.8 The Contractor shall update the Construction Progress Schedule on a monthly basis, or other interval approved by the Owner, in accordance with **Section 6.5.4**.

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

6.6 Progress Meetings

6.6.1 The A/E shall schedule regular progress meetings for the Contractor and other Persons involved in the Project. The purpose of the progress meeting is to review progress on the Project, discuss anticipated progress, review critical operations, and discuss critical problems.

6.6.2 The Contractor shall be represented at every progress meeting by a Person authorized with signature authority to make decisions regarding possible modification of the Contract Documents or Construction Progress Schedule.

6.6.3 The A/E shall prepare a written report of each progress meeting and distribute the report to the Owner and Contractor.

6.7 Review of Contract Documents and Field Conditions

6.7.1 Before starting each portion of the Work, the Contractor shall carefully study and compare the various Contract Documents relative to that portion of the Work, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the Site affecting it.

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

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

6.8 Protection of the Project

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

6.8.2 The Contractor shall protect the Project and existing or adjacent property from damage at all times and shall erect and maintain necessary barriers, furnish and keep lighted necessary danger signals at night, and take reasonable precautions to prevent injury or damage to individuals or property.

6.8.3 The Contractor shall not load, or permit any part of the Project to be loaded, in any manner that endangers the Project, or any portion thereof. The Contractor shall not subject any part of the Project or existing or adjacent property to stress or pressure that endangers the Project or property.

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

6.8.5 The Contractor shall provide controls/barriers for vibrations, noise, and dust control in occupied buildings as required by the construction operations.

6.9 Materials and Equipment

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

6.9.2 The Contractor shall bring to or store at the Site only the materials and equipment required in the Work. If possible, materials and equipment should be installed in their final positions when brought to the Site.

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

6.9.4 The Contractor’s incorporation of unapproved Substitutions in the Work shall constitute Defective Work.

6.10 Labor

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

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

6.10.3 The Contractor shall employ all legal efforts to minimize the likelihood or effect of any strike, Work stoppage, or other labor disturbance. Informational pickets shall not justify any Work stoppage.

6.11 Safety Precautions

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

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

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

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

6.12 Construction Facilities, Utilities, and Equipment

6.12.1 The Contractor shall provide and maintain in a clean condition suitable temporary facilities, equipment, services, and enclosed storage for its use at the Site. The Contractor shall provide and maintain in a clean condition: **(1)** suitable facilities, equipment, and services for use by the A/E; **(2)** adequate space, equipment, and furnishings to conduct progress meetings, and store approved documents and permits; and **(3)** adequate sanitary facilities for use by all Persons at the Site.

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

6.12.3 The Contractor shall provide water necessary for the Work until the permanent plumbing system is available for use. The Contractor shall provide temporary drainage and dewatering necessary for the Work and shall employ pumps, trenches, drains, sumps, and other necessary elements required to provide satisfactory working conditions for the protection, execution, and completion of the Project.

6.12.4 The Contractor shall provide temporary light and power; pay the charges for temporary electric service installation, and removal if required.

6.12.5 The Contractor shall erect and maintain any hoisting equipment required for its Work.

6.13 Progress Cleaning

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

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

6.13.3 The Contractor shall remove, once each working day or as appropriate for the Project, all waste materials and rubbish from the disposal location at, or near, the Site.

6.13.4 The Contractor shall remove, as appropriate for the Project or as the A/E or Owner directs, any waste materials or rubbish from areas adjacent to the Project. The Contractor shall dispose of waste materials, rubbish, and construction debris in a lawful manner in approved recycling facilities or landfills.

6.13.5 If the Contractor fails to clean up during the progress of the Work, the Owner may clean up on behalf of the Contractor and at the Contractor's expense. If the Contractor fails to maintain the areas adjacent to the Project clean and free of waste materials and rubbish, the Owner may also direct the local jurisdiction responsible for the area to have the area cleaned to its satisfaction at the Contractor's expense.

6.14 Use of Premises

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

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

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

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

6.14.5 All State buildings are smoke free. Smoking will not be permitted in any indoor area. The ban on tobacco products will be observed in all indoor and outdoor areas and parking areas on all State-owned and leased property. The Contractor shall enforce these restrictions on any individual employed by the Contractor, or a Subcontractor.

6.15 Interruption of Existing Services

6.15.1 Whenever it becomes necessary to interrupt existing services in use by the Owner or its tenants, including sewer, water, gas, and steam lines, electric, telephone, and cable service, the Contractor shall continue the associated Work on a non-stop 24-hour per day basis until that Work is completed and the service restored, or at an alternate time required by the Owner.

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

6.16 Action Submittals

6.16.1 The Contractor shall review and stamp "approved" all submittals before forwarding them to the A/E. The Contractor shall field verify conditions as necessary and make corrections of dimensions, locations of various items, or variations from the requirements of the Contract Documents. If required by the Contract Documents or Applicable Law, the Contractor shall have Shop Drawings or other submittals prepared by Persons possessing expertise and experience in an appropriate trade or profession or by a registered architect, professional engineer, or other professional.

6.16.2 The A/E shall review submittals for conformity with design intent within 14 days of receiving them or in accordance with the approved submittal schedule, or other period as mutually agreed by the A/E and Contractor.

6.16.3 The Contractor shall not commence any portion of the Work requiring Shop Drawings, Product Data, Samples, or other submittals until the submittal has been approved by the A/E.

6.16.4 Shop Drawings on equipment shall include the following written statement from the manufacturer of the equipment: "This equipment submitted for approval shall perform as specified when installed in the arrangement shown on this drawing and in the Contract Documents and in conjunction with all other accessories as flues, breechings, piping, controls, and equipment not furnished by this manufacturer, but required as an accessory or supplement to this equipment, providing that the accessory or supplementary items perform as specified and are installed as shown in the Contract Documents."

6.17 Warranty

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

6.18 Uncovering the Work

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

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

6.19 Correction of the Work

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

6.19.1.1 If the Contractor fails to promptly commence and diligently pursue correction of Defective Work or recovery of schedule deficiencies required under **Section 6.19.1**, the Owner may correct the Defective Work or take action to recover schedule deficiencies without giving further notice to the Contractor or Contractor's Surety.

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

6.19.2.1 If the Owner issues a notice under **Section 6.19.2** during the Correction Period, the Owner may correct the Defective Work itself without giving further notice to the Contractor or Contractor's Surety if the Contractor fails to **(1)** notify the Owner in writing of the Contractor's intent to correct the Defective Work within 7 days after the Owner issues the notice and **(2)** thereafter promptly commence and diligently pursue correction of Defective Work.

6.19.2.2 The Correction Period: **(1)** commences on the date of Substantial Completion of the Work; **(2)** relates only to the Contractor's specific obligation and opportunity to correct the Work during the Correction Period; **(3)** does not establish a period of limitation with respect to any of the Contractor's other obligations under the Contract Documents; **(4)** has no relationship to the time within which the State or Owner may seek to enforce the Contract; **(5)** does not establish a period of limitation within respect to the commencement of litigation to establish the Contractor's liability under the Contract or otherwise; and **(6)** shall not be extended by corrective Work performed by the Contractor under this **Section 6.19.2**.

6.19.3 The Contractor shall pay all of the costs and damages associated with the correction of Defective Work and the recovery of schedule deficiencies under this **Section 6.19**. Those costs and damages may include the related fees and charges of contractors, engineers, architects, attorneys, and other professionals; and the cost of correcting or replacing adjacent work. The Owner may deduct those costs and damages from payments then or thereafter due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover those amounts, the Contractor shall immediately pay the amount of the insufficiency to the Owner.

6.20 Acceptance of Defective Work

6.20.1 The Owner may accept any Defective Work instead of requiring its removal or correction, in which case the Contract Sum must be equitably reduced as described under **Article 7**. The Owner may only accept Defective Work through a deduct Change Order that makes explicit reference to this **Section 6.20**.

6.21 Project Document Maintenance and Submittal

6.21.1 The Contractor shall maintain in good order at a secure location on the Site: **(1)** a complete copy of all Contract Documents; Shop Drawings, Product Data, Samples and similar required submittals; manufacturer operating and maintenance instructions; certificates; warranties; RFIs and responses thereto; and other Project-related documents, all marked currently and accurately to record field changes and selections made during construction and to show actual installation where installation varies from Work as originally shown, including the exact location and depth of underground utility lines; and **(2)** a set of Drawings and Specifications, approved in accordance with **Section 5.1.1**, and the records required by **Section 6.2.12**.

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

6.22 Final Cleaning

6.22.1 Before requesting the Substantial Completion inspection of the Work, the Contractor shall clean the Site, remove waste materials and rubbish attributable to the Project, and restore the property to its original condition so that upon Substantial Completion, the premises are ready for occupancy by the Owner.

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

6.22.3 Final cleaning shall be done to the reasonable satisfaction of the A/E and Owner.

6.23 Substantial Completion

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

6.23.1.1 The Contractor shall proceed to correct all items listed on the Contractor's Punch List and certify that the incomplete items listed on the Contractor's Punch List are to its knowledge an accurate and complete list by signing the Contractor's Punch List.

6.23.1.2 The Contractor shall submit the signed Contractor's Punch List to the A/E, together with a request for the Substantial Completion inspection of the Work.

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

6.23.2.1 Within 7 days after its acceptance of the Contractor's request, the A/E shall conduct the Substantial Completion inspection to determine whether the Work, or designated portion, is in conformity with the Contract Documents and Substantially Complete. The A/E shall notify the Contractor and Owner of the scheduled time of the inspection.

6.23.2.2 If the A/E determines that the Work is Substantially Complete, within 3 business days after the Substantial Completion inspection, the A/E shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion and include a list of Defective, incomplete, or unacceptable Work ("A/E's Punch List"). The A/E's Punch List shall include **(1)** the items on the Contractor's Punch List that are not yet completed or corrected as of the date of the Substantial Completion inspection, and **(2)** comments from the Owner.

6.23.2.3 The A/E shall submit the Certificate of Substantial Completion to the Owner and Contractor for their written acceptance. Upon their acceptance and consent of the Contractor's Surety, and subject to the Owner's right to withhold payment, the Owner shall release retainage as described under **Section 9.7.2**.

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

6.23.3.1 If Work on the A/E's Punch List cannot be timely completed, the Contractor shall justify in writing to the reasonable satisfaction of the Owner and A/E, the reasons the items cannot be completed, and the Contractor may propose, for the Owner and A/E's approval, a time when the Contractor shall complete those items.

6.23.3.2 Within 3 business days after receipt of the request for the Final Inspection of the Work, the A/E shall complete a Final Inspection of the Work for compliance with the Contract Documents.

6.24 Demonstration and Training, Operating Appurtenances

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

6.24.2 The Contractor, as a condition precedent to execution of the Certificate of Contract Completion and final payment, shall organize and submit operating appurtenances and loose items related to operation and maintenance of the completed Project to the Owner including: keys to door and window hardware, panels, and other devices not directly provided to the Owner from the manufacturer; operating handles, levers, cranks, specialized wrenches or drivers, remote controls, and similar items; and extra materials (e.g., attic stock).

6.25 Contract Completion

6.25.1 When all items on the A/E's Punch List have been completed to the satisfaction of the A/E, all requirements of the Contract Documents have been completed, and the provisions of **Sections 6.21** through **6.24** have been fulfilled, the A/E shall prepare and recommend execution of a Certificate of Contract Completion. The date that the Owner executes the Certificate of Contract Completion is the date of Contract Completion.

ARTICLE 7 - MODIFICATIONS

7.1 General

7.1.1 The Owner may order changes in the Work without invalidating the Contract.

7.1.2 The Contractor shall not proceed with any change in the Work without the Owner's prior written authorization, except as provided under **Sections 1.8** and **7.4**.

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

7.2 Change Order Procedure

7.2.1 A Change Order is a written instrument prepared by the A/E and executed by the Owner and the Contractor, stating their agreement upon all of the following: **(1)** a change in the Work; **(2)** the amount of the adjustment of the Contract Sum, if any; and **(3)** the extent of the adjustment of the Contract Time, if any.

7.2.2 The Contractor is not entitled to reserve any rights or take other similar action with respect to a Change Order if the effect or intent of the reservation or action would be to accommodate a further adjustment of the Contract Sum or Contract Time, or both, after the Contractor signs the Change Order. By signing a Change Order, the Contractor irrevocably certifies that the elements of a Change Order described in **Section 7.2.1** are completely satisfied, and waives all rights, if any, to seek further adjustment of the Contract Sum or Contract Time, or both, at a later date with respect to the associated change in the Work including on account of the “cumulative impact” of the associated change in the Work in combination with one or more other changes in the Work.

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

7.3 Initiation of Change Orders

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

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

7.4 Minor Changes in the Work

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

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

7.5 Differing Site Conditions

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

7.5.2 Promptly after receiving notice from the Contractor under **Section 7.5.1**, the A/E shall investigate to determine whether the Contractor has encountered a Differing Site Condition. The A/E shall give written notice of its determination to the Owner and Contractor within 10 days after completing the investigation.

7.6 Change Order Cost or Credit Determination

7.6.1 The maximum cost or credit resulting from a change in the Work shall be determined using the **Proposal Worksheet Summary Form** described below.

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

7.6.3 The Owner may require notarized invoices for material costs and may audit the records of the Contractor and Subcontractors.

7.6.4 For each change in the Work, the Contractor shall furnish a detailed Proposal itemized on **Document 00 63 54 - Proposal Worksheet Summary Form (Contractor)** published by the Ohio Facilities Construction Commission through which the Contractor shall document the related changes in the Contract Sum. Any Subcontractor pricing shall be itemized on the **Proposal Worksheet Summary Form (Subcontractor)**.

7.7 Time Extension

7.7.1 Every adjustment of the Contract Time associated with any change in the Work shall be determined as provided in this **Section 7.7**, which establishes the Contractor’s maximum entitlement for any change in the Work, including all adjustments for interference, delay, hindrance, or disruption of the Work. This **Section 7.7** also governs time adjustments for deduct Change Orders and the Contractor’s entitlement to additional time through the claims and dispute resolution processes on account of changes in the Work.

7.8 Examination and Audit of Contractor's Records

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

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

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

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

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

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

ARTICLE 8 - DISPUTE RESOLUTION

8.1 Initiation of a Claim

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

8.1.2 Except as provided under **Section 1.8**, the Contractor shall initiate every Claim by giving written notice of the Claim to the A/E and Owner within 10 days after occurrence of the event giving rise to the Claim, with the following exceptions:

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

8.1.2.2 The 10-day time limit on initiating a Claim arising from the A/E's determination concerning a Differing Site Condition begins to run on the date that the A/E issues the A/E's determination under **Section 7.5**.

8.1.3 The Contractor's written notice of a Claim shall provide the following information to permit timely and appropriate evaluation of the Claim, determination of responsibility, and opportunity for mitigation: **(1)** nature and anticipated amount of the impact, including all costs for any interference, disruption, hindrance, or delay, which shall be calculated in accordance with **Section 7.6** and be a fair and reasonably accurate assessment of the damages suffered or anticipated by the Contractor; **(2)** identification of the circumstances responsible for causing the impact, including the date or anticipated date, of the commencement of any interference, disruption, hindrance, or delay; **(3)** identification of activities on the Construction Progress Schedule that will be affected by the impact or new activities that may be created and the relationship with existing activities; **(4)** anticipated impacts and anticipated duration of any interference, disruption, hindrance, delay, or impact, and any remobilization period; and **(5)** recommended action to avoid or minimize any interference, disruption, hindrance, delay, or impact.

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

8.2 Substantiation of Claims

8.2.1 Within 30 days after the initiation of a Claim, the Contractor shall submit 3 copies of all information and statements required to substantiate a Claim as provided in this **Article 8** and all other information that the Contractor believes substantiates the Claim. The Contractor shall file the 3 copies by delivery of 1 copy to the A/E and 2 copies to the Owner.

8.2.2 The Contractor shall substantiate all of its Claims by providing the following minimum information: **(1)** a narrative of the circumstances, which gave rise to the Claim, including the start date of the event or events and the actual or anticipated finish date; **(2)** detailed identification of the Work (e.g., activity codes from the Construction Progress Schedule) affected by the event giving rise to the Claim; **(3)** copies of the Contractor's daily log (**Section 6.2.12**) for each day of impact; **(4)** copies of relevant correspondence and other information regarding or supporting Contractor entitlement; **(5)** copies of the Contractor's most recent income statement, including segregated general and administrative

expenses for the most recent reporting period, and for the period of the Contract, if available, and similar information for any Subcontractor claim included; and **(6)** the notarized certification described under **Section 8.3.1**.

8.3 Certification of the Claim

8.3.1 The Contractor shall certify each Claim within 30 days after initiating the Claim under **Section 8.1** or before Contract Completion, whichever is earlier, by providing the notarized certification specified in **Section 8.3.1**, signed and dated by the Contractor: “The undersigned Contractor certifies that the Claim is made in good faith; that the supporting data is accurate and complete to the best of the Contractor’s knowledge and belief; that the amount requested is a fair, reasonable, and necessary adjustment for which the Contractor believes the State is liable; and that the undersigned is duly authorized to certify the Claim on behalf of the Contractor.”

8.3.2 The date that the Contractor’s certified and fully substantiated Claim is received by the Owner, or the date that the Contractor is required to certify and fully substantiate a Claim pursuant to **Sections 8.2.1** and **8.3.1**, shall trigger the 120-day period for exhaustion of administrative remedies pursuant to ORC Section 153.16(B).

8.3.3 The Contractor’s failure to comply with the requirements of **Sections 8.1, 8.2, and 8.3** shall constitute an irrevocable waiver of any related Claim.

8.4 Delay and Delay Damage Limitations

8.4.1 Subject to other provisions of the Contract, the Contractor will be entitled to an extension of the Contract Time on account of delay in the commencement or progress of Work caused by acts of Nature or the public enemy, acts of the government not arising from the Contractor’s failure to comply with Applicable Law, fires, floods, epidemics, weather, and labor disputes beyond the Contractor’s control.

8.4.2 Notwithstanding any other provision of the Contract Documents to the contrary, the Contractor shall not be entitled to an increase in the Contract Sum, or an extension of the Contract Time, or both **(1)** on account of the impact of any normal adverse weather on any of the Work or **(2)** to the extent that a delay occurs concurrently with a delay attributable to the Contractor.

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

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

8.5 Liquidated Damages

8.5.1 If the Contractor fails to achieve the Contract Time, it would be difficult, if not impossible, to determine the Owner’s resulting damages. Therefore, if the Contractor fails to achieve the Contract Time, the Contractor shall (at the Owner’s option) pay to or credit the Owner the Liquidated Damages per day sum of \$500 for each day that the Contractor fails to achieve the Contract Time.

8.5.2 The Liquidated Damages described in this **Section 8.5** are only intended to compensate the Owner for the direct damages it incurs as a result of the Contractor’s failure to achieve the Contract Time.

8.5.3 The Liquidated Damages described in this **Section 8.5** are not intended to compensate the Owner for any damages the Owner incurs on account of **(1)** any claims attributable to the Contractor that are brought by others or **(2)** any failure of the Contractor to timely, properly, and completely perform the Contract other than the failure to achieve the Contract Time.

8.5.4 The parties acknowledge that the above-listed Liquidated Damages per day sums are not penalties, and they each irrevocably waive the right (if any) to challenge the validity and enforceability of those Liquidated Damages per day sums.

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

8.6 Claim Decision

8.6.1 The A/E shall examine the Contractor's Claim and approve or deny all or any part of it, and forward a written decision to the Contractor and Owner within 30 days after receiving the Contractor's Claim.

8.6.2 If the Contractor and Owner agree with the A/E's decision, the decision shall be incorporated into a Change Order.

8.6.3 Any Claim remaining unresolved after completion of the process described under this **Section 8.6** shall be subject to Claim decision review as described under **Section 8.7**.

8.7 Claim Decision Review

8.7.1 The Contractor may request review of the A/E's decision by written notice delivered to the Executive Director of the Commission by certified mail within 14 days of the A/E's decision.

8.7.2 The Commission shall schedule and conduct a meeting within 30 days after receiving the Contractor's request for review.

8.7.3 The Commission shall determine the final disposition of the Contractor's request for review and provide a written decision to the Contractor and Owner within 14 days after the meeting.

8.7.4 The decision of the Commission is the final administrative decision of the Owner as described under ORC Section 153.12(B).

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

8.7.6 Any Claim remaining unresolved after completion of the process described under this **Section 8.7** shall be subject to litigation, which may be preceded by Alternative Dispute Resolution ("ADR") as described under **Section 8.9**.

8.8 Delegation

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

8.9 Alternative Dispute Resolution

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

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

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

8.10 Audit of the Claim

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

8.10.2 The audit may be performed by employees of the Owner or by a consultant engaged by the Owner.

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

8.10.4 The Contractor shall cooperate with the request.

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

8.10.6 The Contractor shall make available to the Owner all Contractor and Subcontractor documents related to the Claim.

8.11 False Certification of the Claim

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

8.12 Performance and Payment

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

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

ARTICLE 9 - COMPENSATION AND PAYMENT

9.1 Allowances

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

9.1.2 All Allowances include the cost to the Contractor (less any applicable trade discounts) of materials and equipment required by the Allowances to be delivered at the Site, and all applicable taxes. The Contractor's Fee and costs for unloading and handling on the Site, labor, installation costs, and other expenses contemplated for the Allowances are not in the stated Allowance amounts but are otherwise included in the Contract Sum.

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

9.2 Unit Prices

9.2.1 Where the Contract provides that all or part of the Work is to be Unit Price Work, initially the Contract Sum will include for all Unit Price Work **(1)** an amount equal to the sum of the established Unit Prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Contract plus **(2)** the Contractor's Fee on that Unit Price Work.

9.2.2 The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Sum. The Contracting Authority will determine the actual quantities and classifications of Unit Price Work performed by Contractor. The Contractor's Fee on account of Unit Price Work is not in the stated Unit Price amounts but are otherwise included in the Contract Sum.

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

9.3 Schedule of Values

9.3.1 Within 10 days after receipt of the Notice to Proceed, or other period as mutually agreed by the Contractor and Owner, the Contractor shall submit to the A/E a Schedule of Values, with separate amounts shown for labor and materials for each branch of Work.

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

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

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

9.4 Contractor Payment Request

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

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

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

9.4.4 The Owner may audit Contractor Payment Requests as described under **Section 7.8**.

9.5 Labor Payments

9.5.1 Partial payments to the Contractor for labor performed under a lump sum Contract shall be made at the rate of 92 percent of the amount invoiced through the Contractor Payment Request that shows the Work is 50 percent complete.

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

9.6 Material Payments

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

9.6.2 The Owner shall pay the Contractor at the rate of 92 percent of the invoice cost, not to exceed the scheduled value in a lump sum Contract, for materials delivered to the Site. The Owner shall pay the balance of the scheduled value when the materials are incorporated into and become a part of the Project.

9.6.3 When payment is allowed for materials delivered to the Site but not yet incorporated into the Project, the materials are the property of the Owner.

9.7 Retainage

9.7.1 If the total Contract Sum is \$15,000 or more, when the Contract is 50 percent complete, as evidenced by payments in the amount of at least 50 percent of the total Contract Sum to the Contractor, all funds retained for the faithful performance of the Work, in accordance with **Section 9.5.1**, shall be deposited in an escrow account with a bank in the state in accordance with the terms and conditions provided in an escrow agreement executed by the Contractor, Owner, and applicable bank.

9.7.2 When the Contractor has achieved Substantial Completion of all Work, and there is no other reason to retain funds; upon request of the Contractor, the funds retained in connection with that Work shall be released from escrow and paid to the Contractor, withholding only that amount necessary to assure faithful completion in the sole discretion of the Owner, including compliance with **Section 6.21.2**.

9.8 Payments Withheld

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

9.8.2 The Owner may decline to approve any Contractor Payment Request or part thereof, or nullify any previous Contractor Payment Request, in whole or in part, to the extent necessary in the Owner's sole opinion to protect the Owner from loss because of: **(1)** Defective Work not remedied; **(2)** damage caused by the Contractor; **(3)** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum; **(4)** reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover damages under the Contract Documents for the anticipated delay; **(5)** failure to comply with Applicable Law including the requirements of ORC Chapter 4115; **(6)** failure to timely submit EDGE Participation Reports in accordance with **Section 1.6.2**; **(7)** failure to timely identify the Contractor's proposed Subcontractors in accordance with **Section 4.1.1**; **(8)** failure to timely approve a Construction Progress Schedule in accordance with **Section 6.5**; **(9)** failure to carry out the Work in accordance with the Contract Documents; or **(10)** that which is permitted under other provisions of the Contract Documents.

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

9.9 Final Contractor Payment Request

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

9.9.1.1 The Contractor and each of its Subcontractors, regardless of tier, shall execute a Payment Release Affidavit to certify that the Contractor and each of its Subcontractors, regardless of tier, have complied with all requirements of ORC Chapter 4115, and to certify that all of its Subcontractors have been paid in full for all Work performed or materials furnished for the Project.

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

9.9.3 Acceptance of final payment by the Contractor or a Subcontractor constitutes the payee's waiver of all claims against the State except those previously made in writing under **Article 8** and identified by that payee as unsettled at the time of the final Contractor Payment Request.

ARTICLE 10 - BONDS, INSURANCE, AND INDEMNIFICATION

10.1 Payment and Performance Bonds

10.1.1 If the total Contract Sum is \$215,000 or more, the Contractor shall provide the Bond required under Applicable Law before signing the Agreement.

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

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

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

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

10.2 Contractor's General Insurance Requirements

10.2.1 Throughout the performance of the Work or longer as may be described below, the Contractor shall obtain, pay for, and keep in force, the minimum insurance coverage described in this **Article 10**. Before starting the Work on the Site, upon renewal of any policy, and upon a change of any insurance carrier, the Contractor shall deliver to the Owner certificates evidencing that the required insurance is in force.

10.2.2 With the exception of government-controlled workers compensation coverage: **(1)** the Contractor shall place the insurance with companies that **(a)** are satisfactory to the Owner, **(b)** hold an A.M. Best Rating of A-, X, or higher, and **(c)** are authorized to conduct business in Ohio; **(2)** the policies shall be endorsed to require the Contractor's insurance carrier to **(a)** provide 30-days' written notice to the Owner (as certificate holder) of the cancellation or non-renewal of the insurance and **(b)** provide at least 10-days' written notice to the Owner (as certificate holder) of the cancellation of the insurance for non-payment of premium; and **(3)** within 30 days of the Owner's request, the Contractor shall submit insurance-company certified copies of the policies, the policy endorsements, loss-run reports, or all three.

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

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

10.2.5 The Owner does not represent that required coverage or limits are adequate to protect the Contractor.

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

10.2.7 The Owner may terminate the Contract for cause on account of the Contractor's failure to maintain required insurance.

10.3 Contractor's Minimum Coverage Requirements

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

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

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

10.3.4 The Contractor shall maintain business automobile (“BA”) coverage written on ISO form CA 00 01 10 01 or a substitute form, providing at least equivalent coverage with a limit of not less than \$1,000,000 each accident. The coverage shall extend to any auto. The Contractor shall include the State, Owner, and A/E as additional insureds under the BA policy.

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

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

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

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

10.4 Waivers of Subrogation

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

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

10.5 Indemnification for Injury or Damage

10.5.1 To the fullest extent permitted by Applicable Law, the Contractor shall indemnify, defend, and hold harmless the Indemnified Parties from and against all claims, costs, damages, losses, fines, penalties, and expenses (including all fees and charges of attorneys and other professionals, and all court, arbitration, or other dispute-resolution costs) arising out of or in connection with the Project, provided that any such claim, cost, damage, loss, fine, penalty, or expense is attributable to: **(1)** bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property but only to the extent caused by the negligent acts, errors, or omissions of the Contractor or a person or entity for whom the Contractor may be liable; **(2)** infringement of patent rights or copyrights by the Contractor or a person or entity for whom the Contractor may be liable; or **(3)** a violation of Applicable Law but only to the extent attributable to the Contractor or a person or entity for whom the Contractor may be liable.

10.5.2 The Contractor’s indemnification obligation under **Section 10.5** exists regardless of whether or not and the extent to which the claim, damage, loss, fine, penalty, or expense is caused in part by a party indemnified under **Section 10.5**. But nothing in **Section 10.5** obligates the Contractor to indemnify any individual or entity from and against the consequences of that individual’s or entity’s own negligence.

10.5.3 The Contractor’s obligations under **Section 10.5** shall not extend to the liability of the A/E, A/E’s consultants, agents, representatives, or employees for negligent preparation or approval of Drawings, Specifications, Change Orders, opinions, and any other responsibility of the A/E, except to the extent covered by the Contractor’s insurance.

10.5.4 In claims against an Indemnified Party by any direct or indirect employee (or the survivor or personal representative of that employee) of the Contractor or a person or entity for whom the Contractor may be liable, the indemnification obligation under **Section 10.5** will not be limited by a limitation on the amount or type of damages,

compensation, or benefits payable under workers' compensation acts, disability benefit acts, or other employee benefit acts.

10.5.5 The Contractor's indemnification obligation under **Section 10.5** will not be limited by any insurance policy provided or required in connection with the Project.

10.5.6 The Contractor's obligations under **Section 10.5** shall not negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to an Indemnified Party.

10.5.7 The Contractor's indemnification obligation under **Section 10.5** will survive termination of the Contract and Contract Completion.

10.5.8 The Owner may deduct from the Contract Sum the claims, damages, losses, fines, penalties, and expenses for which the Contractor is liable under **Section 10.5**. If those claims, damages, losses, fines, penalties, and expenses exceed the unpaid balance of the Contract Sum, the Contractor shall immediately pay the difference to the Owner.

ARTICLE 11 - SUSPENSION AND TERMINATION

11.1 Suspension of the Work

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

11.1.1.1 If the Owner suspends the Work under this **Section 11.1.1** and the Contractor complies with **Article 8**, the Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by the suspension, delay, or interruption. The adjustment of the Contract Sum, however, shall not include profit (a component of Contractor's Fee).

11.1.1.2 Notwithstanding the foregoing, no adjustment shall be made to the Contract Sum or Contract Time to the extent that: **(1)** performance was, or could have been, suspended, delayed, or interrupted by a cause for which the Contractor is responsible; or **(2)** an equitable adjustment is made or denied under another provision of the Contract.

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

11.1.2 Upon receipt of notice of suspension under this **Section 11.1**, the Contractor shall cease Work on the suspended activities and take all necessary or appropriate steps to limit disbursements and minimize respective costs. The Contractor shall furnish a report to the Owner, within 5 days of receiving the notice of suspension, describing the status of the Work, including results accomplished, resulting conclusions, and other information as the Owner may require.

11.1.3 The Owner's right to stop the Work shall not give rise to any duty to exercise the right for the benefit of the Contractor or any other party, and the Owner's exercise or failure to exercise the right shall not prejudice any of the Owner's other rights.

11.2 Termination for Convenience

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

11.2.2 Upon receipt of the notice of termination, the Contractor shall immediately proceed with performance of the following duties in accordance with instructions from the Owner: **(1)** cease operation as specified in the notice; **(2)** place no further orders and enter into no further subcontracts for materials, labor, services, or facilities, except as necessary to complete continued portions of the Project; **(3)** terminate all subcontracts and orders to the extent they relate to the Work terminated; **(4)** proceed with Work not terminated; and **(5)** take actions that may be necessary, or that the Owner may direct, for the protection and preservation of the terminated Work.

11.2.3 Upon termination, the Owner shall pay the Contractor in accordance with the Schedule of Values for Work completed, including any retained funds, and the value of materials ordered and delivered, less any salvage credit the Contractor may receive for them.

11.2.4 If the Owner terminates the Work under this **Section 11.2**, the termination shall not affect the rights or remedies of the State against the Contractor then existing or which may thereafter accrue.

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

11.3 Termination for Cause

11.3.1 The Owner may terminate all or a portion of the Contract if the Contractor commits a material breach of the Contract including but not limited to: **(1)** failure to prosecute the Work with the necessary force or in a timely manner; **(2)** refusal to remedy Defective Work; **(3)** failure to supply enough properly skilled workers or proper materials; **(4)** failure to properly make payment to Subcontractors or Consultants; **(5)** performance of any services outside of the United States; **(6)** permitting its Subcontractors or Consultants to perform any services outside of the United States; or **(7)** disregarding laws, ordinances, or rules, regulations, or orders of a public authority with jurisdiction over the Project.

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

11.3.2.1 Notwithstanding any provision of the Contract to the contrary **(1)** the issuance of a 72-Hour Notice under **Section 6.19.1** is not a condition precedent to the Owner's exercise of its rights under **Section 11.3** and **(2)** the Owner's decision to not issue a 72-Hour Notice under **Section 6.19.1** will not prejudice the Owner's rights under **Section 11.3**.

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

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

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

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

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

11.3.8 If the Owner is adjudged to have improperly terminated the Contract under this **Section 11.3**, the termination will be deemed to have been a termination under **Section 11.2**.

11.4 Contractor Insolvency

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

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

ARTICLE 12 - GENERAL PROVISIONS

12.1 Contractor's Documents and Contract Documents

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

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

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

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

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

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

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

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

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

12.2 Application and Governing Law

12.2.1 The Contract and the rights of the parties thereunder shall be governed by the laws of the state of Ohio and only Ohio courts shall have jurisdiction over any action or proceeding concerning the Contract and/or performance thereunder. The Contractor irrevocably consents to such jurisdiction. The parties to the Contract shall comply with Applicable Law. Other rights and responsibilities of the Contractor, A/E, and Owner are set forth throughout the Contract Documents and included under different titles, articles, and paragraphs for convenience.

12.3 Conditions of the Contract

12.3.1 These General Conditions govern, take precedence over, and shall not be superseded or amended by Drawings and Specifications, unless so provided in Supplementary Conditions prepared by the Owner and approved by the Ohio Facilities Construction Commission.

12.4 Notice of Commencement.

12.4.1 The Owner shall prepare a Notice of Commencement and make it available as required under ORC Section 1311.252. Upon request, the Owner or Contractor shall furnish the Notice of Commencement to Subcontractors or any other member of the public.

12.5 Written Notice

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

12.5.2 When the Owner, A/E, or Contractor gives notice to one of the other 2, it shall also simultaneously send a copy of that notice to the others.

12.5.3 In the event of an emergency involving the Project, including a fatality, serious injury, fire, collapse, flood, utility, or power loss to occupied facilities, explosion, or environmental damage, the Contractor shall immediately notify the A/E and Owner by telephone.

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

12.6 Taxes

12.6.1 Only those materials that ultimately become a part of the completed structure or improvement that constitutes the Project shall be exempt from state sales tax and state use tax. The purchase, lease, or rental of material, equipment, parts, or expendable items as concrete form lumber, tools, oils, greases, and fuels, which are used in connection with the Work, are subject to the application of state sales tax and state use tax.

12.7 Computing Time

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

12.7.2 Except as excluded under **Section 12.7.1**, the Contract Time and all other periods referred to in the Contract Documents includes Saturdays, Sundays, and legal holidays.

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

12.8 Time of the Essence

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

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

12.9 Successors and Assigns

12.9.1 The Owner and Contractor each bind themselves, their successors, assigns, and legal representatives, to the other party to this Contract and to the successors, assigns, and legal representatives of the other party with respect to all terms of this Contract. The Contractor shall not assign, or transfer any right, title, or interest in this Contract without the Owner's prior written consent.

12.10 Extent of Contract

12.10.1 The Contract Documents represent the entire and integrated agreement between the Owner and Contractor and supersede all prior negotiations, representations, or agreements, either written or oral.

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

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

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

12.11 Severability

12.11.1 If any term or provision of this Contract or the application thereof to any Person or circumstance, is finally determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Contract or the

application of such term or provision to other Persons or circumstances, shall not be affected thereby, and each term and provision of this Contract shall be valid and enforced to the fullest extent permitted by Applicable Law.

12.12 Electronic and Facsimile Signatures

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

12.13 No Third-Party Interest

12.13.1 No person or entity, other than the Owner and Contractor, will have any right or interest under the Contract, and the Contract does not create a contractual relationship of any kind between any people or entities other than the Owner and Contractor.

12.14 No Waiver

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

12.15 Rights and Remedies

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

12.16 Survival of Obligations

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

ARTICLE 13 - DEFINED TERMS AND ABBREVIATIONS

13.1 For the purposes of the Contract, the words, terms, and abbreviations set forth below have the following meanings:

13.1.1 “Addenda” or “Addendum” means a written or graphic instrument issued prior to the bid opening which modifies or interprets the proposed Contract Documents by additions, deletions, clarifications, or corrections.

13.1.2 “Architect/Engineer” or “A/E” means the Person responsible for providing professional design services and construction contract administration for the Project as provided in the Contract Documents.

13.1.3 “Applicable Law” means all federal, state, and local codes, statutes, ordinances, and regulations that apply to the performance of the Work or the A/E’s Services on the Project.

13.1.4 “As-Built Documents” means documents including Drawings, Addenda, Specifications, executed Change Orders, and other elements of the Contract Documents, which the Contractor annotates and otherwise modifies to indicate changes made during the construction process, the location of concealed and buried items, and other useful information.

13.1.5 “Bid” means a written proposal to perform a Contract, submitted on a completed Bid Form, accompanied by other required documents. The term Bid includes a proposal that has been digitally signed, encrypted, and submitted through the State’s electronic bidding application pursuant to OAC Section 153:1-8-01.

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

13.1.7 “Bond” means a performance and payment bond in the format specified by ORC Section 153.57 submitted by the Contractor to provide assurance that the Contractor will perform the Work of the Contract, including making required payments to Subcontractors and Materials Suppliers.

13.1.8 “Certificate of Contract Completion” means a form used to document that the Contractor’s achievement of Contract Completion.

13.1.9 “Certificate of Substantial Completion” means a form used to document (1) that the Contractor has achieved Substantial Completion of the Work, and (2) the date on which Substantial Completion of the Work was achieved.

13.1.10 “Change Order” means a document executed by the Owner and Contractor that modifies the Contract.

13.1.11 “Claim” means a demand or assertion, initiated by written notice, certified by one of the parties to the Contract seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract.

13.1.12 “Commission” means the Ohio Facilities Construction Commission, the authorized contracting agent for public improvement projects in accordance with ORC Chapters 123 and 153, acting by and through its Executive Director.

13.1.13 “Construction Progress Schedule” means the schedule for performance of the Contract; showing the time for completing the Work within the Contract Times; the planned sequence for performing the various components of the Work; and the interrelationship between the activities of the Contractor, A/E, and Owner; as periodically updated during the performance of the Work.

13.1.14 “Contract” means the state of legal obligation entered into by the State and the Contractor, whereby they have agreed to an exchange of certain acts, materials, equipment, and services for certain monetary consideration, under all terms and conditions specified in the Contract Documents, which shall remain in full force and effect until such time as all obligations under the Contract have been lawfully and completely discharged, or the Contract is terminated under other conditions specified in the Contract Documents.

13.1.15 “Contract Completion” means the schedule Milestone when the Work is completed in accordance with the terms of the Contract Documents and Contractor has satisfied all of its other obligations under the Contract Documents, including but not limited to **(1)** all governmental authorities have given final, written approval of the Work, **(2)** a final unconditional certificate of occupancy has been granted and issued to the Owner by the appropriate governmental authorities, **(3)** the Contractor's Work is 100 percent complete, and **(4)** all Punch List items have been completed or corrected, and **(5)** the Contractor has complied with conditions precedent to final payment and release of retained funds.

13.1.16 “Contract Documents” means collectively, the documents that constitute the substance of the Contract including but not limited to Drawings, Specifications, Addenda if any, General Conditions, Supplementary Conditions if any, Bid Form, Wage Rates; and the executed Agreement, Bid Guaranty and Contract Bond, and executed Change Orders if any.

13.1.17 “Contract Sum” means the Contractor’s entire compensation for the Contractor’s proper, timely, and complete performance of the Work and is subject to adjustment as provided in the Contract.

13.1.18 “Contract Time” means the period stipulated in the Contract for the achievement of Substantial Completion, in consecutive days, beginning on the date established by the Notice to Proceed, including adjustments authorized by executed Change Orders.

13.1.19 “Contractor” means a firm, which is party to the Contract for the performance of Work on the Project in accordance with the Contract Documents.

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

13.1.21 “Correction Period” means a period of one year commencing on the date of Substantial Completion.

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

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

13.1.24 “Final Inspection” means the final review of the Work of the Contractor by the A/E to determine whether issuance of the Certificate of Contract Completion is appropriate.

13.1.25 “Hazardous Materials” means any material, substance, pollutant, or contaminant that is defined, regulated, referenced, or classified in the Comprehensive Environmental Response, Compensation and Liability Act, Federal Water Pollution Control Act, the Resource Conservation and Recovery Act, Clean Air Act, Hazardous Materials Transportation Uniform Safety Act, Toxic Substances Control Act, or any other Applicable Law relating to any hazardous, toxic, or dangerous waste, substance, or material, and specifically includes but is not limited to asbestos, polychlorinated

biphenyls (“PCBs”), radioactive materials, including radon and naturally occurring radio nuclides, natural gas, natural gas liquids, liquefied natural gas, synthetic gas, oil, petroleum and petroleum-based derivatives and urea formaldehyde.

13.1.26 “Indemnified Parties” means the State, Owner, A/E, and their respective officials, officers, consultants, agents, representatives, and employees, in both individual and official capacities.

13.1.27 “Liquidated Damages” means a sum established in the Contract Documents, pursuant to the statutory delay forfeiture authorized under ORC Section 153.19, to be paid to the Owner due to the Contractor’s failure to complete the Work within the Contract Time for achievement of Substantial Completion, or any applicable portion of the Work on or prior to any Milestone date stated on the Agreement.

13.1.28 “Milestone” means a principal event specified in the Contract relating to an intermediate date or time prior to Substantial Completion.

13.1.29 “Modification” means a Change Order or an order for a minor change in the Work.

13.1.30 “Notice of Commencement” means a notice prepared by the Owner identifying the Project, the Contractor, the Surety for the Contractor, and the name of the Owner’s representative upon whom a claim affidavit may be served.

13.1.31 “Notice to Proceed” means written notice provided by the Owner authorizing the Contractor to proceed with the Work and establishing the dates for commencement and completion of the Work.

13.1.32 “OAC” means the Ohio Administrative Code.

13.1.33 “ORC” means the Ohio Revised Code.

13.1.34 “Owner” means the state of Ohio agency, institution of higher education or division thereof, school district board, or other instrumentality for whom the Project is being constructed.

13.1.35 “Person” means an individual, corporation, business trust, estate, partnership, association, or other public or private entity.

13.1.36 “Product Data” means a manufacturer’s standard illustrations, schedules, diagrams, performance charts, instructions, and brochures that illustrate physical appearance, size, and other characteristics of materials and equipment.

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

13.1.38 “Proposal Request” means a document issued after execution of the Contract requesting a Proposal from the Contractor, which may initiate a Change Order to modify the Contract.

13.1.39 “Punch List” means a document listing items of Work requiring correction or completion by the Contractor as a condition precedent to Contract Completion.

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

13.1.41 “Samples” means physical examples, color selection items, field samples, and mock-ups furnished by the Contractor to illustrate functional and aesthetic characteristics of products, materials, equipment, or workmanship and establish criteria by which the Work shall be judged.

13.1.42 “Schedule of Values” means a full, accurate, and detailed statement furnished by the Contractor reflecting a defined breakdown of the Contract Sum.

13.1.43 “Shop Drawings” means drawings, diagrams, illustrations, and schedules specifically prepared for the Project provided by the Contractor or a Subcontractor to illustrate some portion of the Work. Shop Drawings are not Contract Documents.

13.1.44 “Site” means the location designated for the Project.

13.1.45 “Specifications” means those portions of the Contract Documents consisting of detailed written administrative, procedural, and technical requirements for the construction of the Work, whether physically on the Drawings or bound in separate volumes, including identification of acceptable materials, methods, equipment, quality, and workmanship.

13.1.46 “State” means the government of Ohio, including any organized body, office, or agency established by the laws of this state for the exercise of any function of state government, any state institution of higher education as defined in ORC Section 3345.011, or any school district board as defined in ORC Section 3318.01.

13.1.47 “Subcontract” means any contract or agreement between the Contractor and a Subcontractor for performance of a portion of the Work.

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

13.1.49 “Substantial Completion” means the stage when the Work is sufficiently complete in accordance with the Contract that the Owner can utilize the Work for its intended use, as determined by the A/E. The issuance of a certificate of occupancy (if applicable) is a condition precedent to the achievement of Substantial Completion.

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

13.1.51 “Supplementary Conditions” means amendments to the General Conditions, issued as a separate document, which describe conditions of the Contract unique to a particular Owner or Project.

13.1.52 “Surety” means a Person providing a Bid Guaranty or a Bond to a Bidder or a Contractor, as applicable, to indemnify the State against all direct and consequential damages suffered by failure of the Bidder to execute the Contract, or of the Contractor to perform the Contract and to pay all lawful claims of Subcontractors, material suppliers and laborers, as applicable.

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

END OF DOCUMENT

SUPPLEMENTARY CONDITIONS to the GENERAL CONDITIONS

The following supplements, modify:

"General Conditions of the Contract for Construction," included as part of AIA Document A201, 2007 edition. Where a portion of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect.

ARTICLE 1 – GENERAL PROVISIONS

- 1.1 Basic Definitions
 - 1.1.1 The Contract Documents
 - 1.1.2 The Contract
 - 1.1.3 The Work
 - 1.1.4 The Project
 - 1.1.5 The Drawings
 - 1.1.6 The Specifications
 - 1.1.7 Instruments of Service
 - 1.1.8 Initial Decision Maker
- 1.2 Correlation and Intent of the Contract Documents
- 1.3 Capitalization
- 1.4 Interpretation
- 1.5 Ownership and Use of Drawings, Specifications and other Instruments of Service
- 1.6 Transmission of Data in Digital Form

ARTICLE 2 – OWNER

- 2.1 General
- 2.2 Information and Services Required of the Owner

Add the following optional paragraph if applicable:

- 2.2.2.1 The Owner shall secure and pay for the State Building, and Electrical Permits. The successful platform lift contractor shall make application for elevator permit and shall pay the State Application Fee. The successful plumbing contractor shall make application to local Health Department and pay application fee.

The Contractor shall secure and pay for all other permits and governmental fees, licenses and inspections necessary for proper execution of and completion of the Contract which are legally required when bids are received or negotiations concluded.

- 2.3 Owner's Right to Stop the Work
- 2.4 Owner's Right to Carry Out the Work

ARTICLE 3 – CONTRACTOR

- 3.1 General
 - 3.2 Review of Contract Documents and Field Conditions by Contractor
- Supplementary Conditions to General Conditions

- 3.3 Supervision and Construction Procedures
- 3.4 Labor and Materials
- 3.5 Warranty
- 3.6 Taxes

When necessary add Paragraph 3.6.1.1:

3.6.1.1 This Project is exempt from state sales tax. The Contractor shall use the “Tax Exempt Certificate” included in Project Manual for use in conjunction with this Project.

- 3.7 Permits, Fees, Notices and Compliance with Laws

When necessary, delete paragraph 3.7.1 and substitute the following:

3.7.1.1 The Contractor shall obtain and pay for all other permits, governmental fees, licenses and inspections necessary for proper execution of and completion of the Contract which are legally required when bids are received.

3.7.1.2 The Owner will secure certain permits as provided under Paragraph 2.2.2.

- 3.8 Allowances
- 3.9 Superintendent
- 3.10 Contractor’s Construction Schedules
- 3.11 Documents and Samples at the Site
- 3.12 Shop Drawings, Product Data and Samples
- 3.13 Use of Site
- 3.14 Cutting and Patching
- 3.15 Cleaning Up
- 3.16 Access to Work
- 3.17 Royalties, Patents and Copyrights
- 3.18 Indemnification

ARTICLE 4 – ARCHITECT

- 4.1 General
- 4.2 Administration of the Contract

Add Clause 4.2.2.1 to Subparagraph 4.2.1:

4.2.2.1 The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by the fault, neglect or request of the Contractor.

- 4.2.4 Communications Facilitating Contract Administration

Supplementary Conditions to General Conditions

ARTICLE 5 – SUBCONTRACTORS

- 5.1 Definitions
- 5.2 Award of Subcontracts and Other Contracts for Portions of the Work
- 5.3 Subcontractual Relations
- 5.4 Contingent Assignment of Subcontracts

ARTICLE 6 – CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

- 6.1 Owner’s Right to Perform Construction and to Award Separate Contracts
- 6.2 Mutual Responsibility
- 6.3 Owner’s Right to Clean Up

ARTICLE 7 – CHANGES IN THE WORK

- 7.1 General
- 7.2 Change Orders
- 7.3 Construction Change Directives
- 7.4 Minor Changes in the Work

ARTICLE 8 – TIME

- 8.1 Definitions
- 8.2 Progress and Completion
- 8.3 Delays and Extensions of Time

ARTICLE 9 – PAYMENTS AND COMPLETION

- 9.1 Contract Sum
- 9.2 Schedule of Values
- 9.3 Applications for Payment

Delete 9.3.1 and substitute the following for Paragraph 9.3.1:

- 9.3.1** At least ten (10) days before each progress payment falls due (but not more than once a month), the Contractor will submit to the Architect a partial payment request filled out and signed by the Contractor covering the Work performed during the period covered by the partial payment request and supported by such data as the Architect may reasonably require. The Contractor, in each partial payment request, shall bill materials and labor separately.

LABOR

- A. Partial payments to the Contractor for labor performed under either a Unit Price or lump sum Contract shall be made at the rate of 92 percent of the amount invoiced through the application for Payment which shows the total Contract Completion at 50 percent or greater, pursuant to Section 153,13, ORC.
- B. After the Contract is 50 percent complete, as evidenced by payments in the amount of at least 50 percent of the Contract price to the Contractor, except in the case of Contracts the total of which is less than \$15,000, no additional funds shall be retained from payments for labor.

MATERIAL

- A. The Owner shall pay to the Contractor a sum at the rate of 92 percent of the invoice cost, not to exceed the bid amount in a Unit Price or lump sum Contract, for material delivered on the site of the project, or other point in the vicinity of the Project, or other storage site approved by the Associate, provided the Contractor provides the following information with the Application for Payment:
 - 1. After the Contract is 50 percent complete, as evidenced by payments in the amount of at least 50 percent of the Contract price to the Contractor, except in the case of Contracts the total of which is less than \$15,000, no additional funds shall be retained from payments for material.
 - 2. A list of the fabricated materials consigned to the Project, giving the place of storage, together with copies of invoices, in order to verify quantity and cost.
 - 3. A certification of materials stored off site, prepared by the Contractor and signed by the Associate to evidence that the materials are in conformity with the Specifications and have been tagged with the Project name and number for delivery to the Project. All costs incurred by the Associate to visit a storage site, other than the areas adjacent to the Project, shall be paid by the Contractor.

All retainage will be held until final completion and acceptance of all work covered by the Contract Documents. When the Work is substantially complete (operational or beneficial occupancy), the retained amount may be further reduced to only that amount necessary to assure completion. On completion and acceptance of a part of the Work on which the price is stated separately in the Contract Documents, payment may be made in full, including retained percentages and escrow fund, less authorized deductions.

- 9.4 Certificates for Payment
- 9.5 Decisions to Withhold Certification
- 9.6 Progress Payments
- 9.7 Failure of Payment
- 9.8 Substantial Completion
- 9.9 Partial Occupancy or Use
- 9.10 Final Completion and Final Payment

ARTICLE 10 – PROTECTION OF PERSONS AND PROPERTY

- 10.1 Safety Precautions and Programs
- 10.2 Safety of Persons and Property
 - 10.2.8 Injury or Damage to Person or Property
- 10.3 Hazardous Materials
- 10.4 Emergencies

Add the following Paragraphs:

- 10.5 Drug-Free Workplace
 - 10.5.1 The Contractor must maintain a “Drug-Free Workplace” program that conforms to the requirements set forth in the Marion County and Ohio Bureau of Workers Compensation “Drug-Free Workplace” Program.

ARTICLE 11 – INSURANCE AND BONDS

- 11.1 Contractor’s Liability Insurance

Add the following section:

- 11.1.1.9 Liability Insurance shall include all major divisions of coverage and be on a comprehensive basis including:
 - 1. Premises Operations (including X, C and U coverages as applicable).
 - 2. Independent Contractor's Protective.
 - 3. Products and Completed Operations.
 - 4. Personal Injury Liability with Employment Exclusion deleted.

Supplementary Conditions to General Conditions
Page 6

- 5. Contractual, including specified provision for Contractor's obligation under

paragraph 3.1.2.

6. Owned, non-owned and hired motor vehicles.
7. Broad Form Property Damage including Completed Operations.

If the General Liability coverages are provided by a Commercial General Liability Policy on a claims-made basis, the policy date or Retroactive Date shall pre-date the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after final payment.

The insurance required in this paragraph shall be written for not less than the following limits, or greater if required by law:

1. Workers Compensation:
 - a. State - Statutory
 - b. Applicable Fed., e.g. Longshoremen's - Statutory
 - c. Employer's Liability: \$500,000 per accident
\$500,000 disease, policy limit
\$500,000 disease, each employee
2. Comprehensive or Commercial General Liability (including Premises-Operations; Independent Contractor's Protective; Products and Completed Operations; Broad Form Property Damage:
 - a. Bodily Injury:

\$1,000,000	Each Occurrence
\$1,000,000	Aggregate
 - b. Property Damage:

\$1,000,000	Each Occurrence
\$1,000,000	Aggregate
 - c. Products and Completed Operations to be maintained for two years after final payment.

\$1,000,000	Aggregate
-------------	-----------
 - d. Property Damage Liability Insurance shall provide X, C and U coverage.
 - e. Broad Form Property Damage Coverage shall include Completed Operations.
- f. Medical: Medical expense limit shall be not less than \$5,000 on any one person.

3. Contractual Liability:
 - a. Bodily Injury:

\$1,000,000	Each Occurrence
\$1,000,000	Aggregate
 - b. Property Damage:

\$1,000,000	Each Occurrence
\$1,000,000	Aggregate
4. Personal Injury, with Employment Exclusion deleted:

\$1,000,000	Aggregate
-------------	-----------
5. Business Auto Liability, (including any auto, hired auto, non-owned autos)
 - a. Bodily Injury:

\$750,000	Each person
\$750,000	Each occurrence
 - b. Property Damage:

\$750,000	Each occurrence.
-----------	------------------
6. Umbrella Excess Liability:

\$1,000,000 over primary insurance	
\$10,000 retention for self-insured hazards each occurrence.	

11.2 Owner's Liability Insurance

11.3 Property Insurance

11.3.2 Boiler or Machinery Insurance

11.3.3 Loss of Use Insurance

11.3.7 Waivers of Subrogation

11.4 Performance Bond and Payment Bond

Delete Subparagraph 11.4.1 and substitute the following:

11.4.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Contractor's usual source and the cost thereof shall be included in the Contract sum. The amount of each

Supplementary Conditions to General Conditions

Page 8

bond shall be equal to 100% of the Contract sum. Bond shall meet the requirements of Ohio Revised Code, Section 153.571.

ARTICLE 12 – UNCOVERING AND CORRECTION OF WORK

- 12.1 Uncovering of Work
- 12.2 Correction of Work
 - 12.2.1 Before or After Substantial Completion
 - 12.2.2 After Substantial Completion
- 12.3 Acceptance of Nonconforming Work

ARTICLE 13 – MISCELLANEOUS PROVISIONS

- 13.1 Governing Law
- 13.2 Successors and Assigns
- 13.3 Written Notice
- 13.4 Rights and Remedies
- 13.5 Tests and Inspections
- 13.6 Interest
- 13.7 Time Limits on Claims

ARTICLE 14 – TERMINATION OR SUSPENSION OF THE CONTRACT

- 14.1 Termination by the Contractor
- 14.2 Termination by the Owner for Cause
- 14.3 Suspension by the Owner for Convenience
- 14.4 Termination by the Owner for Convenience

ARTICLE 15 – CLAIMS AND DISPUTES

- 15.1 Claims
 - 15.1.1 Definition
 - 15.1.2 Notice of Claims
 - 15.1.3 Continuing Contract Performance
 - 15.1.4 Claims for Additional Cost
 - 15.1.5 Claims for Additional Time
 - 15.1.6 Claims for Consequential Damages
- 15.2 Initial Decision
- 15.3 Mediation
- 15.4 Arbitration
 - 15.4.4 Consolidation or Joinder

END OF SUPPLEMENTARY CONDITIONS TO THE GENERAL CONDITIONS A-201.

DRUG-FREE WORKPLACE

The Contractor must maintain a “Drug-Free Workplace” program that conforms to the requirements set forth in the Marion County and Ohio Bureau of Workers Compensation “Drug-Free Workplace” Program.

For the State of Ohio Drug-Free Workplace Policy, go to the following site:

<http://das.ohio.gov/LinkClick.aspx?fileticket=tuFnLFmCqAw%3d&tabid=71>

NOTICE OF COMMENCEMENT OF PUBLIC IMPROVEMENT
Section 1311.252, Ohio Revised Code

State of Ohio
County of Marion

Notice is hereby given by Marion Historical Society, 169 East Church St., Marion, OH 43302 ,
Owner, of the commencement of a public improvement as follows:

1. The public improvement is identified as:

Project Name: Roof Replacement at Heritage Hall

Project Number: 23-111

Location and / or Description of Project: 169 East Church St., Marion, OH 43302;
Roof Tearoff and Replacement.

1a) Legal Description of Property attached.

2. The principal contractors on the public improvement and the trade and surety of each are as follows:

A. Trade: General Contractor

Date of Contract: _____

Principal Contractor: NAME
ADDRESS
CITY STATE ZIP

Surety:

Agent:

_____, Attorney-in-Fact

3. The representative of Marion Historical Society, Owner, upon whom service may be made for the purposes of serving an affidavit pursuant to Section 1311.26 of the Ohio Revised Code is:

Name: _____

Title: Executive Director

Address: 169 E. Church St., Marion, OH 43302

To Lien Claimants and Subsequent Purchasers:

Take notice that labor or work is about to begin on or materials are about to be furnished for and improvement to the real property described in this instrument. A person having a mechanics' lien may preserve the lien by providing a Notice of Furnishing to the above-named designee and the

above-named designee's original Contractor, if any, and by timely recording an affidavit pursuant to Section 1311.06 of the Revised Code. A copy of this notice may be obtained upon making a written request by certified mail to the above-named owner, part owner, lessee, designee, or the person with whom you have contracted.

I certify or affirm that to the best of my knowledge, the information provided in this document is true and correct and that I am fully authorized to provide this Notice.

Affiant: Name of Owner / Office

Signature

Name / Title

Address, City, State, Zip

The Affiant acknowledged and signed this instrument before me, a Notary Public in and for the County of _____, State of Ohio.

Sworn to and subscribed before me this _____ day of _____, 20____.

(Seal)

Notary Public

This Document prepared by: Kathy Caudill, Administrative Assistant
Omness Design, Inc.

NOTICE OF FURNISHING

Section 1311.261, Ohio Revised Code

(FOR USE IN CONNECTION WITH PUBLIC IMPROVEMENTS)

TO: _____
(Name of Principal Contractor)

Date: _____

(Address of Principal Contractor)

The undersigned notifies you that he has furnished or performed or will furnish or perform

(Describe labor, work, or materials)

for the improvement of real property identified as _____

(Property description or address)

under order given by _____
(Name of subcontractor or materialman)

The labor, work, or materials were first furnished or performed or will be furnished or performed

on _____, 20_____.

(Name of subcontractor or materialman)

By: _____
(Signature)

Name: _____

Title: _____

Telephone No.: _____

Address: _____

This Notice of Furnishing must be served in compliance with Ohio Revised Code Sections 311.19 and 1311.261.

DRAFT AIA[®] Document G702[™] - 1992

Application and Certificate for Payment

TO OWNER:	Marion County Historical Society 169 East Church St. Marion, OH 43302	PROJECT:	Roof Replacement @ Heritage Hall 169 East Church St. Marion, OH 43302	APPLICATION NO:	001	Distribution to:
FROM CONTRACTOR:		VIA ARCHITECT:	Omness Design, Inc. 140 Fairfax Road Marion OH 43302	PERIOD TO:		OWNER: <input type="checkbox"/>
				CONTRACT FOR:		ARCHITECT: <input type="checkbox"/>
				CONTRACT DATE:		CONTRACTOR: <input type="checkbox"/>
				PROJECT NOS:	22-12 / /	FIELD: <input type="checkbox"/>

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM.....	\$0.00
2. NET CHANGE BY CHANGE ORDERS.....	\$0.00
3. CONTRACT SUM TO DATE (Line 1 ± 2).....	\$0.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703).....	\$0.00
5. RETAINAGE:	
a. <u>0</u> % of Completed Work (Column D + E on G703: <u>\$0.00</u>) = <u>\$0.00</u>	
b. <u>0</u> % of Stored Material (Column F on G703: <u>\$0.00</u>) = <u>\$0.00</u>	
Total Retainage (Lines 5a + 5b or Total in Column I of G703).....	\$0.00
6. TOTAL EARNED LESS RETAINAGE..... (Line 4 Less Line 5 Total)	\$0.00
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT..... (Line 6 from prior Certificate)	\$0.00
8. CURRENT PAYMENT DUE.....	\$0.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$0.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: _____ Date: _____

By: _____ Date: _____

State of: _____

County of: _____

Subscribed and sworn to before me this _____ day of _____

Notary Public: _____

My Commission expires: _____

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED..... \$0.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT: _____ Date: _____

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
NET CHANGES by Change Order		\$0.00

DRAFT AIA[®] Document G703[™] - 1992

Continuation Sheet

AIA Document, G702[™]-1992, Application and Certification for Payment, or G736[™]-2009, Project Application and Project Certificate for Payment, Construction Manager as Adviser Edition, containing Contractor's signed certification is attached.

In tabulations below, amounts are in US dollars.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO:	001
APPLICATION DATE:	
PERIOD TO:	
ARCHITECT'S PROJECT NO:	22-127

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D + E + F)		H BALANCE TO FINISH (C - G)	I RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD		% (G ÷ C)			
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
	GRAND TOTAL	0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00

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User Notes:

DRAFT AIA® Document G701™ - 2001

Change Order

PROJECT (Name and address):	CHANGE ORDER NUMBER: 001	OWNER: <input type="checkbox"/>
Heritage Hall Roof Replacement 169 E. Church St. Marion OH 43302	DATE:	ARCHITECT: <input type="checkbox"/>
TO CONTRACTOR (Name and address):	ARCHITECT'S PROJECT NUMBER: 22-127	CONTRACTOR: <input type="checkbox"/>
	CONTRACT DATE:	FIELD: <input type="checkbox"/>
	CONTRACT FOR:	OTHER: <input type="checkbox"/>

THE CONTRACT IS CHANGED AS FOLLOWS:
(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)

The original Contract Sum was	\$	0.00
The net change by previously authorized Change Orders	\$	0.00
The Contract Sum prior to this Change Order was	\$	0.00
The Contract Sum will be unchanged by this Change Order in the amount of	\$	0.00
The new Contract Sum including this Change Order will be	\$	0.00

The Contract Time will be unchanged by Zero (0) days.
The date of Substantial Completion as of the date of this Change Order therefore is

NOTE: This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

<u>Omness Design, Inc.</u> ARCHITECT (Firm name)	<u>Marion County Historical Society</u> CONTRACTOR (Firm name)	<u>Marion County Historical Society</u> OWNER (Firm name)
140 Fairfax Road, Marion OH 43302	169 E. Church St.	169 E. Church St.
ADDRESS	ADDRESS	ADDRESS
<u>Paul Omness</u> BY (Signature)	<u>Paul Omness</u> BY (Signature)	<u>Paul Omness</u> BY (Signature)
<u>Paul Omness</u> (Typed name)	<u>Paul Omness</u> (Typed name)	<u>Paul Omness</u> (Typed name)
DATE	DATE	DATE

Date _____

PARTIAL UNCONDITIONAL WAIVER

I/We have a contract with _____
(Other contracting party)
to provide _____

for the improvement of the property described as _____

and hereby waive and release my/our mechanics' lien rights to the amount of _____
_____ (\$ _____)
(Write in amount in words) (Figures)

for labor/materials provided through _____.
(Date)

This waiver, together with all previous waivers, if any covers all amounts due to me/us, other than retainage, for contract improvements provided through the date set forth in the preceding paragraph. It further constitutes a waiver and release of any rights to funds paid pursuant to the construction contract or any subcontract for labor/materials provided through that date. I have full authority to execute this waiver.

(Company Name)

By: _____
(Signature)

Name: _____
(Printed Name)

Title: _____

Telephone No.: _____

Address: _____

DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.

FINAL CONDITIONAL WAIVER

Date _____

My/our contract with _____
(Other contracting party)
to provide _____

for the improvement of the property described as: _____

having been fully paid and satisfied, all my/our mechanics' lien rights against such property are hereby waived and released. I/we further waive and release any rights I/we have to funds paid pursuant to the construction contract or any subcontract. I have full authority to execute this waiver.

This waiver is conditioned on actual receipt of _____
(Write out amount)
_____ (\$ _____).

I/we will serve a new Notice of Furnishing if I/we provide additional labor/materials for which I/we may wish to assert my/our mechanics' lien rights against such property.

By: _____
(Signature)

Name: _____

Title: _____

Telephone No.: _____

Address: _____

DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.

Date _____

FINAL UNCONDITIONAL WAIVER

Affiant states that all claims outstanding against said Contractor _____ for labor materials, and expendable equipment employed in the performance of said Contractor have been paid in full.

Affiant further relieves _____
(Name of Owner)
of all responsibilities of such debts incurred to date hereof against said Contract.

_____ County

Sworn to before me and subscribed in my presence this _____ day of _____, 20____.

My commission expires _____, 20__.

(AFFIX SEAL HERE)

(NAME OF NOTARY PUBLIC)

DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.

GUARANTEE

DATE: _____, 20____

(OWNER)

(ADDRESS)

I/We _____, having performed certain work and/or
(CONTRACTOR)

furnished material for _____, under contract
(NAME OF PROJECT)

dated _____, by me/us have been installed in a good and workmanlike manner, and that all materials used in the installation have been equal to, or are better than the materials called for in the specifications. I/We further guarantee that if any defective materials or faulty workmanship are found to exist in any part of the work under my/our contract within a period of one (1) year after formal acceptance of the architect, Omness Design, Inc., 140 Fairfax Road, Marion, Ohio, I/We shall either replace or correct immediately such defective material or faulty workmanship upon due notice from the architect, and without cost to the Owner, Owner's Agent, successors or assigns. I/We agree to continue my/our Performance Bond for the period of guarantee, whereby if I/We would neglect or fail to replace or correct such defective materials or faulty workmanship, that then my/our bonding company shall be the agent for complying with the conditions of this guarantee.

(NAME OF CONTRACTOR)

BY: _____

(NOTARY PUBLIC)

(AFFIX SEAL HERE)

_____ County