Request for Proposal

The Ohio Facilities Construction Commission
Office of Energy Services requests proposals for:

Project SFC-14N710
Energy Conservation Project
North Central State College
Mansfield, Ohio | Richland County

Date Issued: November 4, 2013

Pre-Proposal Meeting

November 25, 2013, 10:00 a.m.
Building Lobby
Kehoe Center
175 Mansfield Ave.
Shelby, Ohio 44875

Proposal Opening

February 21, 2014, 2:00 p.m.
Security Desk
Ohio Facilities Construction Commission
30 West Spring Street, 4th Floor
Columbus, Ohio 43215

This Request for Proposals consists of 4 parts and 16 attachments for a total of 166 pages. Supplements may be attached to this Request for Proposal with a beginning header page and an ending trailer page. Please verify that you have a complete copy.

OFCC
OHIO FACILITIES CONSTRUCTION COMMISSION

Project SFC-14N710
Energy Conservation Project
North Central State College
Mansfield, Richland County

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PART 1 - EXECUTIVE SUMMARY

1.1 Purpose. This is a Request for Proposals ("RFP") under Ohio Revised Code ("O.R.C.") Chapter 156. The Ohio Facilities Construction Commission (the "Contracting Authority") is issuing this Request for Proposals (the "RFP") to solicit competitive sealed Proposals ("Proposals") on behalf of the North Central State College (the "Owner") for its Energy Conservation Project (the "Project"). If a suitable offer is made in response to this RFP, the Contracting Authority may enter into a contract (the "Contract") to have the selected Offeror (the "Contractor") perform the Project. This RFP provides details on what is required to submit a Proposal for the Project, how the State will evaluate the Proposals, and what will be required of the Contractor in performing the Project.

This RFP also provides the estimated dates for the various events in the submission process, selection process, and Project performance. While these dates are subject to change, prospective Offerors must be prepared to meet them as they currently stand. Any failure to meet a deadline in the submission or evaluation phases and any objection to the dates for performance in the Project phase may result in the State, in its sole discretion, refusing to consider the Proposal of the Offeror.

1.2 Background. Pursuant to O.R.C. Chapter 156, the Executive Director of the Ohio Facilities Construction Commission may implement energy conservation measures to significantly reduce energy consumption and operating costs of state-owned buildings. In compliance with O.R.C. Chapter 156, the Executive Director may enter into contracts for the implementation of energy saving measures in these facilities.

"Performance contracting" is a method of obtaining energy conservation measures, including design, installation, financing, and maintenance services, without initial capital expense. These contracts fund building improvements out of existing utility operating dollars. Such funding allows the Owner to take advantage of cost saving projects that might otherwise be foregone. This RFP begins the process by which such contracts will be executed. The goal is to maximize financial benefit to the Owner through implementation of these measures.

1.3 Structure of this RFP. This RFP is organized into 4 parts and has 16 attachments, as listed in the Table of Contents.

1.4 Calendar of Events. The schedule for the Project is given below. The Contracting Authority may, in its sole discretion, change this schedule at any time. If the Contracting Authority changes firm dates in the schedule before Contract award, it will do so by an addendum to this RFP. Changes in the Project schedule after the Contract award will be made through the change order provisions in the General Conditions of the Contract. It is each prospective Offeror's responsibility to check with the Contracting Authority for current information regarding this RFP and its Calendar of Events.

<u>Firm Dates</u>

RFP Issued:	November 4, 2013
Inquiry Period Begins	November 4, 2013
Inquiry Period Ends:	February 14, 2014 at 4:00 p.m. Eastern Standard Time
Pre-proposal Meeting Date:	November 25, 2013 at 10:00 a.m.at Kehoe Center
Proposal Deadline:	February 21, 2014 at 2:00 p.m. Eastern Standard Time

<u>Estimated Dates</u>

Contract Execution:	April 25, 2014
Project Work Begins:	May 7, 2014

There are references in this RFP to the Proposal deadline. Offerors must assume, unless it is clearly stated to the contrary, that any such reference means the date and time that the Proposals are due and not just the date.

PART TWO: GENERAL INSTRUCTIONS

2.1 Documents. Proposal documents (excluding prints) are available from the Ohio Facilities Construction Commission website at http://ofcc.ohio.gov and the State Procurement website at www.ohio.gov/procure.

2.2 Contacts. Each interested Offeror must provide a contact person who will be the person of record for all correspondence regarding this RFP. The Offeror must provide a name, title, postal address, phone number, facsimile number, and electronic mail address for the person of record.

The State will be represented by an Engineer and an Owner's Representative for each facility during the Proposal process and the performance of the Work.

The Engineer for this Project is:

Oscar Zanganeh, PE, CEM, LEED AP
Ohio Facilities Construction Commission
Office of Energy Services
30 W. Spring Street, 4th Floor
Columbus, Ohio 43215
Phone: 614.466.7369
E-Mail: oscar.zanganeh@ofcc.ohio.gov

The Owner Representative is:

Mr. Dean Schaad
North Central State College
2441 Kenwood Circle, P.O. Box 698
Mansfield, Ohio 44901
Phone: 419-755-4855
E-Mail: dschaad@ncstatecollege.edu

2.3 Eligible Energy Conservation Measures. The Offeror should attempt to maximize energy savings and financial benefit through energy conservation measures and water conservation at the Site. Energy conservation measure means an installation or modification of an installation in, or a remodeling of, an existing building in order to reduce energy consumption and operating costs, pursuant to O.R.C. Section 156.01. The term includes the installation, modification, and replacement of:

- Insulation in building structure and systems within the building;
- Storm windows and doors, multiglazed windows and doors, and heat absorbing or heat reflective glazed and coated window and door systems; additional glazing; reductions in glass area; and other window and door system modifications that reduce energy consumption and operating costs;
- Automatic energy management control systems;
- Heating, ventilating, and air conditioning systems;
- Caulking and weather-stripping;
- Lighting fixtures to increase the energy efficiency of the lighting system without changing the overall illumination of a building, unless an increase in illumination is necessary to conform to the applicable state or local building code for the proposed lighting system;
- Energy recovery systems;
- Cogeneration systems that produce steam or heat as well as electricity, for use primarily within a building or complex of buildings;
- Any other modification, installation, or remodeling approved by the Engineer as an energy conservation measure.

2.4 Pre-Proposal Meeting. The Offeror is strongly encouraged to attend the pre-proposal meeting, where the Engineer and the Owner's Representative will answer questions regarding Site access, Project requirements and Contract Documents. The Engineer will prepare minutes of the pre-proposal meeting, which will be provided to all Offerors present.

For entry clearance, contact the Owner's Representative forty-eight (48) hours prior to pre-proposal meeting/walk through. A valid driver's license or picture I.D. is required. Dress is business-casual: no shorts, tank tops, or clothing with offensive language/symbols. Cell phones and pagers are prohibited.

2.5 Walk-throughs. A walk-through will be conducted at the conclusion of the pre-proposal meeting. Dates for additional walk-throughs, if necessary, will be provided at the pre-proposal meeting. Additional Site access for the purposes of data collection prior to the Proposal deadline may be scheduled at the convenience of the Owner.

During the walk-throughs, all Offerors will be escorted together and will be afforded equal access to the facility. Reasonable efforts will be made to provide accurate, uniform information to all Offerors. The Owner's Representative will be the sole point of contact during the walk-throughs.

2.6 Inquiries. Offerors may make inquiries regarding this RFP any time during the inquiry period listed in the calendar of events. To make an inquiry, Offerors must submit questions in writing by Internet to the Engineer.

Internet Inquiries. Offerors must use the following Internet process:

- Access the State Procurement website at http://www.ohio.gov/procure;
- At the State Purchasing home page, the Offeror can register to receive e-mail updates for the type of contracts selected, and the Offeror can view all current state contracts. For example: The Ohio Facilities Construction Commission RFPs can be access via the state Purchasing home page.

- Select the “Selling to the State” menu option;
- Select the “Construction Opportunities” menu option;
- Select the “Additional Small-scale Construction Opportunities” menu option;
- Select the “Public Works Maintenance, Park Equip & Construction Svcs” menu option;
- Then initiate the search. All current OFCC performance contracts will be displayed.

Offerors can view all current state purchasing contracts and by selecting a specific contract view all the contract documents, make inquiries, view all other inquiries submitted, and the response to each inquiry. Inquiries about a specific portion of this RFP must reference the relevant part of this RFP and the heading for the provision in question.

The State will attempt to respond to all inquiries within 72 hours, excluding weekends and state holidays. The State will not respond to any inquiries received after 4:00 p.m., December 1, 2013. All inquiries and their responses will be distributed to all Offerors. The originator of the inquiry will not be disclosed in the distribution.

2.7 Interpretation. If the Offeror finds any perceived conflict, error, omission or discrepancy on or between the Drawings, Specifications, attachments, or any of the Contract Documents, the Offeror shall submit a written request to the Engineer for an interpretation or clarification. The Offeror is responsible for prompt delivery of such request. Inquiries of this nature are subject to the same deadlines as other inquiries.

Any interpretation of the Contract Documents made by any party other than the Engineer, or in any manner other than a written response, is not binding and the Offeror may not rely upon any such interpretation. The Offeror may not, at any time after the execution of the Contract, be compensated for a Claim alleging insufficient data, incomplete Contract Documents, or incorrectly assumed conditions regarding the nature or character of the Work, if no request for interpretation was made by the Offeror prior to the end of the inquiry period.

2.8 Addenda to the RFP. Should an inquiry prompt the State to amend the RFP, a notice will be sent to all Offerors via postal mail or facsimile or e-mail with confirmation. The Addenda will be deemed to have been validly given if the Addenda is issued and mailed or otherwise furnished to each Offeror’s contact person of record.

When an Addendum to this RFP is necessary less than 5 days before the Proposal deadline, the State may extend the Proposal deadline through an announcement via postal mail or facsimile or e-mail with confirmation. Addenda announcements may be provided any time before 4:00 p.m., December 1, 2013. The State will make reasonable attempts to contact all Offerors; however, it is the responsibility of each Offeror to check for announcements, addenda, and other current information regarding this RFP.

2.9 Basis of Design Components and Substitutions. The articles, devices, materials, equipment, forms of construction, fixtures and other items named in the specifications to denote kind and quality will be known as Basis of Design Components and all Proposals must be based upon them. Where two or more components are named, the Offeror may furnish any one of those components.

If the Offeror proposes to use an article, device, material, equipment, form of construction, fixture or other item other than those components named, the Offeror must certify that the item is equal in quality, and all aspects of performance and appearance, to that specified. The Offeror must submit information as an inquiry to the Engineer no later than 10 days prior to the Proposal deadline, which submission must include:

- The name and a complete description of the proposed substitution, including drawings, performance and test data, and other information necessary for an evaluation;
- A statement setting forth any changes that the proposed substitution will require in the Project.

If the Engineer approves the proposed substitution, the Engineer will, no later than 72 hours prior to the Proposal deadline, excluding Saturdays, Sundays and legal holidays, issue an addendum to all Offerors. If the Engineer finds the proposed substitution is not acceptable, the Engineer will respond to the Offeror in writing, no later than 72 hours prior to the Proposal deadline, excluding Saturdays, Sundays and legal holidays, stating the reason for the rejection, which decision will be final. The Engineer will have the discretion to reject a proposed substitution for the reason that the Offeror failed to provide sufficient information to enable the Engineer to evaluate the proposed substitution without delay in the scheduled Proposal deadline.

No consideration will be given to any proposed substitution unless submitted to the Engineer 10 days prior to the Proposal deadline.

2.10 Communication Restrictions. From the release of this RFP until a Proposal is selected and the Contract executed, Offerors shall not communicate with any State staff concerning this RFP except through the inquiry method. Exceptions to this restriction are the pre-proposal meeting, walk-throughs, and any communication that the State initiates during the evaluation process. If an Offeror engages in any unauthorized communication, the State may reject that Offeror's Proposal.

2.11 Form and Content. The requirements for the Proposal's formatting and contents are contained in Attachment 1 to this RFP. Each Proposal should be organized in an indexed binder ordered in the same manner as the response items are ordered in the Attachment 1 to this RFP.

Each Proposal should be prepared simply and economically, providing a straightforward, concise description of the Offeror's ability to meet the requirements of the RFP. Fancy bindings, colored displays, promotional material, etc., shall receive no evaluation credit. Emphasis should be on completeness and clarity of content.

All pages of the Proposal Form, including a completed "Offeror Affirmation and Disclosure" page acknowledging that the Offeror affirms, understands, and will abide by the requirements of Executive Order 2011-12K. Failure to do so may cause the Proposal to be rejected as non-responsive.

2.12 Multiple or Alternate Proposals. The State discourages, but does not prohibit, multiple Proposals from a single Offeror. The State requires each such Proposal to be submitted separately from every other Proposal the Offeror makes. Additionally, the Offeror must treat every Proposal submitted as a separate and distinct submission and include in each Proposal all materials, information, documentation and other items this RFP requires for a Proposal to be complete and acceptable. No alternate Proposal may incorporate materials by reference from another Proposal made by the Offeror or refer to another Proposal. The State will judge each alternate Proposal on its own merits.

2.13 Proposal Submittal. Each Offeror must submit 5 copies of its Proposal, which will include one signed original and four copies, in a sealed envelope. The envelope should be clearly marked "Energy Conservation Project RFP" on the outside.

Proposals are due no later than February 21, 2013 at 2:00 p.m.. Proposals must be submitted to:

Security Desk
Ohio Facilities Construction Commission
30 W. Spring Street, 4th Floor
Columbus, Ohio 43215

The Contracting Authority may, in its sole discretion, reject any Proposals or unsolicited Proposal amendments that are received after the deadline. An Offeror who mails a Proposal should allow adequate mailing time to ensure its timely receipt. The State may, in its sole discretion, reject late Proposals regardless of the cause for the delay.

2.14 Acknowledgement. By submitting a Proposal, the Offeror acknowledges that it has read this RFP, understands it, and agrees to be bound by its requirements. The Offeror also agrees that the Contract shall

be the complete and exclusive statement of the agreement between the State and the Offeror and shall supersede all communications between the parties regarding the Contract's subject matter.

2.15 Amendments to Proposals. Amendments or withdrawals of Proposals shall be allowed only if the amendment or withdrawal is received before the Proposal deadline. No amendment or withdrawal shall be permitted after the Proposal deadline, except as authorized by this RFP.

2.16 Public Disclosure. All Proposals and other material submitted shall become the property of the State and may be returned only at the State's option. Sensitive or proprietary information should not be included in a Proposal or supporting materials. Additionally, all Proposals will be available to the public after the Contract has been awarded, pursuant to O.R.C. Section 149.43.

The State will retain all Proposals or a copy of them, as part of the Contract file for at least 3 years. After the retention period, the State may return, destroy, or otherwise dispose of the RPF Proposals or the copies.

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

2.18 Campaign Contributions. The Offeror hereby certifies that neither Offeror nor any of Offeror's partners, officers, directors, or shareholders, nor the spouse of any such person, have made contributions in excess of the limitations specified in O.R.C. Section 3517.13.

2.19 Ethics Compliance. The Offeror hereby certifies, by its signature on this document, that it has reviewed and understands the Ohio ethics and conflict of interest laws, and shall take no action inconsistent with those laws. The Offeror certifies that it is currently in compliance with, and will continue to adhere to, the requirements of Ohio ethics laws.

2.20 Findings for Recovery. The Offeror represents and warrants that it is not subject to an "unresolved" finding for recovery under O.R.C. Section 9.24. If this representation and warranty is found to be false, this Contract shall be void, and the Offeror shall immediately repay to the State any funds paid under this Contract.

PART THREE: EVALUATION OF PROPOSALS

3.1 Proposal Opening. The State will open the Proposals in a manner that avoids disclosing their contents. After the Proposals are opened, the State will prepare a public registry of Proposals containing the name and address of each Offeror. In order to ensure fair and impartial evaluation, Proposals and related documents submitted in response to a request for Proposals are not available for public inspection and copying under O.R.C. Section 149.43 until after the award of the Contract.

3.2 Right of Rejection. The State may, in its sole discretion, reject any Proposal, in whole or in part, if:

- it is delivered after the Proposal deadline;
- it is unrealistic in cost savings or excessive in price;
- the Offeror engages in collusion;
- the Offeror takes exception to the terms and conditions of this RFP;
- the Offeror fails to comply with the procedure for participating in the RFP process;
- the Offeror's Proposal fails to meet any requirement of this RFP;
- the State believes that the Proposal is not in its interests to consider or accept.

In addition, the State may, in its sole discretion and for any reason, cancel this RFP, reject all the Proposals, and seek to perform the Project through a new RFP or other means. The State shall not be liable for any costs incurred by an Offeror in responding to this RFP, regardless of whether the State awards the Contract through this process, cancels this RFP for any reason, or contracts for the Project through another RFP or another process.

3.3 Evaluation Phases. The evaluation process may consist of up to four distinct phases:

1. Initial review of all Proposals for defects;
2. The evaluation committee's evaluation of the Proposals;
3. Request for more information (interviews, presentations, and/or demonstrations);
4. Negotiations.

Phases three and four may be deemed unnecessary at the discretion of the evaluation committee.

3.4 Clarifications. During the evaluation process, the evaluation committee may request clarifications from any Offeror under active consideration. The State reserves the right to allow any Offeror a reasonable opportunity to cure a minor irregularity or technical deficiency in a Proposal, provided that the irregularity or deficiency does not give the Offeror an unfair competitive advantage. Such a clarification shall not be considered an amendment to a Proposal.

3.5 Initial Review. The Engineer will review all Proposals for their timeliness, format, and completeness. The Engineer normally rejects any late, incomplete, or incorrectly formatted Proposal, though he may, in his sole discretion, waive any defects or allow an Offeror to submit a correction.

If a late Proposal is rejected, the Engineer shall not open it or evaluate it for format or completeness. The Engineer will forward all timely, complete, and properly formatted Proposals to an evaluation committee, which the Engineer will chair.

3.6 Committee Review. The evaluation committee will evaluate and numerically score each Proposal that passes the initial review. The evaluation will be according to the criteria contained in this part of the RFP. The committee may also have the Proposals, or portions of them, reviewed and evaluated by independent third parties or other State personnel with relevant technical or professional experience. The committee may also seek the review of end users of the Project or the advice of other State committees that have subject matter expertise or an interest in the Project.

The evaluation will result in a point total being calculated for each Proposal. The Offeror(s) submitting the highest-rated Proposal(s) may be scheduled for the next phase. The number of Proposals forwarded to the next phase shall be within the committee's sole discretion.

At any time during the Committee Evaluation phase, the committee may ask an Offeror to correct, revise, or clarify any portions of its Proposal. The evaluation committee will document all major decisions in writing and make these a part of the RFP file along with the evaluation results for each Proposal considered.

3.7 Proposal Evaluation Criteria. In the evaluation phase, the committee will rate the Proposals based on the following criteria and the following weight assigned to each criterion:

3.7.1. Responsibility, Capability, and Qualifications (20 points). The Proposal shall indicate the ability of the Offeror to meet the terms of the RFP, especially the quantity and quality of recent projects similar in scope to that described in the RFP. In determining whether an Offeror is responsible, factors to be considered include, without limitation:

- The experience of the Offeror;
- The financial condition of the Offeror;
- The conduct and performance of the Offeror on previous contracts;
- The management skills of the Offeror;
- The ability of the Offeror to execute the Contract properly.
- References for projects similar in size and scope;
- Audited financial statements for the past 3 years;
- A valid contractor's license from a certified county, municipal, or health department that required a test to obtain such license;
- Certification by the Ohio Construction Industry Examining Board; or
- Registration of certification by a certified municipality or county for the preceding consecutive 5 years, pursuant to demonstration of proof of bonding and insurance.

3.7.2. Qualified Personnel (10 points). The Proposal shall indicate the competence of personnel whom the Offeror intends to assign to the Project. Qualifications will be measured by education, engineering certification, and experience, with particular emphasis on experience with projects of similar scope as that described in the RFP. Emphasis will be placed upon the qualifications of the Offeror’s Engineer and the manager’s dedicated management time, as well as that of other key personnel working on this Project.

3.7.3 Technical Approach (30 points). The Proposal shall indicate the methods used by the Offeror to define the Project. Factors to be considered include:

- Listing of energy conservation measures investigated; reasons for inclusion and exclusion of various measures;
- Data collection: methods used, thoroughness, and accuracy;
- Calculation methodology: acceptability of assumptions and methods, adjustments to calculations based upon experience from similar projects; margins of error and conservatism in approach; historical accuracy of predictions based upon similar projects;

- Awareness and responsiveness of Offeror to Owner preferences, operational factors, and limitations at the facility;
- Mention of additional maintenance, operational, or other measures which may increase savings, but have not been quantified in savings amounts;
- Consideration of utility rate structures and utility incentives, if any;
- Incorporation of ongoing training, maintenance, and customer support following installation;
- Verification of savings and adherence to performance contract, including adjustments for weather and load changes.

3.7.4. Cost and Savings (20 points). Points will be awarded based upon the relative value of the Project to the State over a ten year payback cycle. A Cost Summary Form is included as Attachment 10 of this RFP.

3.7.5 Service Agreement, Energy Guarantee (20 Points). Capability to provide all services described in the Service Agreement for the duration of the guarantee period.

3.8 Interviews, Demonstrations, and Presentations. The Proposal evaluation committee may require some Offerors to interview with the committee, make a presentation about their Proposal, and/or demonstrate their products or services. Such presentations, demonstrations, and interviews provide an Offeror with an opportunity to clarify its Proposal and to ensure a mutual understanding of the Proposal's content. The presentations, demonstrations, and interviews will be scheduled at the convenience and discretion of the evaluation committee.

The evaluation committee may record any presentations, demonstrations, and interviews.

3.9 Contract Negotiations. The State reserves the right to conduct negotiations with one or more competing Offerors during the evaluation process. If the State determines that negotiations are in its best interests, negotiations will be conducted according to the following:

3.9.1 State's Obligations. The State will select which Offeror(s) to negotiate with by determining which Offeror(s) is reasonably likely to be awarded the contract under this RFP. The State’s determination will be based upon each Offeror's Proposal.

Offerors the State determines to be not reasonably susceptible of Contract award do not have a right to participate in Proposal negotiations.

The State shall treat selected Offeror(s) fairly and equally with respect to any opportunity for discussion and revision of Proposals.

The State may determine, during negotiations that it is no longer reasonably likely for an Offeror to be awarded a Contract under this RFP. If the State makes this determination the State will notify the Offeror in writing of its determination to terminate negotiations. The State may re-evaluate which of the remaining Offerors are reasonably likely to be awarded a Contract under this RFP and begin negotiations with a new Offeror and or continue negotiations with other Offerors. If negotiations with an Offeror again result in the State determining that an Offeror is no longer reasonably likely to be awarded a Contract under this RFP, the State will provide written notice to that Offeror and may follow the process to continue negotiations outlined in this section, or may determine that negotiations are no longer in the State's best interests. The State may reject all Proposals and cancel this RFP at any time during the RFP process.

The State may not disclose any information derived from any of the Proposals to competing Offerors. The State must limit access to information contained in the Proposals to those people with a need to know the information.

The State will limit negotiations to specific aspects of the requirements of the RFP.

If negotiations result in revisions or additions to existing Proposals, the State will determine the time and date by which all best Proposals must be submitted to the State.

Best Proposals may be submitted only once, unless the evaluation committee determines that it is in the State's best interests to conduct additional negotiations with one or more of the Offerors that submitted best Proposals, or to change the State's requirements. If the evaluation committee determines that additional discussions or revisions to the State's requirements are necessary, the State may require submission of best and final Proposals.

The State shall negotiate in good faith.

The State must maintain a contract file that contains the basis for each of the State's decisions during the negotiation process, including with whom to negotiate, the evaluation committee's basis to determine to negotiate further after receiving best and final Proposals, if the State allows additional best and final Proposals, and the basis for awarding the Contract to the selected Offeror.

3.9.2 Offeror's Obligations. Offeror(s) shall negotiate in good faith.

Offeror(s) may negotiate only the specific aspects of the RFP that the State, in its sole discretion, selects for negotiation. Offeror(s) may not attempt to negotiate the General Conditions of the Contract, Performance Contract, or Service Agreement, except as to those permitted modifications that may be proposed for the Service Scope of Work (Exhibit 1 of the Service Agreement).

Offeror(s) may not attempt to gain access to the contents of another Offeror's Proposal before the award of the Contract or cancellation of this RFP. Any Offeror that attempts to gain access to another's Proposal before Contract award or cancellation of this RFP may be disqualified.

Offeror(s) shall not submit a Proposal assuming that there will be an opportunity to negotiate.

PART FOUR: CONTRACT AWARD

4.1 Notice of Award. Upon completion of the evaluation, the State will issue a Notice of Award to the selected Offeror. The Notice of Award will state that award and execution of the Contract is based upon the expectation that the highest scoring Offeror will comply with all conditions precedent for Contract execution within 90 days of the date of the Notice of Award.

Noncompliance with such conditions may be cause for the State to cancel the Notice of Award and award the Contract to the next highest scoring Offeror, or resubmit the Contract for Proposals, at the State's sole discretion.

The State, in its sole discretion, may extend the time for submittals precedent for Contract execution for good cause shown. No extension shall serve as a waiver of the conditions precedent for Contract execution.

4.2 Timely Execution. The failure to award and execute the Contract within 90 days of the Proposal deadline invalidates the entire Proposal process and all Proposals submitted, unless the time is extended by written consent of the Offeror whose Proposal the State has accepted, and the State concurs with such an extension.

4.3 Cost Adjustments. If the Contract is awarded within 90 days of the Proposal deadline, any increases in material, labor, financing costs and subcontract costs must be borne by the Offeror without alteration of the amount of the Proposal.

If the Contract is not awarded within 90 days of the Proposal deadline due to delays on the part of the State, the Offeror will be entitled to a Change Order authorizing payment of verifiable increased costs in materials, labor, financing costs or subcontracts. The State shall also be entitled to verifiable decreases in such costs.

If the Contract is not awarded within 90 days of the Proposal deadline due to delays on the part of the Offeror, any increased costs will be borne by the Offeror.

4.4 Conditions Precedent to Contract Execution. Documents necessary for Contract execution include, but are not limited to, the following:

- Performance Contract.
- Service Agreement, and associated Energy Cost Savings Guarantee.
- Performance and Payment Bond. To support the Bond, a Certificate of Compliance issued by the Department of Insurance, showing the Performance and Payment Bond Surety is licensed to do business in Ohio. Provide a valid Power of Attorney of the agent signing for the Surety.
- Guarantee Bond. To support the Bond, a Certificate of Compliance issued by the Department of Insurance, showing the Guarantee Bond Surety is licensed to do business in Ohio. Provide a valid Power of Attorney of the agent signing for the Surety.
- Ohio Workers' Compensation Certificate.
- Certificate of Insurance (ACORD form is acceptable) and copy of additional insured endorsement. The State reserves the right to request a certified copy of the Offeror's insurance policies.
- If the Offeror is a foreign corporation, e.g., not incorporated under the laws of Ohio, a Certificate of Good Standing from the Secretary of State showing the right of the Offeror to do business in the State; or, if the Offeror is a person or partnership, the Offeror has filed with the Secretary of State a Power of Attorney designating the Secretary of State as the Offeror's agent for the purpose of accepting service of summons in any action brought under O.R.C. Section 153.05 or under O.R.C. Sections 4123.01 to

4123.94, inclusive.

- Delinquent Personal Property Tax Statement
- Certificate of Compliance with Affirmative Action Programs, issued pursuant to O.R.C. Section 9.47, by the Equal Employment Opportunity Division of the Department of Administrative Services.
- Plumbing, electrical, hydronics, refrigeration and HVAC Contractors shall submit proof of current licensing by Applicable Law.
- Financing Documents, if Offeror proposes, and State selects, financing by Offeror.
- Approved State Controlling Board request, if applicable.
- If entering into a contract of $2,000,000, or more, Contractor shall submit a legible copy of all the Proposal Information used to prepare the Contractor's Proposal for the Contract to the Proposal Information Escrow Agent and attach a Proposal Information Escrow Agreement and Affidavit.
- Drug Free Safety Program Participation: All Offeror(s) entering into a Contract on a State administered Project will be required to be enrolled, and in good standing in an Ohio Bureau of Workers' Compensation (OBWC) Drug-Free Safety Program (DFSP) or an equivalent BWC approved DFSP that meets the requirements specified in O.R.C. Section 153.03 ("OBWC-approved DFSP"). Contractors entering into a Contract shall require each of its Subcontractors on the Project to also be enrolled in a BWC approved DFSP. Prior to authorizing a Subcontractor to commence work on the Project, the Contractor shall submit confirmation of enrollment of their Subcontractors to the Engineer. In addition to BWC approved DFSP Level 1 requirements, the Department also requires that each Contractor and each Subcontractor include random drug testing of 5 percent of their employees that provide on-site labor on State administered construction site(s) for each Project. The random drug testing percentage shall also include the on-site supervisors of the Contractors and Subcontractors. Level 1 random drug testing shall otherwise comply with the same testing guidelines and criteria as required for BWC approved Level 2 testing.

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ATTACHMENT 1 - PROPOSAL FORMAT

These instructions describe the required format for a responsive Proposal. The Offeror may include any additional information it believes is relevant. An identifiable tab sheet shall precede each section of a Proposal, and each Proposal must follow the format outlined below. All pages, except pre-printed technical inserts, shall be sequentially numbered.

Each Proposal must include sufficient data to allow the evaluation committee to verify the total cost for the Project and all of the Offeror's claims of meeting the RFP's requirements. Each Proposal must respond to every request for information in this Attachment 1 whether the request requires a simple "yes" or "no" or requires a detailed explanation. Simply repeating the RFP's requirement and agreeing to comply will be an unacceptable response and may cause the Proposal to be rejected.

Any material deviation from the format outlined below may result in a rejection of the non-conforming Proposal.

Each Proposal must contain the following:

1. Offeror Profile and Information Form (Attachment 6)
2. Subcontractor Profile
3. Offeror Performance
4. Staffing Plan
5. Personnel Profile Summaries
6. Technical Approach
7. Project Schedule
8. Support Requirements
9. Cost and Savings Summary (Guaranteed Savings), Contractor Certification (Attachment 10)
10. Letters of Commitment for Guarantee Bond and Performance Bond
11. Conflict of Interest Statement
12. Financial Requirements
13. Proof of Insurance
14. Service Agreement Cost Summary Form (Attachment 11)
15. Evidence that the Offeror is enrolled and in good standing, prior to submitting a Proposal, in a Drug-Free Safety Program (“DFSP”) approved by the Ohio Bureau of Workers’ Compensation.

1. Offeror Profile. Each Proposal must include a profile of the Offeror and its relevant experience working on projects similar to this Project. The Offeror Profile Form is included as Attachment 6 and must include:

   - Offeror's legal name, address, and telephone number;
   - Date established;
   - Offeror's Federal Tax Identification number;
   - Principal place of business;
   - Local office from which Project will be managed;
   - Ownership (such as public firm, partnership, or subsidiary);
   - Firm leadership (such as corporate officers or partners);
   - Number of employees;
   - Number of employees engaged in work directly related to the Project;
   - Contact person for all correspondence regarding this RFP, to include name, title, phone number, fax number, postal address, and e-mail address;
   - List of subcontractors, if any, that the Offeror will use on the Project;
   - Any other background information that will help the evaluation committee gauge the Offeror's ability to successfully complete the Project.

   The Offeror must also include 3 references for which the Offeror has successfully provided services on projects that were similar in their nature, size, and scope to the Project. These references must be from current projects or projects that were completed within the past 7 years. This RFP includes an Offeror Reference Form as Attachment 7 The Offeror must complete this form for each reference.

   Each reference shall be willing to discuss the Offeror's performance on the reference project with the evaluation committee.

2. Subcontractor Profile. For each proposed subcontractor, the Offeror must attach a letter from the subcontractor, signed by a representative authorized to legally bind the subcontractor, with the following included in the letter:

   a. The subcontractor's legal name, tax identification number, and principal place of business address;
   b. Printed name and phone number of the authorized subcontractor representative;
   c. A description of the Work the subcontractor will perform;
   d. A certified commitment to perform the Work if the Offeror is selected;
   e. A certified statement that the subcontractor has read and understood the RFP and will comply with the requirements of the RFP.

3. Offeror Performance. The Offeror must provide the following information for this section for the past 7 years:

   a. Whether the Offeror has had a contract terminated for default or cause. If so, the Offeror must submit full details, including the other party's name, address, and telephone number.
   b. Whether the Offeror has been assessed any damages in excess of ($100,000), including liquidated damages, under any of its existing or past contracts with any organization (including any governmental entity). If so, the Offeror must provide complete details, including the name of the other organization, the reason for the damages, and the amount for each incident.
   c. Whether the Offeror was the subject of any governmental action limiting the right of the Offeror to do business with that entity or any other governmental entity.

d. Whether trading in the stock of the company has ever been suspended with the date(s) and explanation(s).

e. Whether the Offeror, any officer of the Offeror, or any owner of a 20% interest or greater in the Offeror has filed for bankruptcy, reorganization, a debt arrangement, moratorium, or any proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding.

f. Whether the Offeror, any officer of the Offeror, or any owner with a 20% interest or greater in the Offeror has been convicted of a felony or is currently under indictment on any felony charge.

If the answer to any item in (a) through (f) is affirmative, the Offeror must provide complete details about the matter. While an affirmative answer to any of these items will not automatically disqualify an Offeror from consideration, such an answer and a review of the background details may result in a rejection of the Offeror's Proposal, at the sole discretion of the evaluation committee. The committee will make this decision based on its determination of the seriousness of the matter, the matter's possible impact on the Offeror's performance on the Project, and the best interests of the Owner.

4. Staffing Plan. The Offeror must provide a staffing plan that identifies all personnel required to perform the Project. The plan must have the following information:

a. A matrix matching each key team member to the staffing requirements in this RFP.

b. A contingency plan that shows the ability to add more staff if needed to meet the Project's due date(s).

c. A discussion of the Offeror's ability to provide qualified replacement personnel.

The Offeror must submit a statement that clearly indicates the time commitment of the proposed Project team, including the Project Manager, to this Project and other projects during the term of the Contract. The Offeror must also include a statement indicating to what extent, if any, the Project Manager may be used on other projects during the term of the Contract. The evaluation committee may reject any Proposal that commits the proposed Project Manager to other projects during the term of the Project if the committee believes that doing so will be detrimental to the Offeror's performance.

One of the criteria on which the Owner will base the award of the Contract is the quality of the Offeror's Project team. Switching personnel after Contract award shall not be permitted without the Owner's prior written approval.

5. Personnel Profile Summaries. Each Proposal must include a profile for each member of the proposed Project team. The profile form is included in this RFP as Attachment 8. Offerors may duplicate this form and complete it for each team member. If additional space is needed for completion of the form for any team member, the Offeror should use the back of the form. Each form must be completed using the format given in the attachment. The various sections of the form are described below.

a. Name and Title.

b. Education and Training. This section must be completed to list the education and training of the proposed candidates and will demonstrate, in detail, the proposed candidate's ability to properly execute the Contract based on the relevance of the education and training to the requirements of the RFP.

c. References. Provide 3 references for which the proposed candidate has successfully demonstrated meeting the requirements of the RFP on a project of similar size and scope within the past 7 years. If fewer references are provided, the Offeror must include an explanation. For each reference the following information must be provided:

1. Contact Information. The contact name, phone number, company name, and address. An alternate contact name in the company, address, and phone number shall also be provided, in case the primary contact cannot be reached.

2. Dates of Service. Must be completed to show the length of time the candidate performed the technical experience being described, not the length of time the candidate worked for the

company. The Offeror must complete these dates with a beginning month and year and an ending month and year.

3. Description of the Related Service Provided. Offerors must reiterate the technical experience being described, including the capacity in which the experience was performed and the role of the candidate in the project. It is the Offeror's responsibility to customize the description to clearly substantiate the candidate's qualification.

d. Resume. The candidate's resume must follow the completed form.

6. Technical Approach. The Offeror must fully describe its approach, methods, and specific work steps for completing this Project and producing the deliverables required under the Contract. The Owner seeks insightful responses that demonstrate a thorough understanding of the nature of the Project and the Owner's needs and limitations. Recommended solutions should demonstrate that the Offeror would be prepared to quickly undertake and successfully complete the required tasks. The Offeror should describe the Offeror's experience and ability to work in an educational environment and campus setting occupied by a diverse student population.

   The Offeror's work plan should be consistent with its staffing plan, project schedule, support requirements, and other parts of its Proposal.

   For each energy conservation or water conservation measure ("ECM or WCM") listed in the work plan, the Offeror must complete the ECM/WCM Form included in this RFP as Attachment 9.

7. Project Schedule. The Offeror must provide a detailed Project schedule for significant Project milestones and deliverables. The Project schedule should be delivered as a Gantt chart, showing all major Project tasks on a week-by-week schedule to serve as the basis for managing the Project. The Offeror must also identify and describe all risk factors associated with the forecasted milestone schedule.

8. Support Requirements. The Offeror must describe the nature and extent of the support it requires from the Owner to accomplish the Project other than what the Owner has offered elsewhere in this RFP.

   The Owner may not be able or willing to provide the additional support the Offeror lists in this part of its Proposal. The Offeror must therefore indicate whether its request for additional support is a requirement for its performance. If any part of the list is a requirement, the Owner may reject the Offeror's Proposal if the Owner is unwilling or unable to meet the requirements.

9. Cost and Savings Summary. This RFP includes a Cost and Savings Summary and Certification Form provided as Attachment 10. The Offeror must fill in all relevant blank spaces in the Cost and Savings Summary and Certification Form in ink or typewritten and not in pencil. The Offeror must initial any alteration or erasure on the Cost Summary Form. A representative who is authorized to legally bind the Offeror must read the certification and sign the form.

   The Offeror must show all Proposal 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 such words are not ambiguous. When the Offeror's intention and the meaning of the words are clear, omissions or misspellings of words will not render the words ambiguous.

   The figures from individual ECM/WCM Forms must be summed to equal the figures shown on the Cost and Savings Summary Form. The Offeror must indicate on the Cost and Savings Summary Form:

   Item 1 - Guaranteed minimum average annual energy savings, in today's dollars, based upon the recommended ECM/WCM. Savings from electricity, natural gas, water and sewer, propane, diesel fuel, or other fuels may be included on this line. Maintenance savings must not be included in Line 1.

   Item 2 - Fixed total installation payments necessary to achieve the savings of Item 1. This amount must include all costs associated with the Project, including without limitation: design, equipment, material, labor, disposal, warranties, equipment service agreements, and financing costs. The Project must not require capital funds in addition to the Item 2 amount, pursuant to O.R.C. Section 3345.64.

Item 3 - Estimated time of completion, in consecutive days following the date set forth in the Notice to Proceed. This line will receive no evaluation credit but will become part of the Contract Documents.

10. Guarantee Bond and Performance Bond. Before Contract execution, the Offeror must provide a Guarantee Bond in the amount of the energy savings listed on its Cost Summary Form and a Performance Bond assuring that the Contractor will perform the Work of the Contract. For the purposes of this RFP, the Offeror's Surety must provide a letter of commitment or other written assurance that it will deliver the necessary Guarantee Bond and Performance Bond should this Offeror be selected for the Project.

11. Conflict of Interest. Each Proposal must include a statement indicating whether the Offeror or any Person that may work on the Project through the Offeror have a possible conflict of interest and, if so, the nature of that conflict. The Owner may, in its sole discretion, reject a Proposal in which a conflict is disclosed or cancel the Contract if any interest is later discovered that could give the appearance of a conflict.

12. Financial Requirements. Part of the Proposal evaluation criteria is the Offeror's financial ability to perform the Contract. In order to be considered responsive, an Offeror must provide its audited annual financial statements for the past 3 most recently completed fiscal years. A Proposal may be rejected if the Offeror has not demonstrated to the satisfaction of the evaluation committee its financial ability to perform the Contract.

13. Proof of Insurance. In this section, the Offeror must provide the certificate(s) of insurance required by the General Conditions of the Contract and the Service Agreement.

14. Service Agreement. As a part of the Proposal, and to assure that the Offeror has adequate access to and control over the operation and maintenance of the energy conservation measures to achieve the guaranteed energy cost savings, a separate Service Agreement will be entered into for the ongoing maintenance of the facility operating systems. This Service Agreement and associated requirements are included in Attachment 15. Attachment 11, Service Agreement Cost Summary Form, is to be provided in this section.

15. Drug Free Safety Program. Evidence that the Offeror is enrolled and in good standing, prior to submitting an Proposal, in a Drug- Free Safety Program ("DFSP") approved by the Ohio Bureau of Workers' Compensation.

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Energy Conservation Project
North Central State College
Mansfield, Richland County

ATTACHMENT 2 - SITE INFORMATION

North Central State College
2441 Kenwood Circle
Mansfield, Ohio 44901

About NC State

North Central State College is a public two-year community-based educational institution serving the residents of north central Ohio. The College offers high quality, technical education in more than 60 associate degree and

certificate programs in Health, Business, Public Service, and Engineering Technologies, as well as customized workforce training programs.

The Students

North Central State College has a friendly, small town atmosphere with most of the students coming from the local area. The College enrolls 3100 students per semester and is the largest public college within a 75 mile radius. The student population is evenly divided between traditional students starting straight out of high school and non-traditional older students who are returning to college to train for a second career. Two-thirds of the student body are part-time students. Minority students range between 10% to 15% depending on the year.

Popular Degrees

Graduates in the college's health and public services associate degree programs continue to lead the state in percentage of graduates passing their board exams for licensure the first time it is attempted – scoring well above the national averages in every category. While health programs are the most popular, NC State's original roots are in manufacturing and business. The Kehoe Center in Shelby continues to train students in traditional tool and die disciplines with a growing interest in cross-training for many manufacturing systems including Pneumatics, Hydraulics and Electronic Controls.

NC State graduates enjoy a 95% employment rate and a growing number of transfer and reverse transfer students are matriculating to and from Ohio's public colleges and universities due to the ease of credit transfer.

Early College Opportunities

A growing segment of the open enrollment is high school students participating in a variety of programs including Tech Prep, Post Secondary Enrollment Option (PSEO), Dual Enrollment/Dual Credit, and CollegeNOW and the Seniors to Sophomores initiative. North Central is a lead partner in the development of a multi-county P-16 Council, charged with improving access to education and increasing prosperity of individuals by meeting the changing employment needs of regional business and manufacturing.

Cost

Tuition at NC State is $146.30 per credit hour which is one of the lowest tuition rates in Ohio. A full-time student taking 12 credit hours per semester would pay $1755.60 per semester in tuition and fees. Two semesters of classes would cost about $3432.00. Actual costs will vary depending on how many credit hours classes are worth. Books are not included in tuition and fees.

Main Campus

Main Campus sits on 600 beautiful wooded acres with walking paths and streams, sharing a campus with a branch of The Ohio State University. This location is accessible to the growing community of Ontario and is fifteen minutes from historic downtown Mansfield. Main campus is roughly half way between Cleveland and Columbus on interstate 71 which makes it possible to get to either city in about an hour's drive.

All buildings on main campus are within a ten minute walking distance making it easy to get to class. General studies classes are on main campus along with students taking health degrees and public service degrees. Kee Hall houses many of the student services offices, including Admissions and the Student Success Center. Kee Hall is a student's first point of contact when applying to the college and it is also the place to find help with registering for classes.

The campus includes a Campus Child Development Center, accredited by the National Association for the Education of Young Children and recognized in the state of Ohio for its quality, and a Campus Recreation Center, home of the champion Mansfield Mavericks basketball team comprised of students from both North Central State College and OSU Mansfield.

Kehoe Center

Students in Business and Manufacturing related degrees take most of their classes at the Kehoe Center in Shelby, which is seven miles northwest of main campus. This 163,000 square foot state of the art facility houses a nationally recognized Integrated Systems Technology laboratory and the regional Advanced Manufacturing Tool & Die Center, as well as an EnterpriseOhio Network's Skillsmax Center.

Outreach Centers

North Central State also offers classes at several outreach centers located throughout its service area. Students can take video conference classes at the Ashland/West Holmes Career Center, Bucyrus High School, Willard High School, and the Urban Center in downtown Mansfield. Professors take turns teaching classes from each location while broadcasting the same lecture to the other outreach centers. Additionally, face to face classes are also offered at the Urban Center.

Campus Activities

Our students compete in club sports including men's and women's soccer, men's and women's basketball, baseball, softball and a host of intramural sports. Numerous clubs are also available for a host of social, religious and political interests.

The College also hosts Rock-n-Ribs during the summer. Nationally known bands and rib vendors are invited to help the College Foundation raise funds for scholarships and campus projects.

Community Involvement

A model college of the 21st Century, NC State is a regional economic and innovation leader where the community as a whole benefits from increased occupational and investment opportunities, higher business revenues, greater availability of public funds, and an eased tax burden thanks to the improved lifestyles of our graduates, many of whom choose to remain and put their talents to work right here in north central Ohio.

Owner's and Engineer's Suggestions

1.	Lighting Retrofit	Numerous
2.	Chiller Reciprocating 135 ton	1
3.	Chiller Centrifugal 175 ton	1
4.	No VFD's 100 HP Motors	3
5.	No VFD's 50 HP Motors	3
6.	Outdated Main front end HVAC communication system	1
7.	Demand Control (CO2 sensors)	
8.	Boilers Clever Brooks	2
9.	Parking lot lighting	
10.	Possible use of motion sensors	
11.	Plumbing fixtures in restrooms	

Current and planned capital projects for the next two years:

	Description	Year	Location	Cost
1)	Ralph Phillips Conference Center	2013	Third Floor	$ 850,000
2)	Phase Two Conference Center	2015	Third Floor	$ 750,000
3)	Fabrication Lab/Classroom Renovation	2015	First Floor	$ 100,000
4)	IT Data Infrastructure Renovation	2015	Entire Building	Not estimated

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ATTACHMENT 3 - UTILITY INFORMATION

Gas Consumption

Utility provider: Columbia Gas
Acc.#914185

Date	CCF	$ per CCF	Amount
12-Jul	116	1.0172	123.69
12-Aug	111	1.0172	123.72
12-Sep	120	1.0172	125.50
12-Oct	181	1.0172	164.39
12-Nov	2823	1.0172	1905.96
12-Dec	4875	1.0172	3344.23
13-Jan	6851	1.0172	4402.42
13-Feb	8061	1.0172	5054.13
13-Mar	8162	1.0172	5291.48
13-Apr	6219	1.0172	4441.56
13-May	1231	1.0172	739.94
13-Jun	417	1.0172	628.10
Total	39,167		26,345.12

Baseline rate of $ 1.017 per CCF

Electric Consumption

Utility provider: Shelby Municipal Utilities (Electric)
Acc. #40*328*3

Date	KWH	KWD	Amount
Jul-12	259200	486	$23,523.03
Aug-12	174600	423	$15,880.69
Sep-12	239400	419	$21,720.22
Oct-12	167400	406	$15,300.51
Nov-12	171000	469	$15,645.04
Dec-12	131400	302	$12,009.88
Jan-13	145800	351	$13,496.53
Feb-13	138600	351	$12,834.99
Mar-13	151200	349	$13,988.64
Apr-13	208800	331	$11,905.01
May-13	180000	487	$14,340.94
Jun-13	199800	410	$18,416.33
Total	2,167,200	4,784	$189,061.81

Baseline rate of $.09 per KWH

Sewer/Water Consumption

Utility provider: Shelby Municipal Utilities (Water/sewage)
Acc.#40*328*3

Date	Water Use (CuFt)	Amount
Jul-12	21900	$1,215.33
Aug-12	22600	$1,245.35
Sep-12	21500	$1,198.18
Oct-12	11800	$693.06
Nov-12	6700	$422.11
Dec-12	4400	$299.92
Jan-13	3900	$277.70
Feb-13	10500	$634.26
Mar-13	3600	$261.48
Apr-13	6900	$441.68
May-13	11800	$722.94
Jun-13	11600	$712.06
Total	137,200	$8,124.07

Baseline rate of $6.00 per 1000 CuFt

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ARTICLE 1 - PERFORMANCE CONTRACTOR'S RESPONSIBILITIES

1.1 Nondiscrimination

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

1.1.1.1 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, which 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 Contracting Authority 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.

1.1.1.4 The Contract may be terminated or suspended in whole or in part by the Contracting Authority and all money to become due hereunder may be forfeited in the event of a subsequent violation of this Section 1.1.

1.1.2 Hiring Under State Public Improvement Contracts.

1.1.2.1 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 journeyperson's membership, or otherwise has available for job referral without discrimination, qualified employees, both whites and non-whites (including African-Americans).

1.1.3 Affirmative Action.

1.1.3.1 The Contractor and Subcontractors shall comply with the State's Equal Employment Opportunity requirements described under Ohio Administrative Code ("OAC") Sections 123:2-3 through 123:2-9 that include, without limitation, the requirements described under this Section 1.1.3.

1.1.3.2 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.

1.1.3.3 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 The Contractor shall comply with the prevailing wage requirements described under ORC Chapter 4115 that include, without limitation, the requirements described under this Section 1.1.3.1.

1.2.2 If the Project is subject to payment of prevailing wage rates, the Contractor shall:

1.2.2.1 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;

1.2.2.2 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;

1.2.2.3 ensure that the rates posted are current and remain posted in legible condition during the period of the Contract; and

1.2.2.4 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, http://198.234.41.198/w3/webwh.nsf/pages/PrevailingWageBid, to obtain the current wage rates.

1.3 Royalties and Patents

1.3.1 The Contractor shall pay all royalties, license fees, and assume all costs incident to the use, in the performance of the Work or the incorporation in the Work, of any invention, design, process, product, or device that is the subject of patent rights or copyrights held by others.

1.3.2 If the Contractor has reason to believe that use of the specified item is subject to patent or copyright protection, the Contractor shall immediately notify the Contracting Authority.

1.4 Assignment of Antitrust Claims

1.4.1 By signing the Performance Contract Form, the Contractor assigns, conveys and transfers to the Contracting Authority any right, title, and interest to any claims or causes of action it may have or acquire under state or federal antitrust laws relating to any goods, products, or services purchased, procured, or rendered to the State pursuant to the Contract.

1.5 Use of Domestic Steel

1.5.1 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.

1.5.2 The Engineer, Contractors, and Subcontractors shall comply with the requirements of the Ohio Facilities Construction Commission's policy regarding the specification and use of domestically produced steel products, including furnishing the required certifications. This policy is available on the Commission's website at http://ofcc.ohio.gov.

1.6 Drug Free Safety Program Participation

1.6.1 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").

1.6.2 As required under ORC Section 153.03(E):

1.6.2.1 "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."

1.6.2.2 "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."

1.6.2.3 "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."

1.6.2.4 "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."

1.6.3 Prior to authorizing a Subcontractor to commence Work on the Site, the Contractor shall obtain the Contracting Authority's approval, and shall also submit written confirmation of the Subcontractor's enrollment on the Subcontractor and Material Supplier Declaration form to the Engineer.

1.6.4 In addition to OBWC-approved DFSP Basic requirements, each Contractor and 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 Subcontractor. 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 Contracting Authority upon request.

1.7 EDGE Participation and Reporting

1.7.1 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 ("EDGE-certified business", "certified EDGE business") by the EOC.

1.7.1.1 If the Contractor is an EDGE-certified business, the Contractor may include its own compensation under this Contract in the reporting.

1.7.1.2 The amount of EDGE participation cannot exceed 100 percent of the Contract Sum.

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

1.7.2.1 The Contractor shall provide status reports, produced by the Contractor and each applicable EDGE-certified business for the Contract, indicating:

.1 the name of each EDGE-certified business;

.2 the federal tax identification number of each EDGE-certified business;

.3 the date of the EDGE-certified business contract, subcontract, or purchase order;

.4 the projected and actual start and end dates of the EDGE-certified business contract, subcontract, or purchase order;

.5 the original amount of the EDGE-certified business contract or purchase order with the Contractor;

.6 the current amount of the EDGE-certified business contract or purchase order;

.7 the amount invoiced to date;

.8 the amount paid to date;

.9 the status of the EDGE-certified business contract or purchase order (active, complete, or void); and

.10 a statement describing any substantive product or performance deficiencies.

1.7.2.2 The Contractor shall provide reports for each EDGE-certified business; however, the reports may be consolidated and submitted as one document.

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

1.7.3.1 The Contractor and each certified EDGE Business Enterprise shall provide in the report certification that the submitted document is a true and accurate accounting of the original contract amount paid to, and received by, each EDGE Certified Business.

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

1.7.4.1 Failure to timely submit EDGE Participation Reports may result in withholding payment in accordance with Section 9.3.2.

1.7.5 The Contractor shall cooperate fully with requests for additional EDGE information and documentation from the EOC or the Contracting Authority.

1.8 Owner Work Rules

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

1.9 Emergency

1.9.1 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.

1.9.2 If the Contractor believes that it is entitled to an adjustment of the Contract Sum or Contract Times, or both, on account of its actions in response to an emergency, the Contractor may request an adjustment to the Contract by giving written notice.

1.10 Testing and Inspection Services

1.10.1 Unless otherwise specified in the Contract Documents, the Contractor 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.

1.11 Contractor's Standard of Care

1.11.1 The Contractor shall perform the professional design services portion of the Work consistent with the professional skill and care ordinarily provided by registered architects, landscape architects, professional engineers, and professional surveyors regularly providing comparable services in the same or similar locality under the same or similar circumstances.

1.11.1.1 The Contractor shall also perform the professional design services portion of the Work in accordance with the applicable rules established by the applicable state boards of registration, including, but not limited to, OAC Section 4703-3-07 for registered architects, OAC Section 4703-3-07 for landscape architects, and OAC Section 4733-35 for professional engineers and professional surveyors.

1.11.2 The Contractor shall perform the portion of the Work, which does not involve professional design services, in a workmanlike 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.

1.11.3 The Contractor shall perform the Work as expeditiously as is consistent with the skill and care required under Sections 1.11.1 and 1.11.2 and the orderly progress of the Project.

1.11.4 The Contractor hereby warrants and represents that the Contractor is financially solvent, able to pay its debts as they mature, and in possession of sufficient working capital to perform its obligations under the Contract.

1.12 Limit of Contractor's Responsibility

1.12.1 The Contractor is not responsible for the Engineer's negligence or the Engineer's failure to properly perform the Engineer's contract.

1.13 Sustainability Requirements

1.13.1 This Project shall be designed and constructed in accordance with the requirements of Am. Sub. H.B. 251 of the 126th General Assembly and the resulting rules, policy, and procedures adopted by the Ohio Facilities Construction Commission establishing Sustainability Requirements for Capital Improvements Projects, including but not limited to the applicable provisions of OAC 3318-3.

1.13.2 If the Project is designed and constructed under the Leadership in Environmental and Energy Design ("LEED") Rating System developed by the U.S. Green Building Council or another rigorous rating system used to facilitate achievement of sustainability goals for the Project, the Contractor shall (1) complete all Work in accordance with the current version of the LEED Rating System for the purpose of achieving the certification goal established for the Project by the Owner, and (2) shall provide submittals certifying achievement of sustainable design rating system criteria for verification by the Green Building Certification Institute or other third party in accordance with the Contract Documents.

ARTICLE 2 - STATE'S RIGHTS AND RESPONSIBILITIES

2.1 Contracting Authority

2.1.1 The Contracting Authority shall designate an Engineer for the Project. The Engineer is authorized to act on behalf of the Contracting Authority to perform specific responsibilities under the Contract.

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

2.1.3 The Contracting Authority shall have access to the Work at all times, whenever the Project is in preparation or progress.

2.1.1 The Ohio Facilities Construction Commission requires the use of its forms where noted in the Contract Documents. The party responsible for initiating forms shall utilize the latest edition obtained from the Commission's website: http://ofcc.ohio.gov. The Commission may make modifications to its forms at any time.

2.1.1.1 The Contractor shall not modify any form provided by the Commission or the Contracting Authority.

2.1.2 The Contracting Authority is not responsible for construction means, methods, manners, techniques, sequences, procedures, 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 Owner

2.2.1 The Owner shall designate a representative authorized to act on the behalf of the Owner during the Project.

2.2.2 The Owner shall furnish information and services required of it in a timely manner.

2.2.3 The Owner shall have access to the Work at all times whenever the Project is in preparation or progress.

2.2.4 Upon issuance of the Notice to Proceed, the Owner shall provide the Site to the Contractor in a condition to permit the Contractor to perform the Work.

2.2.5 The Owner may request a change in the Work if the Engineer recommends and the Contracting Authority approves the change.

2.2.6 The Owner shall communicate with the Contractor through the Contracting Authority.

2.2.7 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.

2.3 Owner's Right to Partial Occupancy

2.3.1 The Owner may occupy or use a portion of the Project prior to Contract Completion if:

2.3.1.1 the building authority with jurisdiction over the Project issues a temporary or partial certificate occupancy permit for the portion of the Project the Owner intends to occupy;

2.3.1.2 the Engineer with the Owner's assistance has provided written notice of the Partial Occupancy to the insurers providing property insurance for the Project; and

2.3.1.3 the Contracting Authority has received notice of the Partial Occupancy from the Engineer and has consented to it.

2.3.2 Before the Owner commences Partial Occupancy, the Owner, Contracting Authority, Engineer, and Contractor shall proceed as described under Sections 6.26 and 6.29 for the area designated for Partial Occupancy.

2.3.3 From the date of execution of the Certification of Contract Completion by the Contracting Authority, the Contractor shall be relieved of the obligation to maintain the occupied portion of the Work, but shall remain obligated to complete and correct the Work and to carry the insurance required by the Contract Documents during performance of any such Work.

2.3.4 The Owner's Partial Occupancy does not constitute acceptance of any Defective Work, nor does it relieve the Contractor of liability for any express or implied warranties or responsibility for Defective Work.

2.4 Approval of Owner, Contracting Authority, and State

2.4.1 The Owner's, Contracting Authority's, 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.

2.5 Contractor Performance Evaluation

2.5.1 The Contracting Authority shall evaluate the Contractor's performance during the progress of the Work, at completion of a phase of the Project, completion of the Project, or any of the foregoing. The Contracting Authority shall retain the evaluation(s).

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

2.5.1.2 The Contracting Authority may use the evaluation(s) in determining the responsibility of the Contractor for award of future Contracts.

2.5.1.3 If a breach of the Contract is committed by the Contractor or is attributable to a Subcontractor, that breach shall be used in the responsibility analysis of the Contractor and the Subcontractor (where applicable) for future contracts with the State or subcontracts on State projects for 5 years after the date of the breach.

ARTICLE 3 - ENGINEER'S RESPONSIBILITIES

3.1 The Engineer's Contract Administration Duties

3.1.1 The Engineer shall administer the Contract as provided in the Contract Documents, including, but not limited to, the performance of the functions described as follows:

3.1.1.1 The Engineer shall attend progress meetings.

3.1.1.2 The Engineer 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 and Guaranteed Savings or the Contract Time, or any or all of the foregoing. The Engineer has no authority to authorize the Contractor to perform additional or extra Work for which the Contractor may seek adjustment of the Contract Sum and Guaranteed Savings, or the Contract Time, or any or all of the foregoing.

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

3.1.1.4 The Engineer shall render decisions in connection with the Contractor's responsibilities under the Contract Documents, and submit recommendations to the Contracting Authority for enforcement of the Contract as necessary.

3.1.2 The Engineer is the initial interpreter of all requirements of the Contract Documents. All decisions of the Engineer are subject to final determination by the Contracting Authority.

3.2 Site Visits and Observation

3.2.1 The Contracting Authority shall notify, advise, and consult with the Owner and protect the State against Defective Work throughout the completion of the Project, which includes the Correction Period.The Contracting Authority shall designate an Engineer, subject to the Owner's approval, to attend to the Project to observe and check the progress and quality of the Work, and to take action as necessary or appropriate to achieve conformity with the Contract Documents.

3.2.1.1 The Contractor shall have its consultants attend to the Project at the intervals required by the Performance Contract for the Project or by the Contracting Authority.

3.2.2 The Engineer is authorized to disapprove or reject any item of Work that is Defective, or that it believes will not produce a Project that conforms to the Contract Documents or will prejudice the integrity of the design concept of the Project as a functioning whole as indicated by the Contract Documents. The Engineer shall immediately notify the Owner and the Contracting Authority any time the Engineer disapproves or rejects an item of Work.

3.2.3 The Engineer is not responsible for construction means, methods, manners, techniques, sequences, procedures, 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 Approval of Engineer

3.3.1 The Engineer's review and approval of the Work and any information the Contractor submits to the Engineer 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.

3.4 Limitation of Engineer's Authority

3.4.1 Under no circumstances is the Engineer authorized to:

3.4.1.1 accept any defective or non-conforming services, Work, or vendor-furnished items; or

3.4.1.2 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 the Contracting Authority, the Contractor shall submit to the Engineer 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 9.3.

4.1.3 After receiving the Subcontractor and Material Supplier Declaration form, the Engineer shall verify that it is complete and deliver it to the Contracting Authority and the Owner. If the Engineer finds the form incomplete, the Engineer shall return it to the Contractor and identify the incomplete information.

4.1.4 If the Contracting Authority rejects any proposed Subcontractor, the Contractor shall propose a replacement Subcontractor with no adjustment of the Contract Sum. The proposed replacement Subcontractor will be evaluated as described above.

4.2 Replacement of Subcontractors

4.2.1 The Contractor shall not replace any Subcontractor after execution of the Subcontract without the prior written approval of the Contracting Authority.

4.3 Contractor's Responsibility

4.3.1 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.

4.3.1.1 The Contractor is fully responsible for any delay, interference, disruption, or hindrance attributable to the Contractor's Subcontractors.

4.3.1.2 The Contractor shall require that each of its Subcontractors have a competent supervisor at the Site whenever the Subcontractor is performing Work.

4.3.1.3 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.

4.3.2 The Contractor will not be relieved of its full responsibility for Subcontractors and their performance of the Work by (1) the participation of the Owner, the Contracting Authority, and the Engineer in the processes described under this Article 4 or other related provisions of the Contract Documents or (2) the Contracting Authority's rejection of a Subcontractor or failure to reject a Subcontractor under Section 4.1.

4.4 Contingent Assignment of Subcontracts

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

4.5 Prompt Payment

4.5.1 The Contractor shall make payments to Subcontractors in accordance with Applicable Law, including ORC Section 4113.61 that include, without limitation, the requirements described under this Section 4.5.1.

4.5.1.1 If a Subcontractor requests payment in time to allow the Contractor to include the request in its Contractor Payment Request, the Contractor shall pay within 10 days after receipt of payment from the State:

.1 To a Subcontractor other than a Material Supplier, an amount equal to the percent of completion allowed by the Contracting Authority for the Subcontractor's Work.

.2 To a Material Supplier, an amount equal to all or that portion of the Contractor Payment Request that represents the materials furnished by the Material Supplier.

4.5.2 The Contractor may reduce the amount paid to a Subcontractor pursuant to Section 4.5.1 at a rate equal to the percentage retained from the Contractor and may withhold amounts necessary to (1) resolve disputed liens or Claims involving the Work of the Subcontractor or (2) account for the failure of the Subcontractor to perform its obligations under its agreement with the Contractor.

4.5.3 If the Contractor fails to comply with this Section 4.5, the Contractor shall pay to the applicable Subcontractor 18 percent interest, compounded annually, on any unpaid amount beginning on the 11th day after receipt of payment from the State.

4.5.4 In order to establish lien rights, Subcontractors shall comply with Applicable Law, including ORC Sections 1311.26, 1311.261, and 1311.29.

4.5.5 If the Contracting Authority receives a Claim Affidavit from a Subcontractor, it shall proceed as required by Applicable Law, including ORC Sections 153.63 and 1311.31.

4.5.6 Laborers, Subcontractors, and Material Suppliers may secure payment rights in accordance with Applicable Law, including ORC Section 153.56.

ARTICLE 5 - PRECONSTRUCTION ACTIVITIES

5.1 Building and Trade Permits and Licenses

5.1.1 Plan Approval:

5.1.1.1 The Contractor shall secure any required structural, plumbing, HVAC, and electrical plan approvals from the Ohio Department of Commerce, Division of Industrial Compliance.

.1 If the Project is not on State property, the Contractor shall secure the plan approvals from the local certified building department with jurisdiction.

5.1.1.2 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 Contracting Authority and the Owner reasonable notice of the dates and times arranged for inspections.

.1 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 Trade Permits and Licenses:

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

5.1.3 Local Permits:

5.1.3.1 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 Contracting Authority and the Owner reasonable notice of the date arranged for inspections.

5.1.4 National Pollutant Discharge Elimination System ("NPDES") Storm Water General Permit:

5.1.4.1 The Contractor shall secure the NPDES general permit by submitting a Notice of Intent ("NOI") application form to the Ohio Environmental Protection Agency at least 45 days prior to the start of construction.

5.1.4.2 The Contractor shall prepare and certify a storm water pollution prevention plan to provide sedimentation and erosion controls at the Project.

5.1.4.3 The Contractor shall prepare and process the required Notice of Termination ("NOT") prior to Contract Completion.

ARTICLE 6 - CONSTRUCTION AND CLOSEOUT

6.1 Commencement of Work on the Site

6.1.1 Unless the Contracting Authority agrees otherwise in writing, the Construction Stage will commence with the Contracting Authority's issuance of the Notice to Proceed and will terminate upon Final Acceptance of the Project.

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 The Contractor shall cooperate with the Contracting Authority and its Engineer so as not to interfere with, disturb, hinder, or delay the responsibilities of the Contracting Authority.

6.2.4 The Contractor shall consult with the Owner to obtain full knowledge of the Owner's rules, regulations, or requirements affecting the Project. The Contractor shall establish the Project's regular working hours, subject to approval by the Contracting Authority and the Owner.

6.2.5 The Contractor shall coordinate the Work with the activities and responsibilities of the Owner and the Contracting Authority to complete the Project in accordance with the Contract Documents.

6.2.6 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 Contracting Authority's acceptance.

6.2.7 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.

6.2.8 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 the Contract Completion date.

6.2.9 The Contractor shall monitor the progress of the Work for conformance with the Construction Progress Schedule and shall initiate revisions as required by Section 6.5.13.

6.2.10 In the event of default of the Contractor, the Contractor shall cooperate with the Engineer, the Contracting Authority, and the Contractor's Surety to achieve the Contract Completion date.

6.2.11 The Contractor shall remove all snow and ice as may be required for reasonably safe access to the Project including, but not limited to, 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 and for coordinating all portions of the Work.

6.3.1.1 If the Contract Documents give instructions that affect construction means, methods, manners, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety of them and, except as stated below, shall be fully and solely responsible for the jobsite safety of the means, methods, manners, techniques, sequences, or procedures.

6.3.1.2 If the Contractor determines that the means, methods, manners, techniques, sequences, or procedures may not be safe, the Contractor shall give timely written notice to the Owner, and the Contracting Authority. The Contractor shall not proceed with that portion of the Work without further written instructions from the Contracting Authority. Any modification of the Contract shall be in accordance with 6.23.1.

6.3.2 The Contractor shall lay out and coordinate all lines, levels, elevations, and measurements for all the Work, coordinate and verify existing conditions, and notify the Contracting Authority 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.

6.3.3.1 If the Contractor requires sleeves for the Work, the Contractor shall furnish and install the sleeves. The Contractor is responsible for the exact location and size of all holes and openings required to be formed or built for the Work.

6.3.3.2 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.

6.3.4.1 The Contractor shall give notice at least 2 business days in advance of excavation to the owners of underground utilities registered with the Ohio Underground Utility Protection Services ("OUPS" at http://oups.org, phone 800-362-2764), and the owners of underground utilities shown on the plans and specifications who are not registered members of OUPS. The owner of an underground utility is required within 48 hours notice to stake, mark, or otherwise designate the location of its utilities in the construction area together with its approximate depth. In the event that any underground utility owner fails to timely perform, the Contractor shall notify the Contracting Authority and contact the owner of the underground utility.

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 comply with all requirements and conditions of the National Pollutant Discharge Elimination System ("NPDES") general permit, including, but not limited to, implementing and maintaining the sedimentation and erosion control measures specified in the storm water pollution prevention plan prepared pursuant to Section 5.1.4, which are related to the Work, maintaining records of its construction activities, removing materials no longer required, and taking proper action if there is a reportable quantity spill.

6.3.7 The Contractor shall communicate with the Contracting Authority and the Owner through the Engineer.

6.4 Project Team Members

6.4.1 The Contractor shall not replace its Project team members as identified and set forth in the Contractor's Proposal without prior written approval of the Contracting Authority.

6.4.1.1 If the Contractor proposes to change any of its Project team members, the Contractor shall submit written justification for the change to the Contracting Authority, along with the name and qualifications of the Contractor's proposed replacement.

6.4.1.2 The Contracting Authority reserves the right to reject any changes to, or proposed replacement of the Contractor's Project team members. Failure to notify the Contractor of the rejection within 30 days of receiving the required information shall indicate that the Contracting Authority has no objection

6.5 Construction Progress Schedule

6.5.1 The Contractor shall provide a bar chart schedule with a logical sequence of events and sufficient detail to properly anticipate and monitor construction progress.

6.5.2 The Contractor shall prepare a Construction Progress Schedule by providing the following:

6.5.2.1 a graphic presentation of the sequence of the Work for the Project in the media and format required for the Project;

6.5.2.2 identification of each phase of the Work and any Milestone dates;

6.5.2.3 identification of activities and durations for review and approval of Shop Drawings and other action submittals, fabrication and review of mock-up Work, product review and procurement, fabrication, shop inspection, and delivery, including, but not limited to, lead time, coordination drawing delivery, Punch List, Punch List Correction, Project close-out requirements, Contract Completion, and occupancy requirements;

6.5.2.4 identification of disruptions and shutdowns due to other operations;

6.5.2.5 identification of the critical path of the Work;

6.5.2.6 identification of the crew size and total resource hours for each activity in the schedule; and

6.5.2.7 the Contractor's signature and date indicating approval.

6.5.3 The Contractor shall develop the Construction Progress Schedule using commercially available, personal computer software that is acceptable to the Contracting Authority and shall provide final copies in color, in full size and 11 by 17 inches. The Contractor shall submit all baseline and updated schedules to the Contracting Authority in electronic format.

6.5.4 The Project participants shall use the Construction Progress Schedule as a tool for scheduling and reporting sequenced progress of the Work. The Contractor shall provide a clear graphics legend and other data including, but not limited to, Milestone dates, constraints, and other items required by the Project and the Contracting Authority. Each submission shall show the Contracting Authority's Project number and Project name, and provide a signature approval and date line for the Contractor.

6.5.5 The Contractor shall provide in each schedule: Activity identification and description for each activity broken down to a maximum duration that is appropriate for the activity, responsibility of the Contractor, Contractor's resources and crew size for each activity, provide early start, early finish, late start, late finish. Each schedule shall show predecessor activities and successor activities for each activity, entry free float, total float, and percentage of completion, and identify the appropriate predecessors and successors for all related activities.

6.5.6 The Construction Progress Schedule shall show all submittal dates, coordination drawing preparation, shop drawings submittals, and mock-up review and approval durations.

6.5.7 The Contractor shall submit the Construction Progress Schedule in graphic and tabular form. Provide a 2- to 6-week look-ahead schedule, as appropriate for the Project, for each progress meeting and provide, with each monthly schedule update, a list of all changes to the previously approved baseline schedule or monthly updated schedule.

6.5.8 The Construction Progress Schedule shall be managed using early start dates and early finish dates. Free float and total float are resources of the Project, and the use of float associated with an activity is not permitted without the concurrence of the the Contracting Authority.

6.5.9 Within 30 days of the date of the Notice to Proceed, the Contractor shall submit to the Contracting Authority a proposed Construction Progress Schedule approved by the Contractor.

6.5.9.1 Upon receipt of the proposed Construction Progress Schedule, the Contracting Authority shall review and submit a copy of the Construction Progress Schedule and schedule of submittals to the Owner for review and acceptance, or reject it, and return it to the Contractor with recommendations for revisions.

6.5.10 On a weekly basis, the Contractor shall prepare and submit to the Contracting Authority a written report describing:

6.5.10.1 activities begun or finished during the preceding week;

6.5.10.2 activities in progress and expected completion;

6.5.10.3 activities to be started or finished in the upcoming 2 weeks, including but not limited to, the Contractor's workforce size and total resource hours associated with those activities; and

6.5.10.4 other information requested by the Contracting Authority.

6.5.11 The Contractor shall attach the above information to the minutes of the weekly progress meetings.

6.5.12 The Contractor shall provide monthly progress reports to the Contracting Authority and the Owner, which shall include recommendations for adjusting the Construction Progress Schedule to meet Milestone dates and the Contract Completion date.

6.5.12.1 If it is apparent to the Contracting Authority that the Contractor may be unable to meet critical path activities, Milestone completion dates, or the Contract Completion date, the Contracting Authority shall direct the Contractor to submit within 3 days a recovery plan to avoid or minimize the delay to the Project.

6.5.12.2 A recovery plan shall include, but is not limited to, adjustments to one or more of the following:

.1 workforce
.2 hours per shift
.3 shifts per workday
.4 workdays per week
.5 equipment
.6 activity logic

6.5.12.3 If the Contracting Authority approves the recovery plan, the Contractor shall prepare a revised Construction Progress Schedule that shall be signed and approved in accordance with Section 6.5.9. If the Contracting Authority fails to approve a time recovery plan, the Contractor shall submit within 3 days an alternate recovery plan to the Contracting Authority in writing for review and approval in accordance with Section 6.5.9.

6.5.13 The Contractor shall update the Construction Progress Schedule on a monthly basis, or other interval approved by the Contracting Authority, in accordance with Section 6.5.9.

6.5.13.1 The updated Construction Progress Schedule signed by the Contractor shall serve as an affirmation that the Contractor can meet the requirements of the updated Construction Progress Schedule.

6.5.13.2 The Contractor shall submit a tabular copy showing all changes to the previously approved schedule including, but not limited to, logic, float, and actual start date of activities. The original or initially approved Construction Progress Schedule and all subsequent Construction Progress Schedules signed by the Contractor, and accepted by the Contracting Authority, shall serve as an affirmation that the Contractor agrees to and can meet the applicable requirements of the updated Construction Progress Schedule.

6.6 Progress Meetings

6.6.1 The Contractor shall schedule a weekly progress meeting for the Contracting Authority and other Persons involved in the Project. The purpose of the progress meeting is to review progress on the Project during the

previous week, discuss anticipated progress during the following weeks, 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.

6.6.2.1 The Contractor shall notify the Contracting Authority and other Persons involved in the Project of the time and place of the progress meeting that shall thereafter be the same day and hour of the week for the duration of the Project, unless the Contractor notifies the Contracting Authority and other Persons involved in the Project of a different day and hour at least 2 days in advance.

6.6.2.2 The Contractor shall have any of its Subcontractors and Material Suppliers attend the progress meeting as determined advisable by the Contractor, or as requested by the Contracting Authority.

6.6.3 The Contractor shall prepare a written report of each progress meeting and distribute the report to the Contracting Authority and the Owner. The Contractor shall not delegate the duty to prepare a written report of any progress meeting.

6.6.3.1 If any Person in attendance objects to anything in a report of a progress meeting, the Person shall notify the Contracting Authority and any other affected Person in writing explaining the objection within 5 days.

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

6.7 Project Coordination

6.7.1 The Contractor shall prepare drawings (the "Coordination Drawings") after the Contractor and appropriate Subcontractors and Material Suppliers ("Coordination Participants") (1) determine the sequence of the Project, (2) identify the areas requiring special attention ("Coordination Areas"), and (3) determine the need for a coordination drawing for any Coordination Area. The Contractor shall prepare the Coordination Drawings with Computer-Aided Design ("CAD") or Building Information Modeling ("BIM") software acceptable to the Contracting Authority. The Coordination Drawings shall show the sheet metal work with plan and elevation dimensions, which specifically locate all HVAC ductwork, HVAC equipment, and HVAC piping for each Coordination Area based upon the information, discussion, and resulting consensus of the Coordination Participants during the coordination meetings.

6.7.1.1 After the Contractor completes the Coordination Drawings, the Contractor shall forward a copy of the Coordination Drawings to the Engineer, the Contracting Authority, and the Owner.

6.7.1.2 The Engineer shall review the Coordination Drawings to determine whether the Coordination Participants achieved the goals listed in Section 6.7.1. The Engineer shall report any concerns, in writing, to the Coordination Participants within 14 days after receiving the drawings.

6.8 Additional Tests and Inspections

6.8.1 If the Engineer determines that any portion of the Work requires special inspection, testing, or approval not otherwise required under the Contract Documents, the Contracting Authority shall order such inspection, testing, or approval.

6.8.1.1 If the special inspection, testing, or approval reveals Defective Work, the Contractor shall pay all associated costs. Those costs may include, but are not limited to:

.1 the cost of the special inspection, testing, or approval;

.2 the cost of additional special inspections, testing, or approvals to evaluate remedial Work;

.3 the cost of correcting the Defective Work; and

.4 all related Owner-incurred fees and charges of engineers, architects, attorneys, and other professionals.

6.8.1.2 The Contracting Authority may deduct the costs described under Section 6.8.1.1 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 Contracting Authority.

6.8.1.3 If the special inspection, testing, or approval reveals that the Work complies with the Contract Documents, the Contractor shall be paid for all associated costs by appropriate Contract modification. The Contractor shall be paid for any such inspection, testing, or approval out of an allowance. Upon approval of a waiver by the Controlling Board, any unused allowance may be used for the purchase of spare parts based on the unit prices provided by the Contractor in its Proposal.

6.8.2 If the Contractor is aware of a need for inspection, testing, or approval, or of a need to have any inspection, testing, or approval completed by a particular time to avoid delay, then the Contractor shall timely communicate such information to the Contracting Authority.

6.8.3 Except as described under Section 6.8.1, the Contractor shall be paid for any inspection, testing, or approval that did not become a requirement until after it was awarded the Contract. The Contractor shall be paid for any such inspection, testing, or approval out of an allowance. Upon approval of a waiver by the Controlling Board, any unused allowance may be used for the purchase of spare parts based on the unit prices provided by the Contractor in its Proposal.

6.8.4 The Contractor shall coordinate with and give the Contracting Authority and the Owner reasonable notice of the anticipated dates of all inspections, testing, or approvals.

6.8.5 Within 5 days after completion of an inspection, testing, or approval, the Contractor shall provide an original report/certificate of the inspection, testing, or approval to the Contracting Authority and the Owner with a recommendation for or against acceptance of the results therein.

6.8.6 Neither the observations of the Engineer in the administration of the Contract, nor any inspection, test, or approval by Persons other than the Contractor shall relieve the Contractor from the Contractor's obligation to perform the Work in conformity with the Contract Documents.

6.9 Review of Contract Documents and Field Conditions

6.9.1 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.

6.9.2 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 Engineer for an interpretation or clarification.

6.9.2.1 Before submitting any RFI to the Engineer, the Contractor shall carefully review the Contract Documents to ensure that the Contract Documents do not answer the RFI.

6.9.2.2 The Engineer shall respond to an RFI within 14 days of receiving the RFI, or within any other time frame as agreed upon by the parties in writing.

6.9.2.3 Any interpretation or clarification of the Contract Documents made by any Person other than the Engineer, or in any manner other than writing, shall not be binding and the Contractor shall not rely upon it.

6.9.3 If the Contractor believes that it is entitled to an adjustment of the Contract Sum and Guaranteed Savings, or Contract Time, or both, on account of clarifications or instructions issued by the Engineer in response to an RFI, the Contractor may request an adjustment to the Contract by giving written notice within 7 days of receiving the Engineer's RFI response.

6.9.4 If the Contractor does not notify the Engineer per Section 6.9.3, the Contractor will have accepted the RFI response without an adjustment to the Contract Sum, Guaranteed Savings, or Contract Time.

6.10 Protection of the Project

6.10.1 The Contractor shall protect the Work from weather and maintain the Work and all materials, apparatus, and fixtures free from injury or damage until Final Acceptance, or Partial Occupancy if applicable.

6.10.1.1 The Contractor shall at all times cover or protect the Work.

6.10.1.2 The Contractor, at its expense, shall remove, and replace with new, any Work damaged as a result of Contractor's failure to provide coverage or protection.

6.10.1.3 The Contractor, at its expense, shall repair or replace any adjacent property, including, but not limited to, roads, walks, shrubbery, plants, trees, or turf, damaged during performance of the Work.

6.10.1.4 After the date of Final Acceptance, or Partial Occupancy if applicable, the Owner is responsible for protecting and maintaining all materials, apparatus, and fixtures for the occupied portion of the Project free from injury or damage.

6.10.2 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.

6.10.3 The Contractor shall not load, nor 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.

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

6.10.5 Vibration, Noise, and Dust Control.

6.10.5.1 In occupied buildings, vibrations, noise and dust control shall be provided. The Contractor shall install dust barriers as required by the construction operations.

6.10.5.2 Exhaust of unfiltered air, dust, construction debris or other undesirable products released into the exterior atmosphere or into occupied areas of the building outside the Site will not be permitted. The Engineer reserves the right to limit or stop the continuation of work if proper air quality standards are not maintained.

6.10.5.3 In certain occupied buildings, tasks might be of such a nature that noise and vibration cannot be tolerated. In such spaces, work shall be scheduled for other than normal working hours. The Contractor is cautioned that weekend or overtime work, if required, shall be performed at no additional cost. Permission to work other than standard hours shall be received from the Contracting Authority prior to the occurrence. Weekend and overtime work shall be reflected in the Construction Progress Schedule.

6.10.5.4 Vibration control and control of transmission of noise are the responsibility of the Contractor whose operations are creating the conditions. Principal considerations which shall be given to noise and vibration control are:

.1 Noise control in compliance with Occupational Safety and Health Administration ("OSHA") requirements for the health and safety of building occupants; control shall be for all areas of the facility, including equipment rooms, boiler rooms, and fan rooms.

.2 Vibration control to limit sound produced by construction equipment, and for protection of the equipment existing in a building and the building structure.

.3 Vibration control to provide for maximum usefulness of the facility by keeping levels of vibration within ranges which are conducive to study and work or other uses for which the facility is designed.

6.11 Materials and Equipment

6.11.1 The Contractor shall provide new materials and equipment of the quality specified in the Contract Documents. Prior to incorporating such materials and equipment into the Project, the Contractor shall obtain the Contracting Authority's approval with respect to any specific materials or equipment or categories of materials or equipment as and when required by the terms of the RFP.

6.11.2 The Contractor shall bring to, or store at, the Site only the materials and equipment required in the Work.

6.11.2.1 The Contractor shall properly store and protect all materials and equipment it provides to the Project.

6.11.2.2 The Contractor shall timely remove from the Site any materials or equipment no longer required for the Work.

6.11.3 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.

6.11.4 If the Contractor provides an Acceptable Component, the Contractor shall be solely responsible for the costs of coordination and modification required.

6.11.5 If the Contractor provides approved Substitutions that require changes to the Contract Documents, the Contractor shall be solely responsible for the additional costs incurred as a result.

6.11.6 The Engineer shall consider Requests for Substitutions after the Proposal deadline only when the Contractor can conclusively demonstrate to the Engineer the following conditions:

6.11.6.1 the specified Basis of Design Components, Acceptable Components, or previously-approved Substitutions, through no fault of the Contractor or the Contractor's Subcontractors and Material Suppliers, are not available; or

6.11.6.2 use or implementation of the proposed Substitution will result in an adjustment to neither the Contract Sum nor Guaranteed Savings; and

6.11.6.3 the specified Basis of Design Components, Acceptable Components, or previously-approved Substitutions will not perform as designed or intended.

6.11.7 The Contractor's incorporation of unapproved Substitutions in the Work shall constitute Defective Work.

6.12 Labor

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

6.12.2 The Contractor shall dismiss from the Project any individual employed by the Contractor, or the Contractor's Subcontractors and Material Suppliers, who the Contracting Authority finds, in its sole discretion, to be incompetent, guilty of misconduct, or detrimental to the Project.

6.12.3 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.

6.12.4 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 the Contractor's Subcontractors and Material Suppliers.

6.13 Safety Precautions

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

6.13.1.1 The Contractor is responsible for designing and implementing its own safety program, including compliance with OSHA regulations. The Contractor's safety plans, such as fall protection, hazards, communications, competent person, etc., shall meet or exceed the Owner's safety plan.

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

6.13.3 Before starting any Work, the Contractor shall submit to the Contracting Authority a copy of the Contractor's site-specific safety plan and safety manuals.

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

6.13.4.1 The Contractor shall notify the Contracting Authority 24 hours before the start of non-routine or non-recurring hot-work. Use of sources of fire, flame or sparks and flammable materials shall be kept to an absolute minimum. At the beginning of the Project the Contractor shall inform the Contracting Authority of its intent to use blowtorches, welding apparatus or similar exposed flame and sparking devices. Similar notice shall be given in regard to the use of flammable liquids, adhesives, and cleaners.

6.13.4.2 The Contractor shall furnish an appropriate number of fire extinguishers (minimum of 1), which shall be within the immediate areas where work is being done at all times. The extinguisher shall be adequate and suitable for the class of fire likely to be caused by the Contractor's operations.

6.13.5 Work Stoppage Due to Hazardous Materials:

6.13.5.1 If the Contractor encounters material the Contractor reasonably believes to be, or contain, a Hazardous Material, which has not been rendered harmless, the Contractor shall immediately stop Work in the affected area and verbally report the condition to the Contracting Authority, and within 1 business day deliver written notice of the condition to the Contracting Authority. The Contracting Authority shall investigate and if required, engage the services of a licensed abatement Contractor who shall issue a report of the condition to the Contracting Authority in writing and remove the material or render it harmless as directed.

6.13.5.2 The Contractor shall resume Work in the affected area upon written notice from the Contracting Authority that (1) the suspect material was evaluated and found not to be or contain a Hazardous Material, or (2) the suspect material has been removed or rendered harmless.

6.13.5.3 If the Contractor knowingly or negligently proceeds with the Work in an area where a Hazardous Material exists and has not been rendered harmless, the Contractor shall be solely responsible for all related claims, damages, losses, and expenses, including, but not limited to, attorneys fees, arising out of or resulting from performing the Work in the affected area.

6.13.5.4 The term "rendered harmless" means that the level of exposure is less than any applicable exposure standards set forth in Applicable Law.

6.13.6 Material Safety Data Sheets:

6.13.6.1 The Contractor shall identify any material it uses at the Site with a Material Safety Data Sheet ("MSDS").

6.13.6.2 The Contractor shall maintain a notebook containing all of its applicable MSDS. This notebook shall be kept at the Site for the duration of the Project.

6.14 Construction Facilities, Utilities, and Equipment

6.14.1 Facilities:

6.14.1.1 The Contractor shall provide and maintain in a clean condition suitable temporary facilities, equipment, services, and enclosed storage for its use at the Site.

6.14.1.2 The Contractor shall provide and maintain in a clean condition:

.1 suitable facilities, equipment, and services for use by the Contracting Authority;

.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.

6.14.2 Environmental Controls:

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

6.14.2.2 Until the permanent HVAC system is complete and available for use:

.1 the Contractor shall make arrangements and pay for installation and maintenance of temporary heating and ventilating systems; and

.2 the Contractor shall pay the costs incurred in operating the temporary heating and ventilating systems.

6.14.2.3 When the permanent HVAC system is complete and available for use:

.1 The Contractor shall start up and maintain operation of the permanent HVAC system, including filters, and promptly remove temporary heating and ventilating systems.

.2 The Owner shall pay the costs of energy consumed in operating the permanent HVAC system.

6.14.3 Water and Drainage:

6.14.3.1 The Contractor shall provide water necessary for the Work until the permanent plumbing system is available for use.

6.14.3.2 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.

6.14.3.3 The Contractor shall make arrangements and pay for installation and maintenance of temporary plumbing systems until the permanent plumbing system is available for use.

6.14.3.4 When the permanent plumbing system is complete and available for use:

.1 The Contractor shall start up and maintain operation of the permanent plumbing systems, and make arrangements and pay for removal of temporary plumbing systems.

.2 The Owner shall pay the costs of water consumed and sewerage charges.

6.14.3.5 From the date of Final Acceptance, or Partial Occupancy if applicable, the Owner shall pay the costs of water consumed and sewerage charges for the occupied portion of the Project.

6.14.4 Electric Service:

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

.1 A Contractor requiring these services shall subcontract with a licensed contractor for the service requirements and shall pay the costs of the services.

6.14.4.2 The Owner shall pay the cost of energy consumed.

6.14.5 Hoisting Facilities:

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

6.14.5.2 If the electric service requirements of hoisting facilities differ from that available at the Site, the Contractor shall provide and pay for all necessary connections.

6.14.5.3 A Contractor requiring use of hoisting facilities, after the Project is enclosed, shall transport Persons and materials required for its Work.

6.15 Progress Cleaning

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

6.15.2 The Contractor shall perform daily broom cleaning of hard flooring surfaces in the area of the Work and maintain the Site in a clean condition acceptable to the Owner.

6.15.3 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.

6.15.4 The Contractor shall remove, as appropriate for the Project or as the Contracting Authority directs, any waste materials or rubbish from areas adjacent to the Project.

6.15.4.1 The Contractor shall dispose of waste materials, rubbish, and construction debris and in a lawful manner in approved recycling facilities or landfills.

6.15.5 If the Contractor fails to clean up during the progress of the Work, the Contracting Authority 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 Contracting Authority may also direct the local jurisdiction responsible for the area to have the area cleaned to its satisfaction at the Contractor's expense.

6.15.5.1 The Contracting Authority may deduct the cleaning costs 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 Contracting Authority.

6.15.6 The Contractor shall remove excavated material and spoil to a suitable off-site location approved by the Owner.

6.15.6.1 If the Owner designates a location on its property for disposal or storage of clean topsoil and/or subsoil in the Contract Documents, the Contractor shall remove such materials to the designated location.

6.16 Use of Premises

6.16.1 The Contractor shall use corridors, stairs, and elevators as designated by the Owner. Extreme care shall be exercised to not exceed the carrying capacity of elevators nor to damage the cab interior in any way.

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

6.16.3 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 Contracting Authority. If possible, materials and equipment should be installed in their final positions when brought to the Site. Short-term storage of equipment shall be scheduled by the Contracting Authority.

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

6.16.5 Site Logistics Plan.

6.16.5.1 The Contractor shall prepare a plan of the Site indicating how the Contractor intends to use the Site. The plan should illustrate, as an example, areas to be used for lay down of material and equipment; office and storage trailer locations; vehicular access gates with ingress and egress routes; locations of wheel wash and concrete truck wash out activities; and offloading and hoisting locations.

6.16.6 Smoking and Tobacco Products.

6.16.6.1 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.

6.17 Interruption of Existing Services

6.17.1 Whenever it becomes necessary to interrupt existing services in use by the Owner or its tenants, including but not limited to 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.

6.17.2 Before beginning that Work, the Contractor shall apply in writing to, and receive approval in writing from the Owner to establish a time when interruption of the service will cause a minimum of interference with the activities of the Owner.

6.18 Explosives and Blasting

6.18.1 The Contractor shall not conduct blasting on, or bring explosives to, the Site without the prior written approval of the Contracting Authority, the Owner, and other authorities with jurisdiction.

6.18.2 The Contractor shall perform all blasting, storing, and handling of explosives as required under Applicable Law.

6.18.2.1 The Contractor shall carry appropriate liability insurance coverage, as required by the Contract Documents, for its blasting and explosives storage and handling operations. Immediately upon request, the Contractor shall deliver evidence of that insurance to the Contracting Authority.

6.19 Building Commissioning

6.19.1 If applicable, the Contractor shall participate in the Building Commissioning process, as prescribed in the Contract Documents.

6.19.2 The Contractor shall permit the Commissioning Agent (“CxA”) if applicable, access to commission performance based equipment, fixtures, and/or systems (e.g., HVAC, fire protection, smoke evacuation, fume hoods, emergency power, etc.), prior to Final Acceptance, or Partial Occupancy if applicable.

6.19.3 The CxA if applicable, shall promptly notify, in writing, the Contractor responsible for the fixture, equipment, and/or system, of any deficiency identified during the commissioning process.

6.20 Action Submittals

6.20.1 Submittal Description. Shop Drawings, Product Data, Samples, and other submittals for the Engineer’s review and action shall be provided by the Contractor for any item required by the Contract Documents but not fully described in the Contract Documents, unless waived by the Engineer, and include, but are not limited to:

6.20.1.1 construction of the various parts, method of joinery, type of materials, grade, quality and thickness of materials, alloy of materials, profiles of all sections, reinforcement, method of hanging doors or installing windows, anchorage, and type and grade of finish;

6.20.1.2 capacities, types of materials and performance charts that are pertinent to the materials, and performance charts that are pertinent to the equipment item; and

6.20.1.3 wiring diagrams, control diagrams, schematic diagrams, working and erection dimensions, arrangement and specifications.

6.20.1.4 To facilitate the Building Commissioning process, the Contractor shall submit 4 sets of Operation and Maintenance Manuals for dynamic and engineered systems to the Engineer, and the CxA if applicable, for approval. This submission shall occur within 30 days following approval of all related Contractor submittals required by the Contract Documents.

6.20.2 Form of Submittals. The Contractor shall provide a transmittal letter, review and stamp its approval, and transmit the submittals to the Engineer in accordance with a schedule established by the Contracting Authority and the Contractor.

6.20.2.1 The Contractor shall submit a minimum of 1 reproducible and 3 copies of Shop Drawings, and a minimum of 4 copies of any other submittal.

6.20.2.2 The data shown on the Shop Drawings shall be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to communicate to the Engineer the materials and equipment which the Contractor proposes to provide.

6.20.2.3 Each Sample shall be identified clearly as to materials, supplier, pertinent data as catalog numbers, the intended use, and other uses as the Engineer may require enabling the Engineer to review the submittal.

6.20.3 Variation from Contract Documents. If the submittals show variations from the requirements of the Contract Documents, the Contractor shall specifically and clearly identify the variations in its letter of transmittal.

6.20.3.1 Variations which may affect the construction quality, cost or timeline shall be submitted by the Engineer to the Owner for review, and if approved, shall be incorporated into the Work by amendment.

6.20.3.2 The Contractor shall not be relieved of responsibility for deviations from the Contract Documents by the Engineer's approval of submittals.

6.20.3.3 Submittals are not Contract Documents. In the event of conflicts between submittals and the Contract Documents, the Contract Documents take precedence and govern the Work.

6.20.4 Contractor’s Submittal Review. The Contractor shall review and stamp “approved” all submittals before forwarding them to the Engineer. If it is apparent to the Engineer that the Contractor has not reviewed the submittals, or has conducted an incomplete review, the Engineer may reject the submittals.

6.20.4.1 The Contractor shall field verify conditions as necessary and make corrections of dimensions, locations of various items, encroachments of work of other contractors, or variations from the requirements of the Contract Documents.

6.20.4.2 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 licensed architect, registered engineer, or other professional.

6.20.4.3 By approving and submitting submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements, and field construction criteria related to the associated Work, or shall do so, and has checked and coordinated the information contained within the submittals with the requirements of the Work and of the Contract Documents.

6.20.5 Engineer’s Submittal Review. The Engineer 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 Contracting Authority and the Contractor.

6.20.5.1 The Contractor shall make corrections required by the Engineer and resubmit the required number of corrected copies of submittals until approved, which re-submission shall be acted upon by the Engineer within 14 days of receiving them, or other period as is mutually agreed by the Contracting Authority and the Contractor.

6.20.5.2 When resubmitting corrected submittals, the Contractor shall direct the Engineer's attention to revisions made by noting revisions on the resubmittal.

6.20.5.3 The Engineer may hold Samples and other submittals used to coordinate finishes, colors, patterns, textures, or other characteristics until submittals for adjacent materials are available. The Engineer shall issue a written notice to the Contractor stating that the submittal is being held, within 7 days of receiving it.

6.20.5.4 If coordinating submittals are not received within the period required for action on previously received submittals that are held in accordance with Section 6.20.5.3, review of the previously received submittals shall be delayed.

6.20.6 The Engineer's review of submittals is to determine if the items covered by the submittals will, after installation and incorporation into the Work, conform to the Contract Documents and be compatible with the design concept of the Project as a functioning whole.

6.20.6.1 The Engineer's review shall not extend to means, methods, manners, techniques, sequences, nor procedures of construction, or to safety precautions or incident programs.

6.20.6.2 The review and approval of a separate item shall not indicate approval of the assembly in which the item functions.

6.20.7 Risk of Nonpayment. 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 Engineer. If the Contractor starts Work before the Engineer’s final approval of the submittal, the Contractor does so at its own risk that payment shall not be approved by the Contracting Authority or made by the Owner for the related Work.

6.20.8 Equipment Statement. Shop Drawings on equipment shall include the following written statement from the manufacturer of the equipment:

6.20.8.1 “This equipment submitted for approval shall perform as specified when installed by the Contractor in the arrangement shown on this drawing and in the Contract Documents and in conjunction with all other accessories such as flues, breechings, piping, controls, and equipment not furnished by this manufacturer, but required as an accessory or supplement to this equipment, provided that the accessory or supplementary items perform as specified and are installed as shown in the Contract Documents.”

.1 The Contractor will be deemed to have included the above statement as required even if the associated Shop Drawing does not actually contain the statement.

6.20.8.2 This equipment statement shall not be required for Samples, Product Data, and other standard submittals that are not created specifically for this Project.

6.21 Warranty

6.21.1 The Contractor warrants to the Contracting Authority and 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 Contracting Authority, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

6.21.2 Notwithstanding any other provision of the Contract Documents, the warranty pursuant to Section 6.21.1 shall commence for each individual ECM/WCM upon acceptance of the ECM/WCM by the Contracting Authority as evidenced by a properly executed Certification of Warranty Commencement.

6.22 Uncovering the Work

6.22.1 If the Contractor covers Work contrary to the requirements of the Contract Documents or contrary to the written request of the Contracting Authority, the Contractor shall, if the Contracting Authority 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 and without adjustment of the Contract Time.

6.22.2 If the Contractor covers Work in accordance with the Contract Documents and not contrary to a request from the Contracting Authority for an opportunity to observe the Work prior to covering, the Contractor shall, if the Contracting Authority requests in writing, uncover that Work.

6.22.2.1 If the uncovered Work is Defective Work, the Contractor shall pay the costs of uncovering, correcting, and recovering the Work and shall not be entitled to an adjustment of the Contract Time.

6.22.2.2 If the uncovered Work is not Defective Work and the Contractor believes that it is entitled to an adjustment of the Contract Sum and Guaranteed Savings, or Contract Time, or both, on account of the uncovering and recovering of the Work, the Contractor may request an adjustment to the Contract by giving written notice to the Contracting Authority.

6.23 Correction of the Work

6.23.1 Before Final Acceptance.

6.23.1.1 If the Contractor provides Defective Work or fails or neglects to perform the Work in accordance with the Construction Progress Schedule, the Contracting Authority or the Engineer may issue a written notice to the Contractor and the 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 receiving the written notice ("72-Hour Notice").

6.23.2 After Final Acceptance.

6.23.2.1 In addition to the Contractor's other obligations under the Contract Documents, if during the Correction Period any of the Work is found to be Defective Work, the Contractor shall correct it promptly after receipt of written notice from the Engineer, the Contracting Authority, or the Owner to do so, unless the Contracting Authority and the Owner have previously acknowledged and accepted the Defective Work in writing. The Engineer, the Contracting Authority, or the Owner may send a copy of the written notice to the Contractor's Surety, but are not obligated to do so.

6.23.2.2 The 1-year period for correction of Work ("Correction Period") shall not be extended by corrective Work performed by the Contractor under this Section 6.23.2.

6.23.2.3 The Correction Period:

.1 relates only to the Contractor's specific obligation and opportunity to correct the Work during the Correction Period;

.2 does not establish a period of limitation with respect to any of the Contractor's other obligations under the Contract Documents;

.3 has no relationship to the time within which the State or Owner may seek to enforce the Contract; and

.4 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.

6.23.2.4 If the Contractor fails to promptly commence and diligently pursue correction of Defective Work under Section 6.23.1 or 6.23.2 after receiving notice to do so, the Owner may correct the Defective Work without giving further notice to the Contractor or the Contractor's Surety.

6.23.2.5 Notwithstanding any other provision of the Contract to the contrary, if in the Contracting Authority's or Owner's opinion the Defective Work presents a threat of imminent harm or danger to people, property, or the environment, the Contracting Authority or Owner may order the Contractor to immediately correct Defective Work or the Owner may correct the Defective Work itself without prior notice to the Contractor or the Contractor's Surety.

6.23.3 Responsibility for Costs of Correction.

6.23.3.1 The Contractor shall pay all of the costs and damages associated with the correction of Defective Work and the recovery of schedule deficiencies. Those costs and damages may include, but are not limited to, the related fees and charges of contractors, engineers, architects, attorneys, and other professionals; the cost of correcting or replacing adjacent work; and any consequential damages. The

Contracting Authority 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.

6.24 Acceptance of Defective Work

6.24.1 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.

6.24.1.1 The Owner may only accept Defective Work though a deduct Change Order which makes explicit reference to this Section 6.24.

6.24.2 None of the following will constitute (1) acceptance of Defective Work, (2) a release of the Contractor's obligation to perform the Work in accordance with the Contract, or (3) a waiver of any rights set forth in the Contract or otherwise provided by Applicable Law:

6.24.2.1 observations or inspections by the Owner, the Contracting Authority, or the Engineer;

6.24.2.2 the making of any payment;

6.24.2.3 Final Acceptance or the issuance of a Partial or Final Certification of Contract Completion;

6.24.2.4 the Owner's use or occupancy of the Work or any part of it;

6.24.2.5 any review or approval of a submittal;

6.24.2.6 any inspection, test, or approval by other Persons; or

6.24.2.7 any correction of Defective Work by the Owner.

6.25 Final Cleaning

6.25.1 Before requesting the Engineer's Punch List review, 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 Contract Completion, the premises are ready for occupancy by the Owner.

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

6.25.3 Final cleaning shall be done to the reasonable satisfaction of the Contracting Authority and the Owner.

6.26 Punch List

6.26.1 Contractor's Punch List.

6.26.1.1 When the Contractor considers the Work, or a designated portion thereof, nearly complete the Contractor shall inspect the Work and prepare a list of defective, 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.

.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 said Punch List.

.2 The Contractor's failure to include an item on the Contractor's Punch List shall not alter the Contractor's responsibility to complete the Work in accordance with the Contract Documents.

.3 The Contractor shall submit the signed Contractor's Punch List to the Engineer, together with a request for the Engineer's Review of the Work.

6.26.2 Engineer's Review of the Work.

6.26.2.1 Within 3 business days of receipt of the request for the Engineer's Review of the Work, the Engineer shall notify the Contractor of acceptance or rejection of the request, stating reasons for any rejection.

.1 Within 7 days of its acceptance of the Contractor's request, the Engineer shall conduct the Engineer's Review to determine whether the Work, or the designated portion, is in conformity with the Contract Documents. The Engineer shall notify the Contractor, and the Owner of the scheduled time of the Engineer's Review.

.2 The Engineer shall include comments from the Owner in the Engineer's Review.

.3 Within 3 business days after the Engineer's Review, the Engineer shall provide to the Contractor a list of defective, incomplete, or unacceptable Work ("Engineer's Punch List").

.4 The Engineer's failure to include an item on the Engineer's Punch List shall not alter the Contractor's responsibility to complete the Work in accordance with the Contract Documents.

6.26.3 Completion of Punch List Items.

6.26.3.1 Within 30 days after receipt of the notice required by Section 6.26.2.1.3 and before the date of Final Contract Completion, the Contractor shall complete all items on the Engineer's Punch List. After completing all items on the Engineer's Punch List, the Contractor shall provide a written request for Final Inspection of the Work to the Engineer.

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

.2 Within 3 business days of receipt of the Contractor's notice that all Punch List items have been completed, the Engineer shall complete a Final Inspection of the Work for compliance with the Contract Documents.

.3 If multiple inspections of items on the Engineer's Punch List are required due to the Contractor's failure to properly and timely complete them, the Contractor shall pay any additional costs incurred by the Engineer and the Owner resulting from any attendant delay. The Contracting Authority may deduct those additional costs 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 Contracting Authority.

6.26.4 Notwithstanding any other provision of the Contract Documents, the Final Inspection of the Work or the issuance of Final Acceptance constitutes neither an acceptance of any Defective Work, nor a waiver of any rights set forth in the Contract Documents or otherwise provided by Applicable Law.

6.27 Project Document Maintenance and Submittal

6.27.1 During Construction.

6.27.1.1 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 by the Ohio Department of Commerce, Division of Industrial Compliance, or its authorized representative, and the records required by Section 6.2.12.

6.27.1.2 Before submitting each Contractor Payment Request, the Contractor shall record all changes on the Contract Documents, neatly in a contrasting color, noting new information not shown on the original Contract Documents. Failure to record all changes may cause payment to be withheld or delayed by the Contracting Authority.

6.27.1.3 The Contractor shall keep a record of changes made to the Specifications, noting particularly any approved variation from manufacturer's installation instructions and recommendations.

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

6.27.1.5 The Contractor shall at all times permit access to the documents described in this Section 6.27.1 to authorized representatives of the State, local authorities having jurisdiction, the Contracting Authority, the Owner, and the Engineer.

6.27.2 Before Final Acceptance.

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

6.27.2.2 The Contractor’s As-Built Documents submission shall include, but is not limited to:

.1 Certificate of Occupancy;

.2 inspection certificates for pressure piping, elevator, boiler, electrical, plumbing or piping purification, etc.;

.3 Letter of Approval from the local fire authority or State Fire Marshal for the fire suppression system;

.4 Operation and Maintenance Manuals, organized into suitable sets of manageable size. Indexed data bound in individual binders, with pocket folders for folded sheet information and appropriate identification marked on the front and the spine of each binder;

.5 neatly and accurately marked sets of As-Built Documents, and other Contract Documents reflecting the actual construction of the Project;

.6 detailed Drawings reflecting the exact location of any concealed utilities, mechanical or electrical systems, and components;

.7 assignment to the Owner of all warranties and guarantees, including the most-recent address and telephone number of any Subcontractors or manufacturers;

.8 an affidavit to certify that all Subcontractors have been paid in full for all Work performed or materials furnished for the Project;

.9 final certified payroll reports; and

.10 an affidavit to certify that the Contractor and each of its Subcontractors, regardless of tier, have complied with all requirements of ORC Chapter 4115.

6.27.3 Record Documents.

6.27.3.1 Upon Final Completion of the Work, the Contractor 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 Contracting Authority.

.1 By submitting the As-Built Documents to the Contracting Authority, the Contractor certifies that the As-Built Documents are complete, correct, and accurate.

6.27.3.2 The Contractor shall revise the original Contract Documents and related electronic files with the information contained on the As-Built Documents. The Contractor shall label the revised original Contract Documents and related electronic files as “Record Documents” and reflect the date of the Contractor 's incorporation of the As-Built Documents.

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

6.28 Demonstration and Training, Operating Appurtenances

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

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

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

6.28.2.2 operating handles, levers, cranks, specialized wrenches or drivers, remote controls, and similar items; and

6.28.2.3 extra materials (e.g., attic stock).

6.29 Certification of Contract Completion

6.29.1 Partial Completion:

6.29.1.1 When items of Work cannot be completed until a subsequent date, the Engineer may recommend that these items be deferred and the Contracting Authority may release payment to the Contractor, as determined in the sole discretion of the Contracting Authority. The Engineer shall list deferred items on a Partial Certification of Contract Completion with the dates the items are to be completed.

6.29.1.2 The date that the Contracting Authority executes the Partial Certification of Contract Completion is the date that the warranty period commences, and final payment may be processed for that portion of the Work.

6.29.2 Final Completion:

6.29.2.1 When all items on the Engineer's Punch List have been completed to the satisfaction of the Engineer, all requirements of the Contract Documents have been completed, and the provisions of Sections 6.25 through 6.28 have been fulfilled, the Engineer shall prepare and recommend execution of a Final Certification of Contract Completion.

6.29.2.2 The date that the Contracting Authority executes the Final Certification of Contract Completion is the date that the Work of the Contract is accepted ("Final Acceptance"). If a Partial Certificate of Contract Completion was not executed for the Contract, the date that the Contracting Authority executes the Final Contract Completion Certificate is the date that the warranty period commences, and final payment may be processed.

6.29.3 Notwithstanding any other provision of the Contract Documents, Final Acceptance pursuant to this Section 6.29 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.

ARTICLE 7 - MODIFICATIONS

7.1 General

7.1.1 The Contracting Authority may order changes in the Work without invalidating the Contract. Subject to the limitations stated in this 6.23.1 and elsewhere in the Contract Documents, a change in the Work may be accomplished by an amendment or an order for a minor change in the Work.

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

7.1.1.2 The Contractor shall proportionately increase the amount of the Guarantee Bond whenever the Guaranteed Savings are increased.

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

7.1.1.4 Because of the difficulty in adjusting the funding, changes in the Work of a Performance Contract shall not routinely be ordered nor approved by the Contracting Authority.

7.1.2 The Contractor shall not proceed with any change in the Work without the Contracting Authority's prior written authorization.

7.1.2.1 Except as provided in Section 1.9, the Contractor's failure to obtain prior written authorization for a change in the Work constitutes a waiver by the Contractor of an adjustment to the Contract Sum, Guaranteed Savings, Contract Time, or any or all of the foregoing, for the related Work.

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 amendment or order for a minor change in the Work.

7.2 Amendments

7.2.1 The Contract may be modified only by an amendment prepared by the Contracting Authority and signed by both the Contractor and the Contracting Authority, with the concurrence of the Owner.

7.3 Cost Allocation Adjustments

7.3.1 Without modifying the Contract Sum, the allocation of costs, as described in the Schedule of Values, may be adjusted upon request of the Contractor and approval by the Contracting Authority without a formal signed amendment.

7.4 Minor Changes in the Work

7.4.1 The Engineer may order minor changes in the Work not involving adjustment of the Contract Sum and Guaranteed Savings 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, Guaranteed Savings, Contract Time, or any or all of the foregoing.

7.4.3 If the Contractor reasonably believes that it would be entitled to an adjustment of the Contract Sum, Guaranteed Savings, Contract Time, or any or all of the foregoing, on account of an order for a minor change in the Work, the Contractor, within 3 business days after receiving the order, shall give the Contracting Authority written notice of the Contractor's position, and not proceed with the subject Work without first receiving an amendment related to it.

7.4.4 The Contractor waives its right to an adjustment of the Contract Sum, Guaranteed Savings, or Contract Time on account of an order for a minor change in the Work by:

7.4.4.1 Starting the Work which is the subject of the order for a minor change in the Work; or

7.4.4.2 Failing to give the notice described under Section 7.4.3 within 3 business days after receiving the order for a minor change in the Work.

7.5 Differing Site Conditions

7.5.1 "Differing Site Conditions" are either (1) subsurface or otherwise concealed physical conditions encountered at the Site that differ materially from the conditions indicated in the Contract Documents or (2)

unknown physical conditions of an unusual nature encountered at the Site that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents.

7.5.2 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 Contracting Authority.

7.5.2.1 The Contractor's failure to give notice of the Differing Site Condition as required under this Section 7.5.2 shall constitute an irrevocable waiver of any associated claim.

7.5.2.2 The written notice of a Differing Site Condition under this Section 7.5.2 shall be required in addition to the notice of claim under Article 8.

7.5.3 Promptly after receiving notice from the Contractor under Section 7.5.2, the Engineer shall investigate to determine whether the Contractor has encountered a Differing Site Condition. The Engineer shall give written notice of its determination to the Contracting Authority and the Contractor within 10 days after completing the investigation.

7.5.3.1 If the Engineer determines that the Contractor has not encountered a Differing Site Condition and the Contractor does not agree with that determination, the Contractor must initiate a claim under Article 8 within 10 days of the date on which the Engineer issues its determination.

7.5.3.2 If the Engineer determines that the Contractor has encountered a Differing Site Condition, the Engineer shall process an appropriate amendment.

7.5.4 Contractor's failure to visit the Site and examine existing conditions prior to execution of the Contract shall not give rise to any Differing Site Condition which may form the basis for a claim.

7.6 Cost or Credit Determination and Associated Adjustment to the Guaranteed Savings

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

7.6.1.1 Proposals shall include the information required by Section 7.6.4.

7.6.1.2 The percentages allowed for overhead and profit include all Contractor Project costs relating to field or home office operations. Additional costs for overhead or profit shall not be allowed.

7.6.1.3 The maximum cost or credit includes all compensation for impact costs. Additional costs for impacts shall not be allowed.

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 Contracting Authority may require notarized invoices for material costs and may audit the records of the Contractor and the Contractor's Subcontractors and Material Suppliers.

7.6.4 For each change in the Work, the Contractor shall furnish a detailed Proposal. Any Subcontractor or Material Supplier pricing shall also be itemized.

7.6.5 The following criteria shall be used to establish the exclusive and maximum amount that the Owner shall pay for any amendment, including, but not limited to, all amounts for interference with, delay, hindrance, disruption, or impact of the Work ("Pricing Criteria"). These Pricing Criteria shall also be used to determine the value of deduct amendments and the Contractor's entitlement to additional compensation or damages through the claims and dispute resolution processes on account of changes in the Work. In order to expedite the review and approval process, Proposals shall be prepared in the categories and order listed below:

7.6.5.1 additional costs of professional services;

7.6.5.2 costs of labor, including fringe benefits pursuant to ORC Chapter 4115;

7.6.5.3 costs of materials, supplies, and equipment, including costs of transportation, whether incorporated or consumed;

7.6.5.4 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

7.6.5.5 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes on items defined in Section 12.7.2;

7.6.5.6 additional costs of supervision and field office personnel directly attributable to the change in the Work; and

7.6.5.7 reasonable allowances for overhead and profit.

7.6.6 Costs that shall not be reimbursed for changes in the Work include the following:

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

7.6.6.2 Employee profit sharing.

7.6.7 If an adjustment to the Guaranteed Savings is associated with a request for adjustment to the Contract Sum, the Contractor shall substantiate such adjustment of the Guaranteed Savings with:

7.6.7.1 A detailed written analysis of the affect on the Guaranteed Savings resulting from the requested adjustment to the Contract Sum.

7.6.7.2 Revised calculations demonstrating the requested adjustment to the Guaranteed Savings.

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 without limitation all adjustments for interference, delay, hindrance, or disruption of the Work. This Section 7.7 also governs time adjustments for deduct amendments and the Contractor's entitlement to additional time through the claims and dispute resolution processes on account of changes in the Work.

7.7.2 The Contractor shall substantiate all changes in the Contract Time with:

7.7.2.1 a written description of the nature of the interference, disruption, hindrance or delay;

7.7.2.2 identification of Persons and events responsible for the interference, disruption, hindrance or delay;

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

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

7.7.2.5 anticipated duration of the interference, disruption, hindrance or delay and of any remobilization period;

7.7.2.6 specific number of days of extension requested and specific number of days for remobilization requested;

7.7.2.7 recommended action to avoid or minimize any future interference, disruption, hindrance or delay; and

7.7.2.8 a detailed written proposal as described under Section 7.6 for an increase in the Contract Sum which would fully compensate the Contractor for all costs of acceleration of the Work needed to completely overcome the associated delay, if any.

7.7.3 In the event that an extension of time is granted under the Contract Documents the schedule for commencement of the Guaranteed Savings period shall be adjusted accordingly.

7.7.4 An amendment may authorize extension of the Contract Time for specific elements, while maintaining Milestone dates for unaffected elements. Such an amendment may also authorize an appropriate adjustment to Liquidated Damages.

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

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

7.8 Examination and Audit of Contractor's Records

7.8.1 The Contracting Authority and the Owner may examine all books, records, documents and other data of the Contractor and of the Contractor's Subcontractors and Material Suppliers related to the Proposal, pricing or performance of the Work for the purpose of evaluating any Proposal or claim.

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

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

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

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

7.8.4 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 Contracting Authority or Owner for a period of 3 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 if such action is initiated during the six year retention period under Section 7.8.2.

ARTICLE 8 - DISPUTE RESOLUTION

8.1 Initiation of a Claim

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

8.1.2 Except as provided under Section 1.9, the Contractor shall initiate every claim by giving written notice of the claim to the Contracting Authority within 10 days after occurrence of the event giving rise to the claim, with the following exceptions:

8.1.2.1 The 10 day time limit on a claim arising from a determination of the Contracting Authority concerning an amendment begins to run on the date on which the Contracting Authority issues its determination.

8.1.2.2 The 10 day time limit on a claim arising from the response of the Engineer to a Request for Interpretation begins to run on the date on which the Engineer issues the Engineer's response to the Request for Interpretation.

8.1.2.3 The 10 day time limit on a claim arising from the Engineer's determination concerning a Differing Site Condition begins to run on the date on which the Engineer issues the Engineer'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:

8.1.3.1 nature and anticipated amount of the impact, including all costs for any interference, disruption, hindrance, or delay, which shall be calculated in accordance with Section 7.5.4 and be a fair and reasonably accurate assessment of the damages suffered or anticipated by the Contractor.

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

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

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

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

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

8.1.5 The Engineer 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 2 copies of all information and statements required to substantiate a claim as provided in this Article 8 and all other information which the Contractor believes substantiates the claim. The Contractor shall file the 2 copies by delivery of 1 copy to the Engineer and 1 copy to the Owner.

8.2.2 The Contractor shall substantiate all of its claims by providing the following minimum information:

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

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

8.2.2.3 copies of the Contractor's daily log (Section 6.2.12) for each day of impact;

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

8.2.2.5 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

8.2.2.6 the notarized certification described under Section 8.5.1.1.

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

8.3 Substantiation of Claims for Increase of the Contract Sum and Associated Adjustment to the Guaranteed Savings

8.3.1 The Contractor shall substantiate each claim for an increase of the Contract Sum and associated adjustment to the Guaranteed Savings with:

8.3.1.1 written documentation as described under Section 7.5.4 of the actual additional direct and indirect costs to the Contractor due to the event giving rise to the claim;

8.3.1.2 a written statement from the Contractor that the increase requested is the entire increase in the Contract Sum associated with the claim;

8.3.1.3 a written statement from the Contractor that the requested adjustment to the Guaranteed Savings is the entire adjustment to the Guaranteed Savings associated with the claim; and

8.3.1.4 the general substantiation documentation described under Section 8.2.

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

8.4 Substantiation of Claims for Extension of the Contract Time

8.4.1 The Contractor shall substantiate each claim for an extension of the Contract Time with:

8.4.1.1 written documentation as described under Section 7.7 of the actual delay to the critical path of the Construction Schedule due to the event giving rise to the claim;

8.4.1.2 a detailed written Proposal as described under Section 7.5.4 for an increase in the Contract Sum which would fully compensate the Contractor for all costs of acceleration of the Work needed to completely overcome the associated delay together with a statement consistent with Section 8.3.1.2;

8.4.1.3 a written statement from the Contractor that the extension requested is the entire extension of the Contract Time associated with the claim; and

8.4.1.4 the general substantiating documentation described under Section 8.2.

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

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

8.5 Certification of the Claim

8.5.1 The 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 8.5.1.1, signed and dated by the Contractor:

8.5.1.1 "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."

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

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

8.6 Delay and Delay Damage Limitations; Derivative Claims

8.6.1 Notwithstanding any other provision of the Contract Documents to the contrary, the Contractor shall not be entitled to an increase in the Contract Sum, adjustment to the Guaranteed Savings, or an extension of the Contract Time:

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

8.6.1.2 to the extent that a delay occurs concurrently with a delay attributable to the Contractor; or

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

8.6.2 Notwithstanding any other provision of the Contract Documents to the contrary, the Contractor shall not be entitled to an increase in the Contract Sum, adjustment to the Guaranteed Savings, or any type of damages on account of a delay in the commencement or progress of Work on the critical path unless (1) the delay is caused by the Owner or a Person for whom the Owner is legally responsible and (2) the delay was not authorized or permitted under the Contract.

8.6.3 Notwithstanding any other provision of the Contract Documents to the contrary, the Contractor shall not be entitled to an increase in the Contract Sum, adjustment to the Guaranteed Savings, 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 or a Person for whom the Contractor is legally responsible.

8.7 Liquidated Damages

8.7.1 If the Contractor fails to achieve one or more of the Completion Milestones set forth in the Contract Documents, the Contractor shall pay to or credit the Owner the associated Liquidated Damages per-diem sum(s) set forth in the Contract Documents for each day that the Contractor fails to achieve one or more of the Completion Milestones.

8.7.2 Notwithstanding any other provision of the Contract Documents to the contrary, if a court determines that the Liquidated Damages per-diem sum(s) or their application are void and unenforceable, the Owner shall be entitled to recover the actual damages that it incurs on account of the Contractor's failure to achieve one or more of the Completion Milestones.

8.7.2.1 If the Contractor fails to achieve two or more Completion Milestones, the Owner shall be entitled to recover the sum of the associated per diem rates.

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

8.7.4 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.

8.8 Review of the Claim and Decision

8.8.1 The Engineer shall examine the Contractor's claim.

8.8.2 The Engineer shall approve or deny all, or any part, of the Contractor's claim and forward a written decision to the Contractor, the Owner, and the Commission within 30 days after receiving the Contractor's substantiated and certified claim.

8.8.2.1 The Engineer may employ independent resources to assist in its review, or refer evaluation of the claim to a consultant.

8.8.3 If the Contractor and the Owner agree with the Engineer's decision, the decision shall be incorporated into an amendment.

8.8.4 Any claim remaining unresolved after completion of the process described under this Section 8.8 shall be subject to claim decision review as described under Section 8.9.

8.9 Claim Decision Review

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

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

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

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

8.9.4 The decision of the Commission is the final administrative decision of the Contracting Authority.

8.9.5 If the Contractor and the Owner agree with the Commission's decision, the decision shall be incorporated into an amendment.

8.9.6 Any claim remaining unresolved after completion of the process described under this Section 8.9 shall be subject to litigation, which may be preceded by Alternative Dispute Resolution ("ADR") as described under Section 8.10.

8.10 Delegation

8.10.1 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.

8.11 Alternative Dispute Resolution

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

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

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

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

8.11.4.1 Negotiation: If negotiation is warranted, the parties to the dispute may agree to a progressive level of negotiators, invested with the authority to agree to a determination of an adjustment in the Contract Sum and Guaranteed Savings, Contract Time, or both

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

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

8.12 Audit of the Claim

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

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

8.12.3 The audit may begin upon 10-days notice to the affected Contractor, Subcontractor, or Material Supplier.

8.12.4 The Contractor shall cooperate with the request.

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

8.12.6 The Contractor shall make available to the Contracting Authority all Contractor, Subcontractor, and Material Supplier documents related to the claim including, without limitation, the following documents:

8.12.6.1 daily time sheets and superintendent's daily reports;

8.12.6.2 union agreements, if any, and employer agreements;

8.12.6.3 insurance, welfare, fringes, and benefits records;

8.12.6.4 payroll register;

8.12.6.5 earnings records;

8.12.6.6 payroll tax returns;

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

8.12.6.8 material cost distribution worksheets;

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

8.12.6.10 vendor rental agreements and Subcontractor invoices;

8.12.6.11 subcontractor payment certificates;

8.12.6.12 canceled checks (payroll and vendors);

8.12.6.13 job cost report;

8.12.6.14 job payroll ledger;

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

8.12.6.16 cash disbursements journal;

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

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

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

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

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

8.12.6.22 all documents related to the preparation of the Proposal, including the final calculations on which the Proposal was based;

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

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

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

8.13 False Certification of the Claim

8.13.1 If the 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 State contracting opportunities as permitted by law.

8.14 Performance and Payment

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

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

ARTICLE 9 - COMPENSATION AND PAYMENT

9.1 Schedule of Values

9.1.1 Within 10 days of receipt of the Notice to Proceed, or other period as mutually agreed by the Contractor and the Contracting Authority, the Contractor shall submit to the Engineer a Schedule of Values on a form published by the Department, with separate amounts shown for labor and materials for each branch of Work, following the numbers and titles of the Construction Specifications Institute's *MasterFormat* for individual work results, or *UniFormat* for assemblies in place.

9.1.1.1 The Contractor shall clearly indicate on the Schedule of Values, the amount(s) allocated, including amounts for overhead and profit, for each certified EDGE Business Enterprise used in the performance of the Work. The amount(s) shall indicate labor and materials, as appropriate.

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

9.1.2.1 The first items shall be actual costs of the Performance Bond, Guarantee Bond, insurance, permits, and tests required for the Project.

9.1.2.2 The amounts for labor and materials shall accurately reflect the cost for each item. Separate items shall not be shown for overhead or profit, except when Work is performed or materials are supplied by a certified EDGE Business Enterprise, pursuant to Section 9.1.1.1. Overhead and profit shall be included in the totals for labor and materials.

9.1.2.3 If the material allocation exceeds 55 percent of the Contract Sum, the Contractor shall provide, upon request, sufficient information to support the higher percentage.

9.1.2.4 Subcontract Work shall show amounts for labor and materials. Fringe benefits shall be shown as a part of labor costs.

9.1.2.5 When more than one major structure is included in the Work, the Contractor shall subdivide the Schedule of Values accordingly, with cost details for each structure shown separately.

9.1.2.6 The line items shall be coordinated with line items in the Project Schedule, which may require division of items of Work by area of the Project by floor, phase, or other appropriate area.

9.1.2.7 Mechanical and Electrical contractors shall include separate line items for all major pieces of equipment, and group smaller equipment items by type.

9.1.2.8 Line items shall be included for each Allowance, Punch List Work, Project Record Document Submittals, delivery of attic stock, and specified demonstrations and training.

9.1.3 The Engineer 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 Engineer determines that it conforms to this Section 9.1.

9.1.4 No payment shall be made until the Engineer has approved the Contractor's Schedule of Values.

9.2 Contractor Payment Request

9.2.1 The Contractor may submit a Contractor Payment Request for Work performed based upon the Schedule of Values to the Engineer each month or upon another interval approved by the Contracting Authority.

9.2.1.1 The Contractor shall support each Contractor Payment Request with documentation substantiating the Contractor's right to payment. The Contractor shall supply additional documentation as the Engineer may request in connection with each payment to the Contractor.

9.2.1.2 The Contracting Authority may require proof of the renewal of required insurance as a condition precedent to payment.

9.2.1.3 The Contractor shall attach certified payroll reports for the relevant period to 1 copy of each Contractor Payment Request, see Attachment 12 - "Prevailing Wage Requirements."

9.2.1.4 The Contractor may list on the Contractor Payment Request any amendments approved and performed prior to submission of the Contractor Payment Request.

9.2.1.5 The Contractor shall submit its application for payment using the Contractor Payment Request form or forms current at the time of each application and as provided by the Contracting Authority in the manner prescribed by the Contracting Authority.

9.2.1.6 The Contractor shall clearly indicate on the Contractor Payment Request, the amount(s) requested for each certified EDGE Business Enterprise used in the performance of the Contract. The amount(s) shall indicate labor and materials, as appropriate.

9.2.1.7 The Contractor shall submit an electronic copy of the Contractor Payment Request to the Engineer with its paper copies of the Contractor Payment Request for collection and reporting of information used for contract compliance evaluation and statistical purposes. The Contractor may issue the copy in any electronic media acceptable to the Contracting Authority.

9.2.2 Payments shall be made to the Contractor only for the authorized actual quantities of Work performed or materials furnished in accordance with the Contract Documents.

9.3 Payments Withheld

9.3.1 The Engineer may recommend to the Contracting Authority that payments be withheld from, or the Liquidated Damages be assessed against, a Contractor Payment Request.

9.3.2 The Contracting Authority 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 Contracting Authority's sole opinion to protect the Owner from loss because of:

9.3.2.1 Defective Work not remedied;

9.3.2.2 damage caused by the Contractor;

9.3.2.3 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

9.3.2.4 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;

9.3.2.5 failure to comply with Applicable Law including, but not limited to, the requirements of ORC Chapter 4115;

9.3.2.6 failure to timely submit EDGE Participation Reports in accordance with Section 1.7.2;

9.3.2.7 failure to carry out the Work in accordance with the Contract Documents; or

9.3.2.8 that which is permitted under other provisions of the Contract Documents.

9.4 Final Contractor Payment Request

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

9.4.1.1 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 and Material Suppliers have been paid in full for all Work performed or materials furnished for the Project.

9.4.2 The acceptance of final payment by the Contractor, a Subcontractor, or a Material Supplier 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.

9.4.3 Notwithstanding any other provision of the Contract Documents, final payment 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.

ARTICLE 10 - BONDS, INSURANCE, AND INDEMNIFICATION

10.1 Performance and Payment Bonds

10.1.1 Before signing the Performance Contract Form, the Contractor shall provide the Bond as required under Applicable Law and below:

10.1.1.1 The Performance and Payment Bond shall be in the form of Document 00 61 13 - "Performance and Payment Bond Form."

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

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

10.1.1.4 The penal sum of the Bond, when initially submitted, shall be equal to one-hundred percent of the Contract Sum.

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 Contracting Authority written consent of the affected Surety or Sureties confirming the increased penal sum. The Contracting Authority'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.

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

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

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

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

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

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

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

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

10.2.4 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 Contracting Authority 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.

10.2.5 The Contractor shall pay a proportionate share of the deductibles, or self-insured retentions, or both contained in any insurance policy the Contracting Authority purchases for the Project. The 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.

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

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

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

10.3 Contractor's Minimum Coverage Requirements

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

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

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

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

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

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

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

10.3.3.6 The Contractor shall maintain the CGL insurance in effect for no less than 5 years after the earlier of the termination the Contract or Final Acceptance of all Work.

10.3.4 Business Automobile Liability. 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.

10.3.4.1 The coverage shall extend to any auto.

10.3.4.2 The Contractor shall include the State, the Contracting Authority, the Owner, and the Engineer as additional insureds under the BA policy.

10.3.5 Umbrella/Excess Liability.

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

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

.1 brick/block masonry;

.2 exterior caulking/sealant;
.3 cast-in-place or precast concrete;
.4 curtain wall;
.5 dampproofing/waterproofing;
.6 electrical;
.7 elevator;
.8 exterior glass and/or glazing;
.9 exterior marble, granite, and/or other stonework;
.10 miscellaneous metals;
.11 plaster/stucco;
.12 plumbing;
.13 HVAC;
.14 roofing and/or sheet metal;
.15 scaffolding;
.16 spray-on fireproofing;
.17 sprinkler and/or fire protection; or
.18 structural steel and/or metal deck.

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

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

10.3.6 Contractor's Pollution Liability. If the Work includes environmentally sensitive, hazardous types of activities (such as demolition, exterior insulation finish systems, Asbestos abatement, storage-tank removal, or similar activities), or involves Hazardous Materials, the 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 Contracting Authority by reason of the Contractor's performance of the Work.

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

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

10.3.6.3 The Contractor shall maintain the CPL insurance in effect for no less than 5 years after the earlier of the termination the Contract or Final Acceptance of all Work.

10.3.7 Professional Liability—Contractor. The Contractor shall maintain professional liability insurance without design-build exclusions with a per-claim limit of not less than $1,000,000 and an annual aggregate limit of not less than $2,000,000.

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

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

10.3.7.3 The Contractor shall maintain the professional liability insurance in effect for no less than 5 years after the earlier of the termination the Contract or Final Acceptance of all Work.

10.3.7.4 If the Contractor is not authorized under Applicable Law to directly provide professional design services, the Contractor may satisfy the requirements of this Section 10.3.7 by providing a contractor's professional liability insurance policy.

10.3.8 Professional Liability—Consultants. Each Consultant which provides professional design services shall maintain professional liability insurance without design-build exclusions with a per-claim limit of not less than $1,000,000 and an annual aggregate limit of not less than $2,000,000.

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

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

10.3.8.3 The Consultant shall maintain the professional liability insurance in effect for no less than 5 years after the earlier of the termination the Contract or Final Acceptance of all Work.

10.3.8.4 If the Consultant is not authorized under Applicable Law to directly provide professional design services, the Consultant may satisfy the requirements of this Section 10.3.8 by providing a contractor's professional liability insurance policy.

10.3.9 Professional Liability—Subcontractors. If the Work to be performed by a Subcontractor includes any professional design services (including without limitation sprinkler and/or fire protection and other design-build work) the Subcontractor shall maintain professional liability insurance without design-build exclusions with a per-claim limit of not less than $1,000,000 and an annual aggregate limit of not less than $2,000,000.

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

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

10.3.9.3 The Subcontractor shall maintain the professional liability insurance in effect for no less than 5 years after the earlier of the termination the Contract or Final Acceptance of all Work.

10.3.9.4 If the Subcontractor is not authorized under Applicable Law to directly provide professional design services, the Subcontractor may satisfy the requirements of this Section 10.3.9 by providing a contractor's professional liability insurance policy.

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

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

10.3.12 Equipment Coverage. The Contracting Authority and 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.

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

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

10.3.13.2 coverage for general average and salvage charges;

10.3.13.3 "on deck" coverage;

10.3.13.4 warehouse-to-warehouse coverage;

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

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

10.3.13.7 "Inchmaree" clause;

10.3.13.8 sue and labor;

10.3.13.9 "both-to-blame" coverage;

10.3.13.10 free of particular average;

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

10.3.13.12 damage by saltwater and rainwater perils and cargo sweat.

10.3.14 Additional Property Insurance. 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 Builder's Risk Insurance

10.4.1 The Contractor shall provide and maintain, during the progress of the Work and until the execution of the final Certification of Contract Completion by the Contracting Authority, a Builder's Risk insurance policy to cover all Work in the course of construction including false-work, temporary buildings and structures, and materials used in the construction process, stored on or off-site, or while in transit. This insurance shall be on a special cause of loss form, which provides coverage on an open perils basis insuring against the direct physical loss of, or damage to, covered property including, but not limited to, theft, vandalism, malicious mischief, earthquake, tornado, lightning, explosion, breakage of glass, flood, collapse, water damage, and hot and cold testing. This insurance shall be written on a replacement cost basis and shall also include debris removal, and/or demolition occasioned by enforcement of Applicable Law.

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

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

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

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

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

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

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

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

10.4.1.9 Coverage shall be primary to all other applicable insurance.

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

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

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

10.5 Insurance Policy Requirements

10.5.1 Each policy of insurance required to be purchased and maintained by the Contractor shall name the State as an additional insured or loss payee, as applicable; provided, however, this designation shall not cause any claim between the Contractor and the State to be waived, except as set forth in Section 10.6.

10.5.1.1 Each such certificate of insurance shall expressly provide that the insurer will endeavor to provide no less than 30 days' written notice to the Contracting Authority in the event of cancellation of the coverage evidenced by the certificate.

10.5.1.2 For each insurance policy required by this Contract, the Contractor shall provide the Contracting Authority with 30 days' prior written notice of cancellation or non-renewal. Failure to comply with these reporting provisions shall constitute grounds for the Contracting Authority's termination of the Contract for cause pursuant to Section 11.3.

10.5.2 The Contractor shall furnish the Contracting Authority, when requested, a certified copy of any insurance or additional insured or loss payee endorsement required to be purchased or maintained by the Contract Documents. In no event shall failure of the Contracting Authority to demand a certified copy of any required insurance or endorsement be construed as a waiver of the obligation of the Contractor to obtain required insurance.

10.5.3 The Contractor shall maintain insurance in the required amounts, without interruption, from the date of execution of the Contract until the date of approval of the Certification of Contract Completion by the Contracting Authority. Failure to maintain the required insurance during the time specified shall be cause for termination of the Contract.

10.5.4 Insurance policies required to be purchased and maintained by the Contractor may include a reasonable loss deductible, which shall be the responsibility of the Contractor to pay in the event of loss.

10.5.5 The prompt repair or reconstruction of the Work resulting from an insured loss or damage is the Contractor's responsibility and shall be accomplished at no additional cost to the State.

10.6 Waivers of Subrogation

10.6.1 To the fullest extent permitted by Applicable Law, the Contractor waives all rights against the Owner, the Contracting Authority, and their 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.

10.6.2 The Owner, the Contracting Authority, and the 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.

10.7 Indemnification for Injury or Damage

10.7.1 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 but not limited to all fees and charges of contractors, engineers, architects, attorneys, and other professionals and all court, arbitration, or other dispute-resolution costs) arising out of or in connection with the Project, provided that any such claim, cost, damage, loss, fine, penalty, or expense (all of which may be direct, indirect, or consequential) is attributable to:

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

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

10.7.1.3 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.

10.7.2 The Contractor's indemnification obligation under Section 10.6.1 exists regardless of whether or not and the extent to which the claim, damage, loss, fine, penalty, or expense is caused in part by a party indemnified under Section 10.6.1. But nothing in Section 10.6.1 obligates the Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

10.7.3 The Contractor's obligations under Section 10.6.1 shall not extend to the liability of the Engineer, the Engineer's consultants, agents, representatives, or employees for negligent preparation or approval of Drawings, Specifications, Change Orders, opinions, and any other responsibility of the Engineer, except to the extent covered by the Contractor's insurance.

10.7.4 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 10.6.1 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.

10.7.5 The Contractor's indemnification obligation under Section 10.6.1 will not be limited by any insurance policy provided or required in connection with the Project.

10.7.6 The Contractor's obligations under Section 10.6.1 shall not negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to an Indemnified Party.

10.7.7 The Contractor's indemnification obligation under Section 10.6.1 will survive termination of the Contract and Final Acceptance of the Work.

10.7.8 The Contracting Authority may deduct from the Contract Sum the claims, damages, losses, fines, penalties, and expenses for which the Contractor is liable under Section 10.6.1. 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.

10.8 Indemnification for Use of Electronic Files

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

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

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

10.8.1.3 The Electronic Files are not products.

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

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

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

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

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

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

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

ARTICLE 11 - SUSPENSION AND TERMINATION

11.1 Suspension of the Work

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

11.1.1.1 If the Contracting Authority suspends the Work under this Section 11.1.1 and the 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.

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 Contracting Authority suspends the Work under this Section 11.1.1 and the Contractor submits a proper Contractor Payment Request, but 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.

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

11.1.2.1 The Contracting Authority's exercise of its right to suspend the Work under this Section 11.1.2 shall not entitle the Contractor to any adjustment of the Contract Sum, Contract Time, or both.

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

11.1.3 Upon receipt of notice of suspension under this Section 11.1, the 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 Contracting Authority, within 5 days of receiving the notice of suspension, describing the status of the Work, including, but not limited to, results accomplished, resulting conclusions, and other information as the Contracting Authority may require.

11.1.4 In the event of suspension under this Section 11.1, the Contractor may be entitled to payment of compensation due under the Contract Documents, upon submission of a proper invoice, for the Work performed prior to receipt of notice of suspension, which shall be payable based upon the Schedule of Values.

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

11.2 Termination for Convenience

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

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

11.2.2.1 cease operation as specified in the notice;

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

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

11.2.2.4 proceed with Work not terminated; and

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

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

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

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

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

11.2.5 Notwithstanding Section 11.2.3, if the Contracting Authority 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 sums as it would be entitled to receive following the occurrence of an event of default as provided in Section 11.3.

11.3 Termination for Cause

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

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

11.3.1.2 refuses to remedy Defective Work;

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

11.3.1.4 fails to properly make payment to Subcontractors or Material Suppliers;

11.3.1.5 performs any services outside of the United States;

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

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

11.3.1.8 during the term of any guaranty applicable pursuant to the Performance Contract, fails to comply with the terms of such guaranty.

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

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 Contracting Authority 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 Contracting Authority may complete the Work by means the Contracting Authority determines appropriate. The Contracting Authority may take possession of and use all materials, facilities, and equipment at the Site or stored off-site, for which the 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 exceeds 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 Contracting Authority to complete the Work.

11.3.7 If the Contracting Authority terminates the Work under this Section 11.3, the termination shall not affect any rights or remedies of the State against the Contractor then existing or which may thereafter accrue. The Contracting Authority'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 Contracting Authority is adjudged to have improperly terminated the Work under this Section 11.3, the termination will be deemed to have been a termination under Section 11.2.

11.4 Contractor Insolvency

11.4.1 Bankruptcy of Contractor:

11.4.1.1 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 frames 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. Contractor agrees to the granting of relief from the automatic stay of the Bankruptcy Code, 11 U.S.C. §362(a), to permit the Contracting Authority to terminate the Contract for cause in such instance and issue and serve all notices necessary to terminate the Contract or arising out of the termination of the Contract and to take any and all other action necessary to terminate the Contract.

11.4.2 Receivership or Assignment for the Benefit of Creditors:

11.4.2.1 If the 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 Contracting Authority shall serve written notice on the Contractor and the 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 for cause. Such termination of the Contract need not be evidenced by an order of any court.

ARTICLE 12 - GENERAL PROVISIONS

12.1 Contract Documents

12.1.1 Ownership.

12.1.1.1 The Owner alone owns the Contractor's Documents and the Contract Documents and every right, title, and interest therein from the moment of creation.

.1 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.

12.1.1.2 The Contractor may retain copies, including reproducible copies, of the Contractor's Documents and the Contract Documents for information, reference, and performance of the Work.

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

12.1.2 Intent.

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

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

12.1.2.3 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.

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

12.1.2.5 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.

12.1.2.6 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.

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

12.1.2.8 The Sections of Division 01 - “General Requirements” govern the performance of the Work of all Sections of the Specifications.

12.2 Public Relations

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

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

12.2.3 Professional Photography. If the Contractor commissions photography of the completed Project, the Contractor shall include in its photography agreements a release for unrestricted and unlimited use of photographs by the Owner and the Contracting Authority, and shall provide the Owner and the Contracting Authority with a reasonable quantity of photographs for use in the Owner’s and the Contracting Authority’s marketing and awareness activities, including, but not limited to, profiles of the Project on their respective websites.

12.2.4 Craft Awards and Other Recognition.

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

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

12.3 Application and Governing Law

12.3.1 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.

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

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

12.4 Conditions of the Contract

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

12.5 Notice of Commencement

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

12.5.2 Upon request, the Contracting Authority or the Contractor shall furnish the Notice of Commencement to Subcontractors and Material Suppliers, or any other member of the public.

12.6 Written Notice

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

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

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

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

12.6.2 When the Owner, the Contracting Authority, or the Contractor gives notice to one of the other 3, it shall also simultaneously send a copy of that notice to the others.

12.7 Taxes

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

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

12.8 Computing Time

12.8.1 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.

12.8.2 Except as excluded under Section 12.8.1, the Contract Time and all other time periods referred to in the Contract Documents includes Saturdays, Sundays, and all days defined as legal holidays by Section 12.8.4.

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

12.8.4 Legal holidays are as follows:

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

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

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

12.8.4.4 Memorial Day – Last Monday in May;

12.8.4.5 Independence Day – Fourth day of July;

12.8.4.6 Labor Day – First Monday in September;

12.8.4.7 Columbus Day – Second Monday in October;

12.8.4.8 Veteran's Day – Eleventh Day of November;

12.8.4.9 Thanksgiving Day – Fourth Thursday of November; and

12.8.4.10 Christmas Day – Twenty-fifth day of December.

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

12.9 Time of the Essence

12.9.1 Time limits stated in the Contract Documents are of the essence of the Contract and all obligations under the Contract. By signing the Performance Contract Form, 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 Progress 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.

12.9.1.1 The Notice to Proceed establishes the date for commencement of the Work.

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

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

12.9.1.4 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.

12.10 Successors and Assigns

12.10.1 The Contracting Authority and the 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.

12.10.2 The Contracting Authority and the Contractor each acknowledge that the Owner is an intended third-party beneficiary of this Contract.

12.10.3 The Contractor shall not assign, or transfer any right, title, or interest in this Contract without the Contracting Authority's prior written consent.

12.11 Extent of Contract

12.11.1 Entire Contract. The Contract Documents represent the entire and integrated agreement between the Contracting Authority and the Contractor and supersede all prior negotiations, representations, or agreements, either written or oral.

12.11.2 Multiple Counterparts. 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.

12.11.3 Captions. 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.

12.11.4 Precedence. 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.

12.12 Severability

12.12.1 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.

12.13 Facsimile Signatures

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

12.14 No Third-Party Interest

12.14.1 Except as expressly provided under Sections Error! Reference source not found. through Error! Reference source not found. and Section 12.10.2, (1) no person or entity, other than the Contracting Authority and Contractor, will have any right or interest under the Contract, and (2) the Contract does not create a contractual relationship of any kind between any people or entities other than the Contracting Authority and the Contractor.

12.15 No Waiver

12.15.1 The failure of the Contracting Authority or the 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.

12.16 Rights and Remedies

12.16.1 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.

12.17 Survival of Obligations

12.17.1 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.

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END OF DOCUMENT

Certifications

These Supplementary Conditions amend and supplement the General Conditions and other provisions of the Contract Documents as indicated below. All provisions not amended remain in full force and effect. The terms in these Supplementary Conditions defined in the Contracting Definitions or the General Conditions shall have the meanings assigned to them in those documents.

These Supplementary Conditions are authorized, by the Ohio Facilities Construction Commission, for use on projects constructed by and for North Central State College.

Contracting Authority and Owner

Ohio Facilities Construction Commission
30 West Spring Street, 4th Floor
Columbus, Ohio 43215
614.466.6290
http://ofcc.ohio.gov

Owner

North Central State College
2441 Kenwood Circle, P.O. Box 698
Mansfield, Ohio 44901
Phone: 419-755-4855
E-Mail: dschaad@ncstatecollege.edu

MODIFICATIONS TO GENERAL CONDITIONS

Delete Section 1.8 in its entirety.

Replace Section 9.1.1 with the following:

9.1.1 Within 10 days of receipt of the Notice to Proceed, or other period as mutually agreed by the Contractor and the Contracting Authority, the Contractor shall submit to the Engineer a Schedule of Values on a form published by the Commission, with separate amounts shown for labor and materials for each branch of Work, following the numbers and titles of the Construction Specifications Institute's *MasterFormat* for individual work results, or *UniFormat* for assemblies in place. All costs shall indicate labor and material cost associated with each item specified on the cost breakdown.

Delete Section 9.1.1.1 in its entirety.

Replace Section 9.1.2.2 with the following:

9.1.2.2 The amounts for labor and materials shall accurately reflect the cost for each item. Separate items shall not be shown for overhead or profit. Overhead and profit shall be included in the totals for labor and materials.

Delete Section 9.2.1.6 in its entirety.

Delete Section 9.3.2.6 in its entirety.

END OF DOCUMENT

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Energy Conservation Project
North Central State College
Mansfield, Richland County

ATTACHMENT 5:
ECM / WCM AND ENERGY SAVINGS GUARANTEE REQUIREMENTS

5.1 Overview:

It is the Owner's intent to select a Contractor based on the evaluation as described in Part Three of the RFP. Once selected, the Contractor and the Owner will agree to the energy and water conservation measures (ECMs and/or WCMs) to be installed by the Contractor and their associated installation costs and guaranteed energy cost savings.

Based on the final selection of the ECMs and/or WCMs, it is further the Owner's intent to enter into two separate agreements with the Contractor. The first agreement is to be a "Performance Contract" for the procurement of the design, materials and installation of the ECMs and/or WCMs. The Performance Contract is attached to the RFP as Attachment 14. The ECM and/or WCM descriptions cost and savings information provided in Attachments 9 and 10 of the RFP Proposal will be utilized as the description of the scope of work and the cost basis for the Performance Contract.

The second agreement will be a "Service Agreement." The Service Agreement will be in effect for a period not to exceed the time frame necessary to assure the energy savings projected based on the information in Attachments 9 and 10 of the RFP Proposal. A portion of the Service Agreement will stipulate that the Contractor guarantee the energy and water savings projected to the Owner for the term of the Service Agreement based on the final ECM and WCM selection. Another portion of the Service Agreement is to assure that the Contractor has the access to and capability to monitor the systems operations and utilization to assure that the assumptions utilized in the savings projections are being met and that the systems are appropriately maintained to achieve the savings guaranteed. Annual energy consumption analysis and reporting will be included in the Service Agreement. This will include the analysis necessary to demonstrate the energy and water guarantee performance and the analysis necessary to demonstrate the Owner's energy and water performance annually against a baseline energy and water consumption. A copy of the Service Agreement is attached to the RFP as Attachment 15. The annual cost of providing the Service Agreement is to be submitted as Attachment 11 with the RFP Proposal.

The Contractor will be required to initiate services on [Insert Date] with the guarantee and term to commence at the conclusion of the installation period as defined in the Contract Documents. In the event that Contract finalization, with the selected Contractor, is not completed in time for a [Insert Date] transfer, the Owner and the Contractor will agree to a starting date for service and the Owner will extend the existing service agreement until that time.

5.2 Energy and Water Conservation Measure and Projected Energy Cost Savings Development:

Each ECM and WCM that the Offeror proposes to be incorporated in the Project is to be summarized individually on an Attachment 9 form. For each ECM/WCM, the Offeror shall provide the following information for review:

a. ECM/WCM Name
b. ECM/WCM Description
c. Brief scope of work anticipated
d. Energy and water savings calculations, with assumptions and methodology
e. Base year energy and water cost savings for electrical demand, electrical consumption, natural gas, water, sewer, and total

f. Projected operations, capital cost avoidance, and maintenance (non energy) savings, if any

g. If for the purposes of the guarantee, the annual savings are to be variable adjusted, provide the variable and baseline assumption. (For example, boiler efficiency improvement is to be adjusted annually based on heating degree days with the baseline equal to the NOAA average for [Insert Date], Ohio)

h. Interaction effects with other ECM/WCMs proposed

i. Installation cost

j. Simple payback period, based on energy cost savings only (do not include operations and maintenance savings)

Attachment 10, the Cost and Savings Summary and Certification, is to be completed for all of the ECM/WCMs proposed, as a group, to summarize the overall financial performance of the Project. The Cost and Savings Summary and Certification represents the totals of the Attachment 9 information for all ECMs and WCMs proposed, including interactions, and the Project Cash Flow Projection included on the form is a summary based on certain financial assumptions, provided below, up to a 15-year period of projected financing. Do not include the cost of the Service Agreement in the projections.

5.3 Energy and Water Conservation Measure Associated Operations and Maintenance Savings:

During the initial evaluation of the Offeror's RFP Proposal, the projected value, if any, of annual impact of the ECMs and WCMs on operation and maintenance costs will not be included in the financial performance of the Project. The Owner would like to review any projected operations and maintenance savings associated with an ECM or WCM, and may request, during the evaluation period that the operations and maintenance savings be included in the Project performance summary.

5.4 Projected Energy Cost Inflation:

For the purposes of Attachment 10, the annual energy cost inflation rate to be used for the cash flow summary is 5% per year for the Project term. This inflation factor is to be utilized for demand and consumption factors equally.

For the base line savings calculations the current rates provided from the utility information in Attachment 3 are to be utilized. If the Offeror, based on their independent evaluation, determines that rates different than those provided are more appropriate, the rates the Offeror calculates may be used. The rates used and their validity are subject to evaluation as part of the RFP Proposal Evaluation process.

5.5 Financing Rate

For the purposes of the Attachment 10 Project Cash Flow Projection, assume that the Owner will procure 10 year project financing at 4.25% for the installation cost of the Project.

If the Offeror chooses to offer financing to the Owner for the project, provide a brief description of the terms and conditions and prepare an alternate Attachment 10 for the proposed financing.

5.6 Energy Guarantee

The annual energy cost savings is to be calculated in the following manner for the purposes of the energy savings guarantee and the presentation of actual energy cost savings. The intent of this calculation method is to make the guarantee inflation risk neutral to the Contractor and to guarantee the Owner energy consumption reduction.

The preparation of the annual energy utilization audits will be a requirement of the selected Contractor and will be included in the scope of work for the Service Agreement.

Step 1.

Accumulate the last year's utility bills from all meters affected by the ECMs and WCMs installed and evaluate the invoices to provide actual units of demand and consumption.

Step 2.
Make variable adjustments to the units as per the variable adjustment in Attachment 5 - 5.2.g and Attachment 9 for the affected ECMs and WCMs.
Make adjustments to the units for verifiable changes in operation or use of the facility or for expansion or reduction of the campus area on existing utility meters, if any.

Step 3.
Multiply the adjusted units from Step 2 by the Base Year utility rates to determine the utility cost in base year dollars. Subtract this amount from the Base Year utility cost, prior to the ECM or WCM implementation. *This is to be greater or equal to the Guaranteed Savings for the Energy Guarantee.*

Step 4.
Multiply the adjusted units from Step 2 by the most recent year's utility rates to determine the total current utility cost after adjustment.

Step 5.
Multiply the Base Year units of consumption, prior to ECM or WCM implementation, by the most recent year's utility rates and subtract the total from Step 4 to find the most recent years savings attributable to the ECM or WCM implementation, at the current utility rates.

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Mansfield, Richland County

ATTACHMENT 6 – OFFEROR PROFILE AND INFORMATION FORM

Offeror's Legal Name _____

Offeror's Address _____

Offeror's City, State, ZIP _____

Offeror's Phone _____ Offeror's Fax _____

Date Established _____

Federal Tax Identification _____

Principal Place of Business _____

Contact Name _____

Contact Title _____

Contact Address _____

Contact City, State ZIP _____

Contact Phone _____ Contact Person Fax _____

Contact E-mail Address _____

If different from above

Local Office Name from which project will be managed _____

Local Office Address _____

Local Office City, State, ZIP _____

Local Office Phone _____

Form of Corporation _____

Key Corporate Management Personnel

Name _____ Title _____ Years with Co. _____

Name _____ Title _____ Years with Co. _____

Name _____ Title _____ Years with Co. _____

Number of Employees

Engineers _____ Project Management _____

Project Supervision _____ Service Management _____

Total (not necessarily the sum of the above) _____

List valid contractor license, Certificate by Ohio Construction Industry Examining Board and any Registration or Certification by an OBBC municipality or county for preceding five (5) years.

List of proposed Subcontractors, if any, to be used on the Project:

1. Name _____ Role in Project _____
   Address _____

2. Name _____ Role in Project _____
   Address _____

3. Name _____ Role in Project _____
   Address _____

(A.) Each Offeror shall supply and certify to the accuracy of the following information relative to projects engaged in by the Offeror within the last five years. If none, so state.

(1) Indicate Offerors overall experience performing the trades proposed, including the years in business performing the trade under present and former business names.

(2) The Offeror shall submit, the financial information requested in Attachment 1 in the RFP. This information is not a public record under O.R.C. Section 149.43; and shall remain confidential, except under proper order of a court.

(3) A description of its experience with projects of comparable size, complexity, and cost demonstrating the Offeror's ability and capacity to perform a substantial portion of the Project with their own forces. Include Scope of Work, Contract value and Project name/ contact Person/phone number for each owner and Associate for each project. A maximum of 3 projects are to be provided. The provision of Attachment 7, as requested in Attachment 1, will satisfy this requirement.

(4) Identification and description of any projects where the Offeror was determined by a public entity not to be a responsible bidder although it was the apparent lowest bidder, the reasons given by the public entity and an explanation thereof;

(5) Disclosure of any OSHA violation resulting in fines;

(6) Disclosure of any violations pertaining to unlawful intimidation or discrimination against any employee by reason of race, creed, color, disability, sex, religion, national origin or employees civil rights or equal employment opportunities;

(7) Disclosure of any adverse judgments in an action involving a claim for personal injury or wrongful death arising from the performance of work related to any project in which it has been engaged;

(8) Disclosure of any adverse judgments for nonpayment or nonperformance;

(9) Disclosure of violations of the prevailing wage law or any other state or federal labor laws;

(10) Disclosure of violations of any Workers' Compensation laws;

(11) Disclosure of any felony convictions involving the contractor, its officers, directors, or owners;

(12) Disclosure of any violations of environmental and/or health laws, codes, rules and/or regulations;

(13) Disclosure of any occurrences of contract abandonment, contract termination, as either a prime- or sub-contractor, or surety takeover;

(14) Disclosure of any occurrences of debarment by state, federal or local jurisdictions; and

(15) Disclosure of any liquidated damages and/or Statutory Delay Forfeiture assessed.

(16) Disclosure and confirmation that all apprentices used by the Offeror on the Project are trained in a program approved by the United States Department of Labor or the Ohio Apprenticeship Council.

(17) Identification of Work to be subcontracted and the value of such Work, the names of all the proposed major subcontractors, and confirmation by the Offeror that it has or will advise said subcontractors that they are obligated to the same levels of responsibility as the Offeror. The provision of the Subcontractor Profile, as requested in Attachment 1, will satisfy this requirement

(B) The Owner reserves the right to further inquire of the Offeror to determine whether the offer contains mathematical errors, omissions and/or erroneous assumptions and whether the Offeror has the capability to perform and complete the Contract for the proposed amount.

(C) The Owner retains the right to waive non-compliance with the selection criteria when it is determined that non-compliance does not affect the competitive nature of the selection process.

(D) All invitations, specifications, and similar requests for works of improvement shall advise all applicable prospective Offeror's of this policy.

Management: Identify individuals assigned to this Project.

Principal	_____	Years with Firm	_____	Total Years of Experience	_____
Project Manager	_____	Years with Firm	_____	Total Years of Experience	_____
Field Superintendent	_____	Years with Firm	_____	Total Years of Experience	_____

Certification: I hereby certify that the information above is factual and complete.

Company Name _____

Authorized Official (please print or type) _____

Signature of Authorized Official _____ Date _____

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OFFEROR AFFIRMATION AND DISCLOSURE

Offeror acknowledges that by signing the Offeror Profile and Information Form, that it affirms, understands, and will abide by the requirements of Executive Order 2011-12K. If awarded a Contract, the Offeror 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 Offeror 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 Proposal may cause the Offeror to be deemed non-responsive and no further consideration will be given to its Proposal. If the Offeror will not be using Subcontractors, indicate "Not Applicable" in the appropriate spaces.

Principal business location of Contractor

Address _____

City, State ZIP _____

Location where services will be performed by Contractor

Address _____

City, State ZIP _____

Locations where services will be performed by Subcontractors, if known at time of the Proposal deadline

Address _____ Address _____

City, State ZIP _____ City, State ZIP _____

Address _____ Address _____

City, State ZIP _____ City, State ZIP _____

Location where state data will be stored, accessed, tested, maintained, or backed-up by Contractor

Address _____

City, State ZIP _____

Locations where state data will be stored, accessed, tested, maintained, or backed-up by Subcontractors, if known at time of the Proposal deadline

Address _____ Address _____

City, State ZIP _____ City, State ZIP _____

Address _____ Address _____

City, State ZIP _____ City, State ZIP _____

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Mansfield, Richland County

ATTACHMENT 7 – OFFEROR REFERENCE FORM

Company 1 _____ Contact _____
Address _____ Title _____
City, State ZIP _____ Phone _____
Program Name _____
Dates of Service _____
Description of Related Service Provided

Company 2 _____ Contact _____
Address _____ Title _____
City, State ZIP _____ Phone _____
Program Name _____
Dates of Service _____
Description of Related Service Provided

Company 3 _____ Contact _____
Address _____ Title _____
City, State ZIP _____ Phone _____
Program Name _____
Dates of Service _____
Description of Related Service Provided

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Mansfield, Richland County

ATTACHMENT 8 – PERSONNEL PROFILE SUMMARY

Name _____ Title _____

Role in Project _____

Education/Training _____

Degree/Major _____ Where Obtained _____

Degree/Major _____ Where Obtained _____

Other Training _____

Company 1 _____ Contact _____

Address _____ Title _____

City, State ZIP _____ Phone _____

Program Name _____ Dates of Service _____

Description of Related Service Provided

Company 2 _____ Contact _____

Address _____ Title _____

City, State ZIP _____ Phone _____

Program Name _____ Dates of Service _____

Description of Related Service Provided

Company 3 _____ Contact _____

Address _____ Title _____

City, State ZIP _____ Phone _____

Program Name _____ Dates of Service _____

Description of Related Service Provided

Note: Attach resume for the above person. Provide for key project personnel only (e.g. project manager, lead energy engineer, service manager, project superintendent).

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North Central State College
Mansfield, Richland County

ATTACHMENT 9 – ENERGY AND WATER CONSERVATION MEASURE (ECM / WCM) FORM

ECM / WCM Number _____

ECM / WCM Name _____

Brief description of ECM / WCM and associated Scope of Work

Equipment to be installed

Estimated Useful Life _____

Warranty Period Parts and Labor _____ Parts only _____

Key Assumptions

Energy / Water / Wastewater Cost Savings (attach calculations to this form)

Electrical Demand	_____	kwd @	$ /kwd/mo	Annual Savings	$
Electrical Consumption	_____	kwh @	$ /kwh	Annual Savings	$
Natural Gas Consumption	_____	mcf @	$ /mcf	Annual Savings	$
Water and/or Wastewater Consumption	_____	gal @	$ /gal	Annual Savings	$
Sewer Reduction	_____	gal @	$ /gal	Annual Savings	$
Blended Electric Rate	_____	kwh	$ /kwh	Annual Savings	$
Biological Organic Deposit and Solid Waste Reduction	_____	mg/l	$ /mg/l	Annual Savings	$
			Total	Annual Savings	$

Installation Cost $ _____

Simple Payback Period _____ years

Describe anticipated impact, if any, on annual Operations and Maintenance cost:

Describe interactions, if any, with other ECMs / WCMs proposed:

Have interactions been accounted for in the Energy and Water Cost Savings calculations? ☐ Yes ☐ No

For purposes of the Energy/Water Savings Guarantee, is this ECM /WCM to be variable adjusted? ☐ Yes ☐ No

If Yes, provide the variable, the baseline value and source and describe the adjustment methodology:

Is there any anticipated hazardous material expected to need abated as part of implementing this ECM / WCM?
☐ Yes ☐ No If Yes, describe:

Note: Provide an Attachment 9 for each Energy/Water Conservation Measure proposed.

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ATTACHMENT 10 – COST AND SAVINGS SUMMARY AND CERTIFICATION FORM

Offeror Name _____

Project Address _____

Project City, State ZIP _____

Having read and examined the Contract Documents, including, but not limited to, the Request for Proposal and related attachments for the above-referenced Project, and the following Addenda:

Addendum Number _____ Date _____

Addendum Number _____ Date _____

Addendum Number _____ Date _____

The RFP Proposal consists of the design, procurement and installation of the following Energy Conservation Measures, as defined in Attachments 9:

ECM#	ECM Description	Installation Cost ($)	Annual Energy Cost Savings ($)	Simple Payback (yrs)
	Total			

Project Cash Flow Projection

Year	Installation Costs (a)	Energy Cost Savings (b)	Cash Flow for year	Cash Flow cumulative
Base				
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

Cash flow projection notes:

(a) Refer to Attachment 5, Paragraph 5.5, for financing rate to utilize this projection.
(b) Refer to Attachment 5, Paragraph 5.4, for utility information rate to utilize for this projection.
(c) Project must achieve positive cumulative cash flow in or prior to year 15.

The undersigned proposes to perform all Work under its RFP Proposal, in accordance with the Contract Documents, for the following sums:

BASE PROPOSAL

ITEM 1: Guaranteed Minimum Annual Energy Cost Savings $ _____

ITEM 1: Number in Words _____

ITEM 2: Fixed Total Installation Cost of Energy Conservation Measures $ _____

ITEM 1: Number in Words _____

ITEM 3: Project Time, in number of consecutive days _____

ITEM 1: Number in Words _____

ALTERNATE 1 NAME

ITEM 1 Add θ _____ Delete θ _____ Number in dollars $ _____

ITEM 1 Number in words _____

ITEM 2 Add θ _____ Delete θ _____ Number in dollars $ _____

ITEM 2 Number in words _____

ITEM 3 Add θ _____ Delete θ _____ Number in years _____

ITEM 3 Number in words _____

ITEM 4 Add θ _____ Delete θ _____ Number in days _____

ITEM 4 Number in words _____

ALTERNATE 2 NAME

ITEM 1 Add θ _____ Delete θ _____ Number in dollars $ _____

ITEM 1 Number in words _____

ITEM 2 Add θ _____ Delete θ _____ Number in dollars $ _____

ITEM 2 Number in words _____

ITEM 3 Add θ _____ Delete θ _____ Number in years _____

ITEM 3 Number in words _____

ITEM 4 Add θ _____ Delete θ _____ Number in days _____

ITEM 4 Number in words _____

ALTERNATE 3 NAME

ITEM 1 Add θ _____ Delete θ _____ Number in dollars $ _____

ITEM 1 Number in words _____

ITEM 2 Add θ _____ Delete θ _____ Number in dollars $ _____

ITEM 2 Number in words _____

ITEM 3 Add θ _____ Delete θ _____ Number in years _____

ITEM 3 Number in words _____

ITEM 4 Add θ _____ Delete θ _____ Number in days _____

ITEM 4 Number in words _____

Upon failure to have all construction of the Work completed within the Contract Time, the Owner shall be entitled to retain or recover from the Contractor, as liquidated damages, and not as a penalty, the amounts set forth in the following table for each and every calendar day thereafter until Contract Completion. The Owner's right to recover liquidated damages shall not substitute for any right of recovery for additional costs incurred should the Contractor fail to complete the Contract according to the Contract Documents.

LIQUIDATED DAMAGES

Contract Amount	**Dollars Per Day**
$1.00 to $50,000.00	$150.00
$50,000.01 to $150,000.00	$250.00

CONTRACTOR'S CERTIFICATION

The Contractor hereby acknowledges that the following representations in this RFP Proposal are material and not mere recitals:

1. Contractor has read and understands the Contract Documents and agrees to comply with all requirements of the Contract Documents, regardless of whether the Contractor has actual knowledge of the requirements and regardless of any statement or omission made by the Contractor which might indicate a contrary intention.

2. The Contractor represents that the RFP Proposal is based upon the Standards specified by the Contract Documents.

3. The Contractor has visited the Site, has become familiar with local conditions, and has correlated personal observations about the requirements of the Contract Documents. The Contractor has no outstanding questions regarding the interpretation of the Contract Documents.

4. The Contractor understands that the Contract is subject to all the provisions, duties, obligations, remedies and penalties of O.R.C. Chapter 4115, "Wages and Hours on Public Works," and that the Contractor shall pay any wage increase in the Project locality during the term of the Contract.

5. The Contractor agrees to comply with the Drug Free Workplace Act and the State's Drug Free Workplace Policy. The Contractor shall make a good faith effort to ensure that all the Contractor employees, while working on State property, shall not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

6. The Contractor agrees to furnish any information requested by the Owner to evaluate the Contractor's responsibility.

7. The Contractor and each individual signing on the Contractor's behalf certifies, and in the case of a joint RFP Proposal, each party thereto certifies as to such party's organization, under penalty of perjury, that to the best of the undersigned's knowledge and belief:

   7.1 The RFP Proposal has been prepared independently without collusion, consultation, communication or agreement, for the purpose of restricting competition as to any matter relating to such RFP Proposal.

   7.2 Unless otherwise required by law, the costs which have been quoted in the RFP Proposal have not been knowingly disclosed by the Contractor and will not knowingly be disclosed by the Contractor prior to the RFP Proposal deadline, directly or indirectly, to any other Contractor that would have any interest in the RFP Proposal costs.

   7.3 No attempt has been made or will be made by the Contractor to induce any other individual, partnership or corporation to submit or not to submit an RFP Proposal for the purpose of restricting competition.

8. The Contractor understands and agrees that it may negotiate only the specific aspects of the RFP that the Owner, in its sole discretion, selects for negotiation. The Contractor certifies that it shall not attempt to negotiate the General Conditions of the Contract, Performance Contract, or Service Agreement, except as to those permitted modifications that may be proposed for the Service Scope of Work (Exhibit 1 of the Service Agreement).

	Contractor	Signature for Joint Venture
Authorized Signature		
Printed Name		
Title		
Company Name		
Mailing Address		
City, State ZIP		
Where incorporated		
Federal Tax ID		
Contact Person		
Contact Phone Number		
Contact Fax Number		
Contact E-mail Address		

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ATTACHMENT 11 – SERVICE AGREEMENT COST SUMMARY

FROM: Name _____

Address _____

City/State _____

Phone _____

Fax _____

FOR: Energy Conservation Project - Service Agreement

PROPOSAL SCHEDULE

The Undersigned Contractor, having visited the Site and familiarized itself with local conditions affecting the cost of the Work and with all requirements of the Contract Documents, including the Request for Proposal and the Service Agreement (Attachment 15, and associated Exhibits), regardless of whether the Contractor has actual knowledge of such requirements and regardless of any statement or omission made by the Contractor which might indicate a contrary intention, hereby agrees to comply with all requirements of the Contract Documents and proposes to furnish the Work required by said Service Agreement for the following amounts:

See Attachment 15, Service Agreement, Exhibit 1, Service Scope of Work; Section 4 for the Part A & B Work below.

A. Building automation and control system preventive maintenance and service, HVAC preventive maintenance, HVAC testing, inspection and calibration, HVAC water treatment service, HVAC emergency service, HVAC equipment repair and replacement labor, HVAC parts and material per Service Agreement (prorated and paid monthly).~~]~~

   The Service Agreement incorporates the guaranteed operational and energy savings as defined in Attachments 5 and 10, as long as the Service Agreement remains in effect. The Contractor is to provide services, in addition to those specified that are deemed necessary by the Contractor, to assure achievement of the guaranteed energy savings.

   5-year period commencing with the issuance of Final Certification of Contract Completion $ Per Year

B. Filter replacements (prorated and paid as completed).

   5-year period commencing with the issuance of Final Certification of Contract Completion $ Per Year

Total (Parts A and B combined)

   5-year period commencing with the issuance of Final Certification of Contract Completion $ Per Year

UNIT PRICES

C **LABOR**

For additional work requested by the Owner which is not part of the Service Agreement, the Contractor and the Owner shall estimate and come to agreement on the time required of each tradesman to complete the task. The Contractor will then be paid based upon the agreed to hours. Payment will be at the prevailing wage rate as established by the State, then in effect, plus a percentage for overhead and profit (combined) as quoted hereafter.

%

D **MATERIALS**

For any materials provided for additional work, the reimbursement to the Contractor shall be a rate of materials cost (less any rebates or volume discounts) plus 10% for overhead and profit. Any expedited shipment or special handling shall be at cost. No other mark-ups will be allowed.

SERVICE AGREEMENT EXTENSION:

The Owner may, in its sole discretion, extend the Service Agreement beyond the 5-year term on a year by year basis for the duration of the period for the guaranteed operational and energy savings. This guarantee period could potentially run through [MM DD YYYY], depending on the chosen Energy Conservation Measures and schedule for the Performance Contract.

In the event the Owner extends the Service Agreement, the labor and material cost components associated with the 5 Year Base Proposal will be adjusted in accordance with the local CPI adjustment factors for labor and material based on the then current year factors as compared to year end [YYYY].

	Contractor	**Signature for Joint Venture**
Authorized Signature		
Printed Name		
Title		
Company Name		
Mailing Address		
City/State/Zip Code		
Where Incorporated		
Federal Tax ID		
Contact person		
Telephone Number		
Fax Number		

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ATTACHMENT 12 – PREVAILING WAGE RATE REQUIREMENTS

1.1 Payment of Prevailing Wage Rates

1.1.1 The Contractor shall pay the prevailing wage rates of the Project locality, as issued by the Ohio Department of Commerce, Wage and Hour Bureau to laborers and mechanics performing Work on the Project.

1.1.2 The Contractor shall comply with the provisions, duties, obligations, and is subject to the remedies and penalties of Ohio Revised Code ("O.R.C.") Chapter 4115.

1.1.3 If the Contractor or its Subcontractors fail to comply with O.R.C. Chapter 4115, the Contracting Authority may withhold payment pursuant to Article 9.6 of the General Conditions. The Contractor is liable for violations committed by the Contractor or its Subcontractors.

1.1.4 The Contractor shall submit all payroll reports in compliance with the requirements of paragraph 1.4 for all of the employees of the Contractor and of the Contractor's Subcontractors.

1.1.5 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 O.R.C. Sections 4115.03 through 4115.14, which are inserted at the end of this Document.

1.2 Prevailing Wage Rate Revisions

1.2.1 The Contracting Authority shall, within 7 business days after receipt of a notice of a change in the prevailing wage rates, notify the Contractor of the change. The prevailing wage rates are available at the Ohio Department of Commerce's web site: http://com.state.oh.us/.

1.2.2 The Contractor shall pay any revised wage rates issued during the term of the Contract.

1.3 Payroll Schedule

1.3.1 Within 10 days of the date of the Notice to Proceed, the Contractor shall provide the Contracting Authority'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.

1.4 Payroll Reports

1.4.1 The Contractor shall submit payroll reports with each Contractor Payment Request, 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. The Contractor is responsible for submitting all payroll reports of its Subcontractors.

1.4.1.1 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.

1.4.1.2 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.

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

1.4.1.4 The Contractor and its Subcontractors shall submit apprenticeship agreements for all apprentices utilized on the Project.

Actual Energy Savings	Actual cost savings attributable to the Energy Conservation Measures described in the Contract Documents, which are measured and/or calculated as specified in Exhibit 3 - Baseline Energy Consumption and Exhibit 1 - Service Scope of Work.
Acceptable Component	A component listed in the Specifications after the Basis of Design Component.
Addenda or Addendum	Written or graphic instrument issued prior to the Proposal Deadline which modifies or interprets the proposed Contract Documents by additions, deletions, clarifications, or corrections. Addenda become part of the Contract Documents when the Performance Contract Form is executed.
Allowance	A sum stipulated in the Contract Documents, which includes overhead and profit for a defined scope of the Work that may not be completely defined at the Proposal deadline.
Alternate	A change in the proposed Project scope, which may include but is not limited to alternate materials or methods of construction, and an amount stated on the Proposal to be added to or deducted from the base Proposal if the corresponding Alternate is incorporated into the Contract.
Alternative Dispute Resolution	A voluntary and non-binding process for the administrative review, consideration, and attempted settlement of a dispute, without resort to judicial process, including but not limited to partnering, negotiation, mediation, impartial fact-finding, dispute review board, and mini-trials, but shall not include arbitration.
Applicable Law	All federal, state, and local codes, statutes, ordinances, and regulations that apply to the performance of the Work on the Project.
As-Built Documents	Documents, including, but not limited to, Drawings, Addenda, Specifications, executed amendments, 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 information useful to the Owner throughout the life of the completed Project.
Basis of Design or BOD	A document that records the concepts, calculations, decisions, and product selections used to meet the Owner's Project Requirements and to satisfy applicable regulatory requirements, standards, and guidelines. The document includes both narrative descriptions and lists of individual items that support the design process.
Basis of Design Component	A component listed first in the Specifications.
Building Information Model or BIM	A digital representation of physical and functional characteristics of a facility; a shared knowledge resource for information about a facility forming a reliable basis for decisions during its life-cycle, which is defined as existing from earliest conception to demolition. The term BIM may be used as a *noun* to describe a single model or multiple models used in the aggregate. The term BIM may also be used as a *verb* in the context of Building Information Modeling or Management, the process of creating, maintaining, and querying the model.

Certification of Contract Completion	A form used to document that the Contractor's Work is complete, and the Contractor has complied with all conditions precedent to final payment and release of retainage. This form may also be used to document partial completion.
Certified Claim	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.
Claim Affidavit	A sworn document used in conjunction with filing a lien, which contains a claim on the funds that are due to the Contractor, in favor of a Person supplying labor, materials, or services for the value of labor, materials, or services supplied.
Commissioning Agent or CxA	The Person identified by the Contracting Authority who leads, plans, schedules, and coordinates the commissioning team to implement the Commissioning Process for the Project.
Commissioning Plan	A document that outlines the organization, schedule, allocation of resources, and documentation requirements of the Commissioning Process.
Commissioning Process	A quality-focused process for enhancing the delivery of a project. The process focuses on verifying and documenting that the facility and all of its systems are planned, designed, installed, tested, operated, and maintained to meet the Owner’s Project Requirements.
Commissioning Report	A document that records the activities and results of the Commissioning Process. The Commissioning Report is developed from the final Commissioning Plan with its attached appendices.
Construction Progress Schedule	The critical path schedule for performance of the Contract; showing the time for completing the Work within the Contract Time; the planned sequence for performing the various components of the Work; the interrelationship between the activities of the Contractor, Subcontractors, Material Suppliers, the Engineer, the Contracting Authority, and the Owner; and the Contractors’ resource and cost loading information; as periodically updated during the performance of the Work.
Contract	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.
Contract Completion	The schedule Milestone in the progress of any Phase 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, (a) all governmental authorities have given final, written approval of the Work, (b) a final unconditional certificate of occupancy has been granted and issued to the Owner by the appropriate governmental authorities, (c) the Contractor's Work is 100

	percent complete, and (d) all Punch List items have been completed or corrected, and (e) the Contractor has complied with conditions precedent to final payment and release of retained funds.
Contract Documents	Collectively, the documents that constitute the substance of the Contract including, but not limited to, the Request for Proposals, Drawings, Specifications, Addenda if any, General Conditions of the Contract, Wage Rates; and the executed Performance Contract, Service Agreement, Performance Bond, Guarantee Bond, and amendments if any.
Contract Form, Performance	The form furnished by the Contracting Authority that, when completed and signed by the Contractor and the Contracting Authority, and approved by the Attorney General, evidences entry into the Performance Contract.
Contract Sum	The amount stipulated in the Performance Contract Form that is the total amount payable to the Contractor for performance of the Work, including adjustments authorized by executed amendments.
Contract Time	The period stipulated in the Performance Contract Form for performance of the Work, in consecutive days, beginning and ending on the dates established by the Notice to Proceed, including adjustments authorized by executed amendments.
Contracting Authority	The Ohio Department of Administrative Services, acting by and through the General Services Division, State Architect's Office.
Contractor	A Person, which is party to the Contract for the performance of Work on the Project in cooperation with Separate Contractors and Persons, and in accordance with the Contract Documents.
Contractor Payment Request	The form furnished by the Contracting Authority 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.
Contractor's Punch List	A document prepared by the Contractor that consists of a list of items of Work to be completed or corrected by the Contactor as a condition precedent to the Engineer issuing the Engineer's Punch List.
Coordination Drawings	Drawings and electronic files prepared by the Contractors to demonstrate how multiple-system and interdisciplinary work will be coordinated. Clash reports generated by BIM authoring software may be included in the Coordination Drawing submittals if applicable.
day	A calendar day of 24 hours measured from midnight to midnight, unless otherwise expressly specified to mean a business day.
Defective Work	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 Engineer'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.
Department	The Ohio Department of Administrative Services, the authorized contracting agent for public improvement Projects in accordance with Ohio Revised

	Code Chapters 123, 153, and 156 acting by and through the General Services Division, State Architect's Office.
Dispute Review Board	A form of Alternative Dispute Resolution that is typically comprised of three members, selected jointly by the Contractor and the Contracting Authority, to monitor the progress of construction and provide recommended resolutions to disputes that are brought before them.
Drawings	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.
Energy Conservation Measure or ECM	An installation or modification of an installation in, or a remodeling of, an existing building in order to reduce the Owner's energy consumption and operating costs.
energy savings summary	A report submitted by the Contractor to the Owner describing Actual Energy Savings achieved for each Energy Conservation Measure, including load adjustments due to weather, occupancy, or major equipment changes, as applicable.
Engineer	A permanent employee of the Contracting Authority, who is a licensed professional engineer under O.R.C. Chapter 4733, assigned to the Project and authorized to perform specific responsibilities.
Extra Materials	Materials required by the Contract Documents that are not incorporated into the Project but are given to the Owner to be used for future maintenance or repairs.
Final Acceptance	The Contracting Authority's acceptance of the Work performed by the Contractor after certification by the Engineer of Contract Completion.
Final Inspection	The final review of the Work of the Contractor by the Engineer to determine whether issuance of the Certificate of Contract Completion is appropriate.
furnish	Supply and deliver to the Site, or other specified location, ready for installation.
General Conditions	The State's Standard General Conditions for projects of the Contractcurrently in effect, which may be modified by the Department from time to time.
Guarantee Bond	A bond, letter of credit, or other instrument of security submitted by the Contractor, in a form approved by the Contracting Authority, to provide assurance that the Contractor will achieve the amount of the Guaranteed Savings specified in the Service Agreement.
Guaranteed Savings	Costs which the Contractor warrants and guarantees the Owner will avoid due to implementation of the Energy Conservation Measures set forth in the Contract Documents. The Guaranteed Savings are set forth in Schedule B of Exhibit 2 - Guaranteed Savings Schedule.
Hazardous Materials	Any material, substance, pollutant, or contaminant that is defined, regulated, referenced, or classified in the Comprehensive Environmental Response, Compensation and Liability Act, the Federal Water Pollution Control Act, the Resource Conservation and Recovery Act, the Clean Air Act, the Hazardous Materials Transportation Uniform Safety Act, the Toxic

	Substances Control Act, or any other Applicable Law relating to any hazardous, toxic, or dangerous waste, substance, or material. Any substance or material that, after release into the environment or upon exposure, ingestion, inhalation, or assimilation, either directly from the environment or directly by ingestion through food chains, will, or may reasonably be anticipated to, cause death, disease, behavior abnormalities, cancer or genetic abnormalities 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.
install	Put into use or place in final position, complete and ready for intended service or use.
Liquidated Damages	A sum established in the Contract Documents to be paid to the Owner due to the Contractor's failure to complete the Work within the Contract Time, or any applicable portion of the work on or prior to any Milestone date stated on the Contract Form.
Material Supplier	A Person who furnishes materials or supplies on the Project.
mediation	A voluntary process in which a neutral third party meets with the parties who have a disagreement or dispute and attempts to facilitate a mutually satisfactory resolution.
Milestone	A significant date or event in the development of the Work identified in the Contract Documents and illustrated on the Construction Progress Schedule.
negotiation	A form of Alternative Dispute Resolution in which all parties involved are represented by those invested with the authority to agree to a determination of an adjustment in the Contract Sum, Contract Time, or both.
Notice of Commencement	A notice prepared by the Contracting Authority identifying the Project, the Contractors, the Surety for each Contractor, and the name of the Contracting Authority's representative upon whom a Claim Affidavit may be served.
Notice of Intent to Award	A written notice provided by the Contracting Authority to the apparent successful Offeror stating that upon satisfactory compliance with all conditions precedent for execution of a Contract within the time specified, the Contracting Authority intends to execute a Contract with the Offeror.
Notice to Proceed	A written notice provided by the Contracting Authority authorizing the Contractor to proceed with the Work and establishing the dates for commencement and completion of the Work.
Offeror	A Person that submitted a Proposal.
Owner	«insert name of facility owner»
Owner's Project Requirements or OPR	A written document that details the functional requirements of the Project and the expectations of how it will be used and operated. These include project goals, measureable performance criteria, cost considerations, benchmarks, success criteria, and supporting information.
Partial Occupancy	The condition that occurs when the Owner occupies or uses a portion of the Project prior to Contract Completion, temporary occupancy is approved by

	authorities having jurisdiction, and items of Work cannot be completed until a subsequent date.
Performance Bond	A performance and payment bond in the format specified by Ohio Revised Code 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.
Performance Contract	That certain agreement by and between the Contracting Authority and the Contractor titled “Performance Contract”.
partnering	A voluntary dispute prevention process involving team building activities to help define common goals, improve communication, and foster a problem solving attitude among a group of contracting parties that must work together throughout Contract performance to be less adversarial and more cooperative.
Person	An individual, corporation, business trust, estate, partnership, association, or other public or private entity.
Product Data	Manufacturer’s standard illustrations, schedules, diagrams, performance charts, instructions, and brochures that illustrate physical appearance, size, and other characteristics of materials and equipment.
Project	A public improvement, of which the Work performed under the Contract Documents may be the whole or a part.
Proposal	A written offer to perform the Contract, submitted in response to the RFP, accompanied by other required documents.
provide	Furnish and install, complete and ready for intended use.
Punch List	A document listing items of Work requiring correction or completion by the Contractor as a condition precedent to Contract Completion.
Record Documents	Electronic files and printed documents of all nature prepared by the Contractor which incorporate the information shown on the Contractor’s As-Built Documents. They consist of the “Record Drawings” and “Record Project Manual,” the Certification of Contract Completion (as complete), Contractor’s Warranty, Manufacturers’ Warrantees, Certificate(s) of Occupancy, approved shop drawings and other action submittals, Field Work Orders, Proposal Requests, Requests for Interpretation, Addenda, Change Orders, Balancing Reports, and the final version of the approved Construction Progress Schedule.
Request for Change Order	A written notice from the Contractor accompanied by a Proposal for a change in the Work.
Request for Interpretation	A written request to the Engineer seeking an interpretation or clarification of the Contract Documents.
Request for Proposal or RFP	An invitation for Offerors to submit a Proposal for the Project.
Samples	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.

Schedule of Values	A full, accurate, and detailed statement furnished by the Contractor reflecting a defined breakdown of the Contract Sum.
Service Agreement	That certain agreement by and between the Owner and the Contractor titled "Service Agreement".
Shop Drawings	Drawings, diagrams, illustrations, and schedules specifically prepared for the Project provided by the Contractor, a Subcontractor, or a Material Supplier to illustrate some portion of the Work. Shop Drawings are not Contract Documents. Shop Drawings on equipment shall include a written statement from the manufacturer of the equipment certifying the equipment is in compliance with the Contract Documents.
Site	The location designated for the Project.
Specifications	Those portions of the Contract Documents consisting of detailed written administrative, procedural, and technical requirements, included in Divisions 01 through 49, for the construction of the Work, whether physically on the Drawings or bound in separate volumes, including identification of acceptable materials, methods, equipment, quality, and workmanship.
State	The state of Ohio, acting by and through the Ohio Department of Administrative Services, General Services Division, State Architect's Office, on behalf of the Owner, which Department serves as the contracting agent as authorized by Ohio Revised Code Chapters 123, 153, and 156.
State Architect	The public official who exercises the duties and responsibilities of the position of the State Architect and who administers the State Architect's Office.
State Architect's Office or SAO	An office in the Ohio Department of Administrative Services which acts under the authority of the Director of Administrative Services to administer capital improvement Projects.
Subcontractor	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.
Substitution	An article, device, material, equipment, form of construction, or other item, proposed by a prospective Offeror prior to the Proposal Deadline and approved by the Contracting Authority by Addendum, for incorporation or use in the Work as being functionally and qualitatively equivalent to essential attributes of a Basis of Design or Acceptable Component specified in the proposed Contract Documents.
Surety	A Person or Persons providing a Performance Bond or a Guarantee Bond to the Contractor to indemnify the State against all direct and consequential damages suffered by failure of the Contractor to perform the Contract and to pay all lawful claims of Subcontractors, Material Suppliers and laborers, as applicable, or of the Contractor to achieve the energy conservation savings stated in the Contractor's Proposal.
Systems Manual	A system focused composite document that includes the operation manual, maintenance manual, and additional information of use to the Owner after they begin using the facility.

Work 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

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North Central State College
Mansfield, Richland County

ATTACHMENT 7 – OFFEROR REFERENCE FORM

This Performance Contract, as evidenced by this Contract Form, made by and between:

[Insert Contractor]

(the "Contractor") and North Central State College (the "Owner").

WHEREAS, pursuant to Ohio Revised Code ("O.R.C") Chapter 3345, the Owner may implement Energy Conservation Measures ("ECM") and Water Conservation Measures ("WCM") to significantly reduce the operating costs and energy and water consumption of its buildings; and

WHEREAS, in compliance with O.R.C. Chapter 3345, the Owner and the Contractor desire to enter into this Performance Contract for the installation and implementation of ECMs and WCMs in certain of the Owner's facilities; and

WHEREAS, in addition to this Performance Contract, the Owner and the Contractor desire to enter into a Service Agreement, whereby the Contractor shall agree to perform additional services upon the ECMs and WCMs and to guarantee certain energy savings therefrom; and

WHEREAS, capitalized terms used in this Performance Contract and not defined herein shall have the meanings ascribed to them in Schedule A, Exhibit 3 - Contracting Definitions.

WHEREAS, in addition to the terms and conditions contained herein, incorporated into this Performance Contract are the following Contract Documents:

Schedule A: Conditions of the Performance Contract
- Exhibit 1: Scope of Work
- Exhibit 2: Performance and Payment Bond Form
- Exhibit 3: Contracting Definitions
- Exhibit 4: General Conditions
- Exhibit 5: Wage Rate Requirements
- Exhibit 6: Construction Progress Schedule

Schedule B: Service Agreement
- Exhibit 1: Service Scope of Work
- Exhibit 2: Guaranteed Savings Schedule
- Exhibit 3: Baseline Energy Consumption
- Exhibit 4: Guarantee Bond Form

Schedule C: Request for Proposal
- Exhibit 1: Owner's Request for Proposal ("RFP"), dated November 4, 2013.
- Exhibit 2: RFP Addendum Issued (TBD)

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements set forth herein, the parties hereto agree as follows:

ARTICLE 1 - NATURE OF PERFORMANCE CONTRACT

1.1 The Contractor shall perform the entire Work described in the Contract Documents and reasonably inferable as necessary to produce the results intended by the Contract Documents for:

Project SFC-14N710
North Central State College
2441Kenwood Circle
Mansfield / Richland

1.2 The Contractor shall install identifiable Energy Conservation Measures, facility improvement measures, and operational efficiency improvements as delineated in the Contract Documents, including Schedule A, Exhibit 1 - Scope of Work, which will result in Guaranteed Savings.

1.3 After installation of the Energy Conservation Measures, facility improvement measures, and operational efficiency improvements delineated in the Contract Documents, the Contractor shall provide the services identified in the Service Agreement (Schedule B), which include services that are necessary to monitor, measure, and/or achieve the identified Guaranteed Savings.

1.4 The Owner shall provide the Contractor or other Persons reasonably necessary for the performance of the Work, with access to the Site which is reasonably necessary to effectuate the Work. Notwithstanding the foregoing, the Owner reserves the right to restrict and/or deny access to the facilities to any of such foregoing Persons if such restriction or denial is based upon the Owner's reasonable safety and/or security concerns, and Owner reserves the right to require any such foregoing Persons to execute a waiver in order to access the facilities or any part thereof. The Owner may request criminal background checks on any Person being provided access to the Site by, or through, the Contractor.

1.5 By executing this Performance Contract, the Contractor represents that it has visited the Site, become familiar with the local conditions under which the Work is to be performed hereunder, and correlated these observations with the requirements of the Contract Documents. The Contractor shall immediately notify the Owner of any discrepancies between actual field conditions and the Contract Documents. Failure to visit the Site and examine existing conditions shall not relieve the Contractor from these requirements. The compensation set forth in Article 2 hereof shall not be increased, in any amount, because of local conditions not perceived by the Contractor, or because of the Contractor's failure to visit and inspect the Site.

1.6 The Contractor shall perform the Work required hereunder and the State shall not hire, supervise, or pay any assistants to the Contractor in its performance under this Performance Contract. The State shall not be required to provide any training to the Contractor to enable it to perform the Work required by this Performance Contract.

1.7 The State retains the right to ensure that the Contractor's Work under this Performance Contract is in conformity with the terms and conditions hereunder.

ARTICLE 2 - COMPENSATION

2.1 In order to finance the Project, the Contractor shall enter into a loan agreement with the Ohio Air Quality Development Authority ("OAQDA") whereby the OAQDA will loan to the Contractor the proceeds from the issuance of its air quality revenue bonds as payment for the Contractor's performance under this Contract. The loan funds will be escrowed and will be distributed in accordance with the payment process set forth in Section 2.3.

2.2 The Contractor agrees to repay the OAQDA loan in accordance with the loan agreement. However, the Contractor's obligation to repay the loan shall be limited to, and payable solely from, the rental payments made by the Owner in accordance with the schedule set forth in a lease/purchase agreement entered into between the Contractor and the Owner.

2.3 In accordance with the terms and conditions of any lease/purchase agreement, the Owner agrees to pay the Contract Sum of $[Insert Amount] through the Owner to the OAQDA or its subsequent assignee as payment for the Contractor's performance under this Performance Contract.

2.4 In order for the Contractor to be paid the proceeds of the loan by the OAQDA, the Contractor must submit a Contractor Payment Request to the Owner pursuant to Section 9.2 of the General Conditions. The Contractor Payment Request must include an application and certificate for payment as prescribed by the Owner. The application shall include a description of each ECM or WCM installed or implemented, scheduled value of the work performed, and percentage of completion for each ECM or WCM. Before any OAQDA funds will be released from escrow, the selected escrow agent must receive a fully executed Contractor Payment Request from the Owner. The Owner may withhold its approval of a Contractor Payment Request pursuant to the terms and conditions of Section 9.3 of the General Conditions or if the Contractor is in default of this Performance Contract. The Owner will promptly notify the Contractor, the selected escrow agent, the OAQDA and its subsequent assignee if any approval is withheld.

2.5 The Contractor will not seek any other funds from the Owner as payment for the installation of the Equipment or for any other Work completed under this Contract.

ARTICLE 3 - TIME OF PERFORMANCE

3.1 The Contractor shall diligently prosecute and complete all Work such that Final Acceptance occurs in [Insert Number of Days] consecutive days, following the date of the Notice to Proceed, unless an extension of time is granted by the Owner in accordance with the Contract Documents. In the event that such an extension of time is granted, the schedule for commencement of the Guaranteed Savings period shall be adjusted accordingly. The period established in this paragraph is referred to as the Contract Time.

3.2 The Contractor shall perform and complete all Work under the Performance Contract within the established Contract Time, and each applicable portion of the Work must be completed upon its respective Milestone date, unless the Contractor timely requests, and the Owner grants, an extension of time in accordance with the Contract Documents. In the event that no such extension of time is granted, no adjustments shall be made to the schedule for commencement of the Guaranteed Savings period.

3.3 The Contractor's failure to complete all Work within the period of time specified, or failure to have the applicable portion of the Work completed upon any Milestone date, shall entitle the Owner to retain or recover from the Contractor, as Liquidated Damages, the applicable amount set forth in the following table for each and every calendar day thereafter until Contract Completion or the date of completion of the applicable portion of the Work, unless the Contractor timely requests, and the Owner grants, an extension of time in accordance with these Contract Documents. The Liquidated Damages amount is applicable to Milestone dates only when so stated in this Contract Form.

LIQUIDATED DAMAGES SCHEDULE

Contract Sum	Amount per day
Less than $50,000	$150
From $50,000.01 to $150,000	$250
From $150,000.01 to $500,000	$500
From $500,000.01 to $2,000,000	$1,000
From $2,000,000.01 to $5,000,000	$2,000
From $5,000,000.01 to $10,000,000	$2,500
More than $10,000,000	$3,000

3.4 The Owner's right to recover the Liquidated Damages amount does not preclude any right of recovery for actual damages.

ARTICLE 4 – BONDS

4.1 Throughout the Contract Time, the Contractor shall provide a Performance Bond.

4.2 Pursuant to Schedule B, the Contractor warrants and guarantees to the Owner that the facilities shall realize the Guaranteed Savings. In order to ensure payment of any savings shortfall as provided in Schedule B, the Contractor shall provide, throughout the Contract Time, a Guarantee Bond or assurances acceptable to the Owner, in its sole discretion, that a Guarantee Bond will be made available at the commencement of the Service Agreement.

4.3 The Contractor's failure to maintain either a Guarantee Bond or assurances acceptable to the Owner as set forth in Section 4.2, and a Performance Bond during the Contract Time shall be considered a default under this Performance Contract.

ARTICLE 5 - CONTRACT DOCUMENTS

5.1 The Contract Documents embody the entire understanding of the parties and form the basis of the Contract between the Owner and the Contractor.

5.2 The Contract and any modifications, amendments, or alterations thereto shall be governed, construed, and enforced by and under the laws of the State of Ohio.

5.3 If any term or provision of the 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 the 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 the Contract shall be valid and enforced to the fullest extent permitted by law.

5.4 The Contract shall be binding on the Contractor and Owner, their successors and assigns, in respect to all respective covenants and obligations contained in the Contract Documents, but the Contractor may not assign the Contract without the prior written consent of the Owner.

5.5 The Contract shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto.

5.6 A waiver by any party of any breach or default by the other party under this Contract shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

5.7 If there is a conflict between this Performance Contract and any of the Contract Documents incorporated herein, the following shall be the order of control:

1. This Performance Contract
2. Schedule A: General Conditions
3. Schedule C: Request for Proposal
4. Schedule B: Service Agreement

ARTICLE 6 - EFFECTIVENESS

6.1 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.

6.2 The Contract shall become binding and effective upon execution by the Owner and approval by the Attorney General.

6.3 This Performance Contract has been executed in several counterparts, each of which shall constitute a complete original Performance Contract, which may be introduced in evidence or used for any other purpose without production of any other counterparts.

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

ARTICLE 7 - REPRESENTATIONS

7.1 The Contractor represents and warrants that it is not subject to an unresolved finding for recovery under Ohio Revised Code ("O.R.C.") 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.

7.2 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 O.R.C. Section 3517.13.

7.3 The Contractor, by signature on this document, certifies that it has reviewed and understands the Ohio ethics and conflict of interest laws and will take no action inconsistent with those laws.

7.4 The Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of Ohio ethics laws.

7.5 In accordance with Executive Order 2011-12K, the Contractor hereby certifies, by its signature on this Contract Form, that it: (1) has reviewed and understands the Executive Order , (2) shall abide by those requirements in the performance of this Contract, (3) shall perform no services required under this Contract outside of the United States, (4) shall immediately notify the State of any change or shift in the location of services performed by the Contractor or its Subcontractors under this Contract, and (5) no services shall be changed or shifted to one or more locations that are outside of the United States. Further requirements related to offshore services are stipulated in paragraph 1.12 of the General Conditions.

The following Treasurer's Certification only applies to Two-Year Colleges.

For all other Contracts, delete the Treasurer's Certification below.

TREASURER'S CERTIFICATION

This signature certifies the amount required to meet the obligation in the fiscal year in which the Contract is made, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances.

_____
Signature

_____
Printed Name

_____
Title

SIGNATURES

IN WITNESS WHEREOF, the parties hereto have executed this Performance:

[INSERT CONTRACTOR'S NAME]

Signature

Printed Name

Title

STATE OF OHIO

Signature

Printed Name

Title

[INSERT NAME OF INSTITUTION]
Owner's Concurrence

Signature

Printed Name

Title

OHIO ATTORNEY GENERAL
Approval as to Form

Signature

Printed Name

Title

Date

END OF DOCUMENT

Project SFC-14N710
Energy Conservation Project
North Central State College
Mansfield, Richland County

ATTACHMENT 14b – PERFORMANCE AND PAYMENT BOND FORM

(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

[Insert Name] as Principal, at [Insert Company Name]
[Insert Address] and [Insert Name] as Surety,
are hereby held and firmly bound unto the State of Ohio, as Obligee, in the penal sum of [Insert Amount] 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 to undertake the Project known as:

Project Number:	SFC-14N710
Project Name:	North Central State College
Contract Description:	[Insert Contract Description] (e.g., General Trades, Plumbing, HVAC, Electrical)

SIGNED AND SEALED this [Day] day of [Month], [Year].

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above-named Principal did on the [Day] day of [Month], [Year], enter into a Contract with the State of Ohio, which said Contract is made a part of this Bond the same as though set forth herein;

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 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 or in or to 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.

PRINCIPAL:

_____

By _____

Title _____

SURETY:

_____

By _____

Attorney-in-Fact

SURETY INFORMATION:

Address _____

City, State ZIP _____

Phone _____

SURETY AGENT'S INFORMATION

Agency Name _____

Address _____

City, State ZIP _____

Phone _____

END OF DOCUMENT

Project SFC-14N710
Energy Conservation Project
North Central State College
Mansfield, Richland County

ATTACHMENT 15a – SERVICE AGREEMENT

This Service Agreement (this "Service Agreement" or this "Agreement") is made by and between:

[Insert Contractor]

(the "Contractor") and North Central State College (the "Owner").

WHEREAS, pursuant to Ohio Revised Code ("O.R.C") Chapter 3345, the Owner may implement Energy Conservation and Water Conservation Measures ("ECM/WCM") to significantly reduce the operating costs and energy and water consumption of its buildings; and

WHEREAS, in compliance with O.R.C. Chapter 3345, the Owner and the Contractor executed a Performance Contract dated [Insert Date] ("Performance Contract") for the installation and implementation of ECMs and WCMs in certain of the Owner's facilities; and

WHEREAS, in addition to the Performance Contract, the Owner and the Contractor desire to enter into this Service Agreement, whereby the Contractor shall agree to perform additional services upon the ECM and WCM and to guarantee certain energy savings therefrom; and

WHEREAS, in addition to the terms and conditions contained herein, incorporated into this Service Agreement are the following Exhibits:

Exhibit 1: Service Scope of Work
Exhibit 2: Guaranteed Savings Schedule
Exhibit 3: Baseline Energy Consumption
Exhibit 4: Guarantee Bond Form

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements set forth herein, the parties hereto agree as follows:

ARTICLE 1: NATURE OF SERVICE AGREEMENT

1.1 This Service Agreement incorporates the Performance Contract and all Schedules and Exhibits thereto as if fully rewritten herein.

1.1.1 If there is a conflict between this Service Agreement and the Performance Contract, the Performance Contract shall control.

1.1.2 If any part of the General Conditions is contrary to, prohibited by, or invalid under this Agreement, that provision shall be inapplicable and deemed omitted to the extent so contrary, and the remainder of the General Conditions shall be given full force and effect.

1.1.3 Capitalized terms used in this Contract and not defined hereon shall have the meaning ascribed to

them in the Performance Contract, including Schedule A, Exhibit 3 - Contracting Definitions thereto.

1.2 The Owner enters into this Service Agreement in reliance upon the Contractor's representations that it has the necessary expertise and experience to perform its obligations hereunder, and the Contractor warrants that it does possess the necessary expertise and experience. The Owner further enters this Service Agreement in reliance upon the Contractor's representations that the work included herein is necessary for the Contractor to guarantee the savings set forth in Exhibit 2, and the Contractor therefore waives any rights to setoff of the guaranteed savings based on work performed by the Contractor's own forces.

1.3 By executing this Service Agreement, the Contractor represents that it has visited the Site, become familiar with the local conditions under which the Work is to be performed hereunder, and correlated these observations with the requirements of the Contract Documents. The Contractor shall immediately notify the Owner of any discrepancies between actual field conditions and the Contract Documents.

1.3.1 Failure to visit the Site and examine existing conditions shall not relieve the Contractor from these requirements. The compensation set forth in Exhibit 1, Service Scope of Work, shall not be increased, in any amount, because of local conditions not perceived by the Contractor, or because of the Contractor's failure to visit and inspect the Site.

1.4 The Contractor shall perform the Work required hereunder and the Owner shall not hire, supervise, or pay any assistants to the Contractor in its performance under this Service Agreement. The Owner shall not be required to provide any training to the Contractor to enable it to perform the Work required by this Service Agreement.

1.5 The Owner retains the right to ensure that the Contractor's Work under this Service Agreement is in conformity with the terms and conditions hereunder.

ARTICLE 2: RELATIONSHIP OF PARTIES

2.1 During the term of this Service Agreement, the Contractor shall be engaged by the Owner solely on an independent contractor basis, and the Contractor shall therefore be responsible for all the Contractor's business expenses, including, but not limited to, employees' wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any.

2.2 It is fully understood and agreed that the Contractor is an independent contractor and neither the Contractor nor its personnel shall at any time, or for any purpose, be considered as agents, servants, or employees of the Owner or the State.

2.3 While the Contractor shall be required to perform the Work described hereunder for the Owner during the term of this Service Agreement, nothing herein shall be construed to imply, by reason of the Contractor's engagement hereunder on an independent contractor basis, that the Owner shall have or may exercise any right of control over the Contractor with regard to the manner or method of the Contractor's performance of Work hereunder.

2.4 Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.

2.5 The Contractor agrees to comply with all Applicable Law in the performance of the Work hereunder.

ARTICLE 3: THE OWNER

3.1 During the term of this Service Agreement, the Owner shall furnish, or authorize its energy suppliers to furnish, to the Contractor, upon its reasonable written request, the Owner's pertinent and complete records concerning energy and water consumption and related maintenance for the Site.

3.2 If the Contractor fails to correct Defective Work or persistently fails to perform the Work required by this Service Agreement, the Owner may issue a written notice to the Contractor providing 3 days for the Contractor to begin to correct the Defective Work ("72-Hour Notice").

3.2.1 A copy of the 72-Hour Notice shall be issued to the Contractor's Guarantee Bond Surety.

3.3 If the Contractor fails or refuses to commence and continue to correct the Defective Work with diligence and promptness within three business days after receiving the 72-Hour Notice, the Owner may, without jeopardizing other remedies, take any action the Owner deems appropriate to correct the Defective Work including, but not limited to, exercising its termination rights under paragraph 11.1.

3.3.1 If the Owner proceeds as described in paragraph 3.3, the Contractor shall pay all resulting costs and damages. These costs and damages include, but are not limited to, the cost of correcting the Defective Work as well as shortfalls in the Guaranteed Savings and the related fees and charges of engineers, architects, attorneys, and other professionals. The Owner shall deduct the costs and damages from payments then or thereafter due the Contractor. If the payments then or thereafter due to the Contractor under this Service Agreement are insufficient to cover such amount, the Contractor shall immediately pay the amount of the insufficiency to the Owner. If the Contractor cannot reimburse the Owner for all resulting costs and damages, because of bankruptcy or for any other reason, the Owner shall collect on the Contractor's Guarantee Bond.

3.4 The Owner shall notify the Contractor, or its designated Subcontractor, within two business days after the Owner's actual knowledge of:

3.4.1 Malfunction in the operation of an ECM or WCM or any preexisting energy-related equipment that Owner reasonably determines might materially impact the Guaranteed Savings;

3.4.2 Interruption or alteration to the energy supply to the Site that Owner reasonably determines might materially impact the Guaranteed Savings;

3.4.3 Alteration or modification in any energy-related equipment or its operation that Owner reasonably determines might materially impact the Guaranteed Savings; or

3.4.4 An emergency condition affecting the ECM or WCM that Owner reasonably determines might materially impact the Guaranteed Savings.

3.5 The Owner shall adhere to, follow, and implement manufacturer, dealer, and supplier recommendations commensurate with the manufacturer, dealer, or supplier warranties that were assigned to the Owner under the Performance Contract. The Owner shall adhere to, follow, and implement the energy conservation procedures and methods of operation set forth in Exhibit 1, Service Scope of Work, including upon the occurrence of one of the events listed in paragraph 3.4 above.

3.6 The Owner is exempt from federal, state, and municipal sales and excise taxes. The compensation included in Exhibit 1, Service Scope of Work, shall be net and shall not include the amount of any such tax. The Owner shall provide exemption certificates to the Contractor upon request.

ARTICLE 4: THE CONTRACTOR

4.1 The Contractor shall timely and diligently perform all Work provided in Exhibit 1, Service Scope of Work to the satisfaction of the Owner.

4.2 In performing the Work described in Exhibit 1, Service Scope of Work, the Contractor shall:

4.2.1 Comply with all Applicable Law.

4.2.2 Supervise and direct the Work, using the Contractor's best skill and attention.

4.2.3 Be solely responsible for all means, methods, techniques, sequences and procedures and for coordinating all portions of the Work.

4.2.4 Keep a supervisor, who is satisfactory to the Owner, constantly upon the Site while the Contractor's Work is in progress. The supervisor must have full authority to promptly carry out the Owner's instructions. The supervisor shall represent the Contractor in the Contractor's absence, and all directions with reference to materials and workmanship given to the supervisor shall be binding as if given to the Contractor.

4.2.5 Employ only skilled and reliable workers and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to them.

4.2.6 At all times enforce strict discipline and good order among its workers. The Owner may order the discontinuance of the services of any worker employed on the Work who does not, in the Owner's sole opinion, possess satisfactory skill and qualification or is otherwise objectionable.

4.2.7 Work collaboratively with the Owner's administrative, academic, and maintenance staff to avoid labor related and other types of disputes.

4.2.8 Agree that all Persons working for or on behalf of the Contractor whose duties bring them upon the Owner's premises shall obey the rules and regulations that are established by the Owner including, but not limited to, those dealing with harassment.

4.2.9 Be solely responsible for the acts of its employees and agents while on the Owner's premises.

4.2.10 Maintain sole responsibility for any Hazardous Material the Contractor may bring to the Site.

4.2.11 Within 1 day, respond to notice given by the Owner under paragraph 3.4 herein and promptly thereafter proceed with corrective measures and/or cooperate with the Owner with respect to any emergency corrective measures already commenced.

4.2.12 Unless otherwise specifically noted in Exhibit 1, Service Scope of Work, provide and pay for all labor, materials, equipment, tools and machinery, transportation and other facilities and services necessary for the proper execution and completion of the Work.

4.2.13 Follow all standards and instructions provided by the manufacturers of equipment and material used in the performance of the Work, to ensure that the terms and conditions of all applicable manufacturer, dealer, or supplier warranties are complied with.

4.2.14 Guarantee all of the Work, including any Work performed by Subcontractors, for a period of one year after the date of service. Neither payment, nor any provision in the Contract Documents, nor partial or entire use of the related premises by the Owner shall constitute acceptance of the Work not done in accordance with the Contract Documents, nor shall it relieve the Contractor of liability in respect to any express warranties or responsibility for fault in material or quality of Work.

4.2.15 Prior to any Subcontractor performing any Work under this Service Agreement, submit the Subcontractor's name and qualifications to the Owner for approval. Upon written approval issued by the Owner to the Contractor, the Subcontractor may commence such Work.

4.2.16 Immediately notify Owner in the event that, for any reason, equipment must be shut down for an extended period. The Contractor shall report the measures being taken to mitigate the impact to Owner and the amount of time required to return the equipment to service.

4.3 The Contractor hereby warrants and represents that the Contractor is financially solvent, able to pay its debts as they mature, and in possession of sufficient working capital to perform its obligations under this Service Agreement.

ARTICLE 5: TIME OF PERFORMANCE

5.1 The Work as stated in Exhibit 1, Service Scope of Work, shall be commenced on [MM DD YYYY] and concluded on June 30, [Insert Final Year of Current Biennium]. This period shall be the "Initial Term" of this Service Agreement.

5.2 The Owner may, in its sole discretion, renew this Service Agreement for [Insert Contract Term] additional terms of 2 years each ("Renewal Term(s)"), aligned with the corresponding biennium, on the same terms and conditions as set forth herein. The Owner may exercise its Renewal Terms by giving written notice to the Contractor prior to expiration of the then-current term.

5.2.1 Any reference in this Service Agreement to "term of this Service Agreement" shall include the Initial Term and any Renewal Terms.

5.3 The term of this Service Agreement shall be completed no later than fifteen (15) years and three (3) months from the date that the Owner executes the Final Certification of Contract Completion.

5.4 It is expressly agreed by the parties that none of the rights, duties, and obligations herein shall be binding on either party if award of this Service Agreement would be contrary to the terms of O.R.C. Section 3517.13, O.R.C. Section 127.16, or O.R.C. Chapter 102.

ARTICLE 6: COMPENSATION

6.1 The Owner shall pay the Contractor, for Work performed under this Service Agreement, in accordance with Exhibit 1, Service Scope of Work.

6.2 The Contractor shall not be reimbursed for travel, lodging, or any other expenses incurred in the performance of this Service Agreement.

6.3 The Contractor shall submit an invoice for the Work performed consistent with paragraph 6.1, and each invoice shall contain a description of the Work performed and total hours worked. Upon receipt and approval of the invoice by the Owner, a voucher for payment shall be processed.

6.3.1 The Owner may, in its sole discretion, decline to approve an invoice and may withhold payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Owner's sole opinion:

6.3.1.1 The Work has not been completed in accordance with Exhibit 1, Service Scope of Work;

6.3.1.2 Defective Work has not been remedied;

6.3.1.3 The Contractor fails to perform any provision of this Service Agreement;

6.3.1.4 Third Party claims have been filed or there is reasonable evidence indicating the filing of such claims; or

6.3.1.5 The Contractor has not made proper payments to Subcontractors.

6.3.1.6 The Contractor has failed to report as required by paragraph 24.1.

6.3.2 When the grounds listed in paragraph 6.3.1 above are removed, payments shall be made for the amount withheld, in accordance with this Article 6, Compensation.

6.4 The Contractor shall make prompt payment to all Persons and Subcontractors providing any Work required by Exhibit 1, Service Scope of Work.

6.5 If, at any time, there should be evidence of any lien or claim for which, if established, the Owner may become liable and which is chargeable to the Contractor, the Owner shall cause to be retained an amount equal to the lien or claim from subsequent payments due to the Contractor for the purpose of securing such lien or claim.

6.5.1 Should there prove to be any such lien or claim after payments are made, the Contractor shall promptly refund to the Owner a sum of money equal to the sum of all monies that the Owner may be compelled to pay in discharging any lien or claim on the premises made obligatory by the Contractor's default.

6.6 In the event that the Owner incurs out-of-pocket costs for time and materials in connection with emergency attention to a malfunction in the operation of an ECM or WCM, provided the Owner complies with the terms of paragraph 3.4 hereof, the Contractor shall reimburse owner for such costs promptly upon request therefor. In the Owner's sole discretion, the Owner may offset against any sums due hereunder any such costs billed but not yet paid by the Contractor.

6.7 It is expressly understood and agreed by the parties that none of the rights, duties, or obligations described in this Service Agreement shall be binding on either party until all relevant statutory provisions of the Ohio Revised Code, including, but not limited to, O.R.C. Section 126.07, have been complied with, and until such time as all necessary funds are available or encumbered and, when required, such expenditure of funds is approved by the Controlling Board of the State.

ARTICLE 7: GUARANTEED SAVINGS AND RECONCILIATION

7.1 The Contractor hereby warrants and guarantees that the Owner shall achieve the Guaranteed Savings.

7.2 The Contractor shall submit an energy savings summary to the Owner on an annual basis, beginning

fifteen (15) months from the issuance of the Certification of Contract Completion, and continuing every twelve (12) months until the end of this Service Agreement.

7.2.1 The summary shall include and reflect load adjustments due to weather, occupancy, or major equipment changes, if applicable.

7.2.2 The summary shall account for the impact of the occurrence of any and all of the factors set forth in paragraph 3.4 above, as applicable. The Owner shall receive credit due for malfunction of an ECM or WCM, Defective Work or any other discrepancy between Actual Energy Savings and Guaranteed Savings that is attributable to the Contractor.

7.3 Reconciliation of the Guaranteed Savings shall commence upon the issuance of the Final Certification of Contract Completion.

7.4 The Actual Energy Savings shall be measured and/or calculated as specified in Exhibit 3, Baseline Energy Consumption, and Exhibit 1, Service Scope of Work. The Contractor shall provide an explanation and supplemental documentation of Actual Energy Savings upon request by the Owner. The Contractor shall work cooperatively with the Owner to reconcile the Actual Energy Savings and the Guaranteed Savings.

7.5 If the Actual Energy Savings in any year of the Contract according to the agreed upon Energy Savings Summary are less than the Guaranteed Savings for that year, the Contractor shall, in the Owner's sole discretion, pay or credit the Owner the difference, as follows:

7.5.1 Within 30 days of the Owner's request, the Contractor shall submit payment to the Owner for the amount of the difference; or

7.5.2 The Owner may carry the negative balance forward to be included in the following year's reconciliation.

7.6 If the Actual Energy Savings in any year of the Contract prior to the final year exceed the Guaranteed Savings for that year, the Owner shall, in its sole discretion:

7.6.1 Carry the positive balance forward and add it to the savings generated during any future years; or

7.6.2 If the prior year produced Actual Energy Savings less than the Guaranteed Savings for that year and the Contractor, pursuant to paragraph 7.5.1 above, submitted payment to the Owner for the amount of the difference, submit payment to the Contractor as recovery of such amount. Any overage, following payment for recovery of such amount, shall be carried forward and added to the savings generated during any future years.

7.7 If the Actual Energy Savings in the final year of the Contract exceed the Guaranteed Savings for that year, after accounting for any negative or positive balance adjustments pursuant to paragraphs 7.5 and 7.6 hereof, the Owner shall submit payment to the Contractor in the amount that Actual Energy Savings exceed Guaranteed Savings.

7.8 Any disputes between the Owner and the Contractor regarding reconciliation and reimbursement for savings shortfalls shall be resolved under Article 8 of the General Conditions (Schedule A-Exhibit 4 of the Performance Contract).

ARTICLE 8: GUARANTEE BOND

8.1 As a condition precedent to execution of this Service Agreement, the Contractor must file a Guarantee Bond payable to the Owner. The Guarantee Bond shall serve as assurance that the Actual Energy Savings will meet or exceed the Guaranteed Savings Schedule set forth on Exhibit 2 hereto.

8.1.1 The initial Guarantee Bond shall be a three-year bond in the total amount of the first three (3) years of Guaranteed Savings. The amount of the bond shall decrease for the second and third years on a pro rata basis.

8.1.2 The Guarantee Bond must be signed by an authorized agent, with a Power of Attorney, from a Surety authorized by the Department of Insurance to transact business in the State of Ohio.

8.2 If the Contractor cannot reimburse the Owner for savings shortfalls, because of bankruptcy or for any other reason, the Owner shall collect on the Contractor's Guarantee Bond. If the Owner is unable to collect on the Guarantee Bond, the Owner shall collect the remaining amount of Guaranteed Savings directly from the Contractor. If the Contractor is in bankruptcy, the Owner shall be a creditor in any bankruptcy proceedings for the remaining amount of the Guaranteed Savings.

8.3 The Contractor's failure to maintain a Guarantee Bond when required by the Owner during the term of this Service Agreement shall be considered a default under this Service Agreement.

ARTICLE 9: ECM / WCM MODIFICATION, ALTERATION, OR UPGRADING

9.1 During the term of this Service Agreement, the Owner shall not, without the Contractor's prior written approval, which approval shall not be unreasonably withheld, affix or install any accessory, equipment, or device on any of the ECM or WCMs if such addition will materially adversely affect the Actual Energy Savings or materially impair the originally intended function or use of the ECM or WCM.

9.2 During the term of this Service Agreement, the Owner shall not, without the Contractor's prior written approval, which approval shall not be unreasonably withheld, move, remove, modify, alter, or change the ECM or WCM or any part thereof in any way that would materially adversely affect the Actual Energy Savings.

9.2.1 Notwithstanding paragraphs 9.1 and 9.2 above, the Owner may take reasonably necessary action to protect the ECM or WCM and/or its surrounding property if, because of an emergency, it is not possible or reasonable to notify the Contractor before taking such action.

9.2.2 In the event of such emergency, the Owner shall take reasonable steps to protect the ECM or WCM from damage or harm and shall provide Contractor with any notice required by paragraph 3.4 hereof.

9.3 During the term of this Service Agreement, the Contractor may, with the Owner's prior written approval, change the ECM or WCM, revise any procedures for the operation of the ECM or WCM, or implement other minor energy saving actions on the Site, provided that:

9.3.1 The Contractor complies with this Service Agreement and the Performance Contract;

9.3.2 Such modifications, additions to, or replacement of the ECM or WCM, and any operational changes or new procedures, are reasonably necessary to enable the Contractor to achieve the Guaranteed Savings;

9.3.3 There is no resulting decrease to the Guaranteed Savings; and

9.3.4 Any cost incurred relative to such modifications, additions, or replacement of the ECM or WCM, or operational changes or new procedures shall be the Contractor's sole responsibility.

9.4 All modifications, additions, or alterations made to the ECM or WCM under this Article 9, ECM or WCM Modification, Alteration, or Upgrading, shall become part of the ECM or WCM described in the Contract.

ARTICLE 10: PROJECT PHASES

10.1 In the event the Owner decides to enter into a subsequent phase of energy conservation projects during the term of this Service Agreement, the Contractor shall assist the Owner and any relevant third parties in separating and accounting for the Guaranteed Savings that are directly attributable to the Contractor and the work performed under this Service Agreement and the related Performance Contract. The Contractor shall work cooperatively with other Contractors' administrative, construction, and maintenance staff to avoid labor related and other types of disputes.

ARTICLE 11: OWNER DEFAULT

11.1 The following events shall constitute "Owner Default" under this Service Agreement:

11.1.1 Without 30 days prior notification of, and agreement by, the Contractor, changes are implemented by the Owner in the use, structure, or operating conditions of the Site, which changes significantly and detrimentally affect the ECM or WCM.

11.1.2 Additions, deletions, or material alterations of equipment by the Owner, without the Contractor's prior written approval as required under Article 9, ECM or WCM Modification, Alteration, or Upgrading.

11.1.3 The Owner's material failure to perform or comply with the terms of this Service Agreement, provided that such failure continues for 60 days after notice to the Owner demanding that such failure be cured; or if cure cannot be effected in such 60 days, the Owner shall be deemed to have cured the failure upon commencement of a cure within such 60 days and diligent subsequent completion thereof.

ARTICLE 12: TERMINATION

12.1 The Owner may, at any time prior to the completion of the Work described in Exhibit 1, Service Scope of Work, suspend or terminate this Service Agreement with or without cause by giving written notice to the Contractor.

12.1.1 The Owner shall have terminated this Service Agreement "with cause" if the Owner terminates this Service Agreement because the Contractor:

12.1.1.1 Fails to prosecute the Work hereunder with the necessary force or in a timely manner;

12.1.1.2 Refuses to remedy Defective Work, whether such Work was performed pursuant to the Performance Contract or this Service Agreement;

12.1.1.3 Fails to perform any provision of this Service Agreement;

12.1.1.4 Fails to supply enough properly skilled workers or proper materials;

12.1.1.5 Fails to properly make payment to Subcontractors or Material Suppliers;

12.1.1.6 Disregards Applicable Law or orders of a public authority with jurisdiction over the Project;

12.1.1.7 During the term of any guaranty applicable pursuant to the Performance Contract or this Service Agreement, fails to comply with the terms of such guaranty; or

12.1.1.8 Repeatedly fails to report to the Owner's security forces as required by paragraph 24.1.

12.1.2 If the Owner terminates this Service Agreement for reasons other than those listed in paragraph 12.1.1, such termination shall be termination "without cause" under paragraph 12.7.1.

12.2 The Contractor, upon receipt of notice of suspension or termination, shall cease Work on the suspended or terminated activities under this Service Agreement, suspend or terminate all subcontracts relating to the suspended or terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and, if requested by the Owner, furnish a report, as of the date of receipt of notice of suspension or termination, describing the status of all Work under this Service Agreement, including, without limitation, results, conclusions resulting therefrom, and any other matters the Owner requires.

12.3 The Contractor shall be paid for services rendered up to the date the Contractor received notice of suspension or termination, less any payments previously made, provided the Contractor has supported such payments with detailed factual data containing services performed and hours worked. In the event of suspension or termination, any payments made by the Owner for which the Contractor has not rendered services shall be promptly refunded.

12.4 In the event this Service Agreement is terminated prior to its completion, the Contractor, upon payment as specified, shall deliver to the Owner all work products and documents which have been prepared by the Contractor in the course of performing Work under this Service Agreement. All such materials shall become, and remain the property of, the Owner, to be used in such manner and for such purpose as the Owner may choose.

12.5 The Contractor agrees to waive any right to, and shall make no claim for, additional compensation against the Owner by reason of such suspension or termination.

12.6 Upon an uncured event of Owner Default and 60 days written notice provided to the Owner following such event, the Contractor may terminate this Service Agreement and shall be compensated in accordance with paragraphs 12.3 and 12.5 hereof.

12.7 The Contractor's guarantee that the Owner shall achieve the Guaranteed Savings for the period following termination shall be cancelled only if:

12.7.1 This Service Agreement is terminated by the Owner without cause; or

12.7.2 This Service Agreement is terminated by the Contractor pursuant to paragraph 12.6 above.

12.7.3 The term of the Guaranteed Savings Period naturally expires.

12.8 If the Owner terminates this Service Agreement with cause or the Contractor terminates this Service

Agreement other than in accordance with paragraph 12.6 hereof, the Contractor irrevocably consents to accept the Owner's calculations of Actual Energy Savings for the remainder of the Guaranteed Savings Period.

12.9 In the event that the Contractor's guarantee that the Owner shall achieve the Guaranteed Savings for the period following termination is cancelled pursuant to paragraph 12.7 and such termination occurs other than at the end of a Guaranteed Savings year, the Guaranteed Savings for such year shall be recalculated. The Contractor shall work cooperatively with the Owner's representative to assist the Owner in determining the final amount of the Guaranteed Savings.

ARTICLE 13: RELATED AGREEMENTS

13.1 The Contractor shall not enter into other subcontracts without the Owner's prior written approval, in accordance with paragraph 4.2.14 herein. All Work subcontracted shall be at the Contractor's sole expense.

13.2 The Contractor shall bind its Subcontractors to the terms and conditions of this Service Agreement, so far as applicable to the Work performed by the respective Subcontractor, and shall not agree to any provision which seeks to bind the Owner to terms inconsistent with, or at variance from, this Service Agreement.

13.3 The Contractor shall furnish the Owner with a list of all Subcontractors, their addresses, tax identification numbers, and the dollar amount of each subcontract.

ARTICLE 14: LIABILITY

14.1 To the extent permitted by Applicable Law, the Contractor agrees to indemnify and to hold the Owner and the State harmless and immune from any and all claims for injury or damages arising from this Service Agreement which are attributable to the Contractor's own actions or omissions of those of its trustees, officers, employees, Subcontractors, suppliers, third parties utilized by the Contractor, or joint venturers while acting under this Service Agreement.

14.1.1 Such claims shall include, but are not limited to, any claims made under the Fair Labor Standards Act or under any other Applicable Law involving wages, overtime, or employment matters and any claims involving patents, copyrights, and trademarks.

14.1.2 The Contractor shall bear all costs associated with defending the Owner and the State against any such claims.

14.2 The Contractor shall provide a Certificate of Insurance and an Additional Insured Endorsement, collectively showing the Contractor's compliance with the insurance requirements set forth in this Article 14, Liability, naming [Insert Name of Owner] and its affiliated subsidiary units, commissions, departments and organizations that now or shall hereafter be constituted" as Additional Insured.

14.3 The Contractor shall provide the following minimum insurance requirements during the term of this Service Agreement:

14.3.1 Comprehensive or Commercial General Liability (including Premises-Operations, Independent Contractors' Protective, Products and Completed Operations, Broad Form Property Damage).

(a) Bodily Injury and Property Damage, Combined Single Limit, CSL:

General Aggregate	$2,000,000
Products & Completed Operations Aggregate	$2,000,000
Personal & Advertising Injury	$1,000,000
Each Occurrence	$1,000,000
Fire Damage	$ 100,000

(b) Products and Completed Operations to be maintained for two years after final payment and the Contractor shall continue to provide evidence of such coverage to the Owner on an annual basis during the aforementioned period.

(c) Property Damage Liability insurance shall provide X (explosion), C (collapse), and U (underground) coverage.

(d) Contractual Liability (Hold Harmless Coverage):
Bodily Injury and Property Damage (Combined Single Limit) $1,000,000 Each Occurrence.

(e) Personal Injury, (with Employment Exclusion deleted), $2,000,000 Aggregate

(f) If the General Liability policy includes a General Aggregate, such General Aggregate shall be not less than $2,000,000. Policy shall be endorsed to have General Aggregate apply to this project only.

14.3.2 Umbrella Excess Liability:

(a) $5,000,000 over primary insurance

(b) Minimal Retention

14.3.3 Automobile Liability (owned, non-owned, hired).

(a) Bodily Injury and Property Damage, Combined Single Limit:
$1,000,000 each accident

14.3.4 Certificate from the State evidencing Ohio Workers' Compensation insurance.

14.4 Before commencing the Work required hereunder, the Contractor shall furnish a certificate satisfactory to the Owner, from each insurance company showing that the above insurance is in force, stating policy numbers, dates of expiration, and limits of liability thereunder. Each such certificate shall expressly provide that the insurer will endeavor to provide no less than 30 days' written notice to the Owner in the event of cancellation of the coverage evidenced by the certificate.

14.5 The Contractor shall provide no less than 30 days' prior written notice to the Owner in the event of cancellation, non-renewal, expiration or material alteration of the coverage contained in any required policy of insurance. If the Contractor fails to procure and maintain such insurance, the Owner shall have the right to procure and maintain the said insurance for, and in the name of, the Contractor and the Contractor shall pay the cost thereof and shall furnish all necessary information to make effective and maintain such insurance.

ARTICLE 15: CLEANING

15.1 The Contractor shall be responsible for continuous removal of all debris created by the Work performed under this Service Agreement. The Contractor and its Subcontractors shall deposit their debris at a location designated by the Owner.

15.2 The Contractor shall be responsible for the daily removal of any materials or equipment that the Contractor requires to perform the Work hereunder. If the Contractor fails to perform such removal, the Owner shall do so and the costs for such shall be charged back to the Contractor.

15.3 The Contractor shall remove any unidentifiable debris and shall transport it to a disposal site acceptable to the Owner.

ARTICLE 16: SAFETY AND PROTECTION

16.1 The Contractor shall protect its workers and the public from injury and shall protect the property, in and about the Work required hereunder, from damage. The Contractor alone shall be responsible for any injury to the workers or public and for any damage to property in and about the Work required hereunder.

16.2 The Contractor shall perform its Work under this Service Agreement in accordance with Applicable Law and the best standard safety precautions, including OSHA Regulation 29 CFR Part 1926.

16.3 If the Contractor shall fail, in the Owner's sole opinion, to properly provide adequate protection, the Owner may cause such protection to be provided and the cost and expense thereof shall be deducted from the moneys due or to become due the Contractor under this Service Agreement. In the event moneys due or to become due are insufficient to pay such costs and expenses, the Contractor shall immediately remit payment in the amount of such shortfall to the Owner.

16.4 If damage is done to an adjoining property, and the Contractor shall fail to immediately repair the same upon the Owner's order, the Owner shall have power to cause such repairs to be made, and the cost and expense thereof shall be deducted from the moneys due or to become due the Contractor under this Service Agreement. In the event moneys due or to become due are insufficient to pay such costs and expenses, the Contractor shall immediately remit payment in the amount of such shortfall to the Owner.

ARTICLE 17: RECORD KEEPING

17.1 During the performance of this Service Agreement, and for a period of three years after its completion, the Contractor shall maintain auditable records of (a) all charges pertaining to this Service Agreement and (b) all information utilized by the Contractor to measure, calculate or otherwise ascertain Actual Energy Savings, and shall make such records available to the Owner as the Owner may reasonably require.

17.2 The Contractor shall include in all subcontracts a provision to the effect that the Subcontractor agrees that the Subcontractor, during the performance of the subcontract and for a period of three years after its completion, shall maintain auditable records of all charges pertaining to the subcontract and shall make such records available to the Owner as the Owner may reasonably require.

17.3 If an audit of the Contractor's or any Subcontractor's records by the Owner reveals a deficiency in any calculation relating to the amount of Actual Energy Savings, the Contractor shall pay the Owner the full amount of the deficiency promptly upon demand. If the deficiency exceeds [3] percent of the amount of the Guaranteed Savings for any Guaranteed Savings year, the Contractor shall also pay interest on the deficiency, starting on the date the relevant energy savings summary was submitted to Owner, plus Owner's expense for the audit. The interest charge shall be at the rate per calendar month that equals one-twelfth of the rate per annum prescribed by O.R.C. 5703.47 of the Revised Code for the calendar year that

includes the month for which the interest charge accrues.

ARTICLE 18: CONFLICTS OF INTEREST AND ETHICS COMPLIANCE

18.1 No personnel of the Contractor or member of the governing body of any locality or other public official or employee of any such locality in which, or relating to which, the Work under this Service Agreement is being carried out, and who exercise any functions or responsibilities in connection with the review or approval of this Service Agreement or carrying out of any such Work, shall, prior to the completion of said Work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of said Work.

18.2 Any such Person who acquires an incompatible or conflicting personal interest, on or after the effective date of this Service Agreement, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to the Owner in writing. Thereafter, he or she shall not participate in any action affecting the Work under this Service Agreement, unless the Owner shall determine in its sole discretion that, in the light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

18.3 The Contractor represents, warrants, and certifies that it and its employees engaged in the administration or performance of this Service Agreement are knowledgeable of and understand the Ohio Ethics and Conflicts of Interest laws. The Contractor further represents, warrants, and certifies that neither the Contractor nor any of its employees will do any act that is inconsistent with such laws.

18.4 The Contractor hereby certifies that none of the Contractor’s directors, principle officers or employees are employed by, or affiliated with, the Owner.

ARTICLE 19: NONDISCRIMINATION OF EMPLOYMENT

19.1 The Contractor agrees that the Contractor, any Subcontractor, and any person acting on behalf of the Contractor or a Subcontractor, shall not discriminate, by reason of race, color, religion, sex, age, national origin, or disability against any citizen of the State in the employment of any Person qualified and available to perform the Work under this Service Agreement.

19.2 The Contractor further agrees that the Contractor, any Subcontractor, and any Person acting on behalf of the Contractor or a Subcontractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of Work under this Service Agreement on account of race, color, religion, sex, age, national origin, or disability.

19.3 The Contractor represents that it has a written affirmative action program for the employment and effective utilization of economically disadvantaged persons and shall file a description of the affirmative action program and a progress report on its implementation with the equal employment opportunity office of the Department of Administrative Services.

ARTICLE 20: PREVAILING WAGE

20.1 The Contractor shall comply with the prevailing wage requirements described under O.R.C. Chapter 4115.

20.2 The Contractor shall 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.

20.3 The Contractor shall 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. The Contractor shall ensure that the rates posted are current and remain posted in legible condition during the period of the Contract.

20.4 The Contractor 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 Contractor may access the Ohio Department of Commerce, Wage & Hour Bureau at its website, http://198.234.41.198/w3/webwh.nsf/pages/PrevailingWageBid, to obtain the current wage rates.

ARTICLE 21: RIGHTS IN DATA AND COPYRIGHTS/PUBLIC USE

21.1 The Owner shall have unrestricted authority to reproduce, distribute and use (in whole or in part) any reports, data or materials prepared by the Contractor pursuant to this Service Agreement. No such documents or other materials produced (in whole or in part) with funds provided to the Contractor by the Owner shall be subject to copyright by the Contractor in the United States or any other country.

21.2 The Contractor agrees that all deliverables hereunder shall be made freely available to the general public to the extent permitted or required by law.

ARTICLE 22: DRUG FREE SFETY PROGRAM PARTICIPATION

22.1 During the Contract Time, 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 O.R.C. Section 153.03 ("OBWC-approved DFSP").

22.2 If the Contractor provides Subcontractors that provide labor on the Site, the Subcontractors shall be enrolled in and in good standing in the OBWC DFSP or an OBWC-approved DFSP.

22.2.1 Each Subcontractor shall require all lower-tier Subcontractors with whom the Subcontractor is in contract for the Work to be enrolled in and be in good standing in the OBWC DFSP or an OBWC-approved DFSP prior to a lower-tier Subcontractor providing labor at the Site.

22.2.2 Failure of the Contractor to require a Subcontractor to be enrolled in and be in good standing in the OBWC DFSP or an OBWC-approved DFSP prior to the time that the Subcontractor provides labor at the Site shall 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 five years after the date of the breach.

22.2.3 Failure of a Subcontractor to require a lower-tier Subcontractor to be enrolled in and be in good standing in the OBWC DFSP or an OBWC-approved DFSP prior to the time that the lower-tier Subcontractor provides labor at the Site shall 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 five years after the date of the breach.

22.2.4 Prior to authorizing a Subcontractor to commence Work on the Project, the Contractor shall obtain the Owner's approval, and shall also submit written confirmation of the Subcontractor's enrollment on the Declaration of Subcontractors and Material Suppliers form to the Owner.

ARTICLE 23: CONTRACTOR REPRESENTATIONS

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

23.2 The Contractor affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Agreement, and shall perform no services required under this Agreement outside of the United States.

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

ARTICLE 24: REPORTING TO [INSTITUTION SECURITY]

24.1 Whenever the Contractor arrives on the Owner's property to perform Work under this Service Agreement, the Contractor shall report to [Insert Name of Institution] [Institution Security] in person or by telephone. Failure to report may prevent invoice approvals. Repeated failure to report may result in termination pursuant to paragraph 12.1.1.

ARTICLE 25: CAMPAIGN CONTRIBUTIONS

25.1 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 O.R.C. Section 3517.13.

ARTICLE 26: AMENDMENT AND WAIVER

26.1 This Service Agreement shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto.

26.2 A waiver by any party of any breach or default by the other party under this Service Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

ARTICLE 27: NOTICES

27.1 All notices, consents, and communications hereunder shall be (a) given in writing, (b) either (1) delivered personally, (2) deposited with the United States Postal Service as registered or certified mail, return receipt requested, (3) sent by overnight express courier with a request that the addressee sign a receipt evidencing delivery, or (4) 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; and (c) addressed to the following addressees:

Owner	Contractor
[Contact Name]	[Contact Name]

[Title]	[Title]
[Street Address]	[Street Address]
[City, State ZIP]	[City, State ZIP]

ARTICLE 28: HEADINGS

28.1 The headings in this Service Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Service Agreement.

ARTICLE 29: SEVERABILITY

29.1 The provisions of this Service Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.

ARTICLE 30: CONTROLLING LAW

30.1 This Service Agreement and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio. Any action or proceeding concerning this Service Agreement shall be brought in a court of competent jurisdiction in Ohio. The Contractor irrevocably consents to such jurisdiction.

ARTICLE 31: SUCCESSORS AND ASSIGNS

31.1 Neither this Service Agreement, nor any rights, duties, nor obligations hereunder, may be assigned or transferred in whole or in part by the Contractor, without the Owner's prior written consent.

ARTICLE 32: ANTITRUST ASSIGNMENT

32.1 The Contractor assigns to the Owner all state and federal antitrust claims and causes of action that related to all goods and services provided for in this Service Agreement.

ARTICLE 33: COUNTERPARTS

33.1 This Service Agreement may be executed in several counterparts, each of which shall constitute an original which may be introduced in evidence or used for any other purpose without production of any other counterparts, and all of which, when taken together, shall constitute but one instrument.

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

ARTICLE 34: SURVIVAL

34.1 The restrictions and obligations of paragraphs 12.5, 14.1, 14.3, 17.1, and 17.2 of this Service Agreement shall survive any expiration, termination or cancellation of this Service Agreement and shall continue to bind the parties hereto and their respective successors, heirs and assigns.

ARTICLE 35: EXECUTION

35.1 This Service Agreement shall become binding and effective upon execution by the Contractor and the Owner and approval by the Attorney General.

IN WITNESS WHEREOF, the parties hereto have executed this Service Agreement.

CONTRACTOR
[INSERT LEGAL NAME OF CONTRACTOR]

Date:_____ By: _____
(Authorized Signature)

Name: _____

Title: _____

STATE OF OHIO
[INSERT NAME OF INSTITUTION]

By: _____ Date: _____
[Insert Name], *Board Chair*
[Insert Name of Institution]

By: _____ Date: _____
[Insert Name], *President*
[Insert Name of Institution]

[THE FOLLOWING SECTION ONLY APPLIES TO 2-YEAR INSTITUTIONS. PLEASE REMOVE FOR NON 2-YEAR INSTITUTIONS. REMOVE THIS INSTRUCTION]

TREASURER'S CERTIFICATION
This signature certifies the amount required to meet the obligation in the fiscal year in which the Contract is made, has been lawfully appropriated for such purpose and is in the treasury or in the process of collection to the credit of an appropriate fund free from any previous encumbrances.

By: _____ Date: _____

OHIO ATTORNEY GENERAL
Approved as to Form

By: _____ Date: _____
Assistant Attorney General

Project SFC-14N710
Energy Conservation Project
North Central State College
Mansfield, Richland County

ATTACHMENT 15b – GUARANTEE BOND

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned

[Insert Name] _____ as Principal, at [Insert Company Name] _____

[Insert Address] _____ and [Insert Name] _____ as Surety,

are hereby held and firmly bound unto the State of Ohio, as Obligee, in the penal sum of [Insert Amount] 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, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above-bounden Principal entered into a certain written Service Agreement with the [Insert Name of Institution] dated [Insert Contract Execution Date] for services and other work to be performed upon, and to guarantee the achievement of certain energy savings from, the Energy Conservation Project (Project Number [Insert Project Number]), which Service Agreement is hereby referred to and made a part of this Guarantee Bond the same as if set forth herein;

NOW, THEREFORE, if the above-bounden 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 Service Agreement, 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 Service Agreement or renewals to said Service Agreement shall in any way affect the obligations of said Surety on this Guarantee Bond, and it does hereby waive notice of any such modifications, omissions, additions, or renewals.

PRINCIPAL:

_____

By _____

Title _____

SURETY:

_____

By _____

Attorney-in-Fact

SURETY INFORMATION:

Address _____

City, State ZIP _____

Phone _____

SURETY AGENT'S INFORMATION

Agency Name _____

Address _____

City, State ZIP _____

Phone _____

Project SFC-14N710
Energy Conservation Project
North Central State College
Mansfield, Richland County

ATTACHMENT 15c – SERVICE SCOPE OF WORK

PAYMENT SCHEDULE:

1. STANDARD OF QUALITY

A. The specific mention of a manufacturer's name brand of material, equipment, etc., shall be considered as indicting a standard of quality, grade, or type required by the Owner. Material of manufacturers other than those mentioned throughout these specifications may be accepted if they are equal in quality, dimension, and performance to those specified, and if approval is given by the Owner as outlined herein, except if the statement "no substitute" is shown.

B. The intent of these qualifications is to encourage and permit competition, qualified products by all reputable and qualified service companies, suppliers, and manufacturers whose products, reputations, and performances warrant approval for the conditions, intent of design and performance consideration.

C. Whenever a product is specified or shown by describing proprietary items, model number, catalog number, manufacturer, trade names or similar references, the Contractor obligates himself to submit proposals and accept awards of contracts based upon the use of such products, or their equal. Use of such reference is intended to establish the measure of quality and dimensions which the Owner has determined as requisites and necessary for the Services. The Owner reserves the right to approve or disapprove proposed deviations to design, function, construction or similar differences that will affect the design intent.

2. CONTRACTOR QUALIFICATIONS

A. The following requirements shall be considered as the minimum standards for a Contractor to be considered as qualified to provide the Services, and shall be a prerequisite to any award.

1. A minimum of ten (10) years experience in the performance of HVAC maintenance as specified.

2. The Contractor shall maintain a field office and/or warehouse that is within fifty (50) miles of the Site.

3. A minimum of two (2) local service personnel employed by the Contractor shall be a resident in an area within a maximum of a twenty-five (25) mile radius of the Site.

4. Services that are to be provided shall be performed by qualified and trained service personnel that are directly employed by the Contractor. Subcontracting portions of the system or Services shall not be allowed without the Owner's prior written consent.

5. The Contractor shall maintain an Engineering Department staffed by a minimum of one (1) registered Professional Engineer currently practicing in the mechanical engineering field. In addition, the Contractor shall be experienced in and currently engaged in design/build projects of HVAC systems.
The Contractor may, with the Owner's prior written consent, use outside engineering services meeting the specified qualifications.

6. The Contractor shall have the expertise to design, program, install, service, and remotely monitor the existing Building Automation System (used throughout the campus) and any new Building Automation System or revisions to the existing provided as an Energy Conservation Measure. This service includes the provision of all software, software licenses and software maintenance necessary for the continued effective use and operation of the Building Automation System. The Contractor shall provide a minimum of three (3) references for which such services are presently being performed.

7. The Contractor shall comply in a timely manner with all EPA rules and regulations regarding refrigerants in existing and/or new equipment. The Contractor shall supply evidence of its ability to reclaim and/or recover these compounds.

8. The Contractor shall have the ability to adapt existing refrigeration equipment to comply with all EPA rules and regulations regarding refrigerants. The Contractor shall supply copies of training certificates indicating the ability to perform such adaptation, upon request.

9. The Contractor shall be a currently licensed mechanical contractor and shall submit, with its RFP Proposal, references of major mechanical equipment installations.

10. The Contractor shall provide a minimum of three (3) references, within 50 miles of the Site.

11. The Contractor shall submit with its RFP Proposal, data that indicates the use of a uniform and detailed method by which preventive maintenance tasks are defined, scheduled, recorded, updated and processed. The Contractor's preventive maintenance program shall be computer generated, based on run time, manufacturer's recommendations, and a historical data bank of similar equipment. Simple computer based, run time only, or hand scheduled programs are not acceptable.

12. A report shall be supplied monthly which identifies preventative maintenance service, repairs and tests performed the previous month. Failure to supply this report will result in the Owner withholding payment for that month's service until the report is filed.

13. A copy of the work order form which the Contractor plans to use shall be included with its RFP Proposal, and must be approved in writing by the Owner. Issuance of work orders must be done in conjunction with the Owner.

14. Drawings shall be made available for viewing to the Offerors at [Insert Location] Ohio. It is the sole responsibility of the Contractor to verify equipment items and locations on the Site.

    The equipment included in the Specifications shall be as per [Insert Project Location], but any omissions do not relieve the Contractor of the responsibility for maintaining omitted items.

15. The Contractor shall follow Applicable Law and the Owner's mandated safety procedures.

16. The Contractor shall be held responsible for damage caused by his or her performance of the Services, or through neglect of his or her workmen. Repairs of damaged Work, or buildings' contents, furnishings or finishes shall be done as directed by the Owner and paid for solely by the Contractor.

17. Within ten (10) days after notice of the award of the Contract, the Contractor shall prepare and submit a list of proposed Subcontractors to the Owner for approval. This list must be resubmitted within thirty (30) days of the start of each new contract period. No subcontractor shall be utilized without prior written authorization of approval by the Owner.

18. The Contractor shall accept all equipment in its existing condition at the inception date of the Service Agreement, except if excluded by the Owner, and shall immediately perform all repairs necessary to restore the equipment to a working maintainable condition.

19. All Contractor trucks shall have the Contractor's company name on a window placard. All workers' uniforms shall also have the Contractor's company name in a conspicuous location.

3. SCOPE OF THE WORK

A. HVAC Maintenance/Services include:
   1. HVAC Preventive Maintenance
   2. HVAC Emergency Service
   3. HVAC Equipment Repair
   4. HVAC Equipment Test and Calibration
   5. HVAC Water Treatment Service
   6. HVAC Filter Service
   7. Building Automation Monitoring and Programming and Preventive Maintenance

B. All buildings on the Owner's property are covered as listed below:
   1. [Insert Project Location]
   2. [Insert Project Location]

C. All HVAC equipment, DDC and pneumatic control systems, appurtenant devices and systems that are related to the HVAC systems and domestic hot water tanks are the equipment to be maintained. Any equipment or system added or revised as an Energy Conservation Measure is to be maintained as necessary to assure its energy savings features. The equipment not to be maintained under this Service Agreement are such items as foundations, structural supports, domestic water lines, drain plumbing, gas lines, unit cabinets, cooling tower structure, etc.

4. LUMP SUM AND SPECIFIC SERVICES RFP PROPOSAL

A. The cost for the required work to perform the building automation system preventive maintenance and service, HVAC preventive maintenance, HVAC test, inspect and calibration, HVAC water treatment service, HVAC filter service, HVAC emergency service, HVAC equipment repair and replacement labor, HVAC parts and material for the duration of the contract, shall be included in Base Proposal A.

A. The cost for HVAC filter service shall be included in Separate Proposal B. Service is to be performed annually over the life of the Service Agreement with, as shown on Attachment 11.

5. PERFORMANCE REVIEW

A. The Owner may review, at any time, the services provided and reports submitted, to verify that the preventive maintenance is, in fact, being properly and adequately performed. Any lack of maintenance service, complaints, or deficiencies in the performance of the services shall be submitted to the Contractor in writing for prompt correction.

B. For problems or deficiencies of significant importance or of a continual nature, a time period of compliance shall be established by the Owner. Failure of the Contractor to correct the deficiencies within the time period so established shall constitute cause of termination of the Service Agreement and/or withholding of payment.

6. EMPLOYEE PERFORMANCE AND CONDUCT

A. Should any of the Contractor's employees performing Services under this Service Agreement fail to perform or conduct themselves in a manner acceptable to the Owner, they shall be removed from performing Services under this Service Agreement at the Owner's request.

7. EQUIPMENT SHUT DOWN

A. If for some unknown reason or reasons, equipment must be shut down for an extended period of time, the Contractor shall immediately notify the Owner. The Contractor shall report the measures being taken to mitigate the impact to the Owner and the time required to put the equipment back in service.

8. EQUIPMENT MAINTENANCE SERVICE

A. Equipment Included.

1. The specific quantities, sizes, and model numbers of the major pieces of equipment are listed in this specification. This list is to serve as a guide only. The Contractor shall be responsible for all equipment outlined in these specifications, listed or not.

2. The preventive maintenance and the responsibility of the Contractor shall not be limited only to these major pieces of equipment as shown on the EQUIPMENT LIST, but shall also include all appurtenant devices and systems as listed below that are related to heating, ventilating, and air conditioning system.

   The Contractor shall accept all items described on the equipment lists herein as maintainable equipment subject to wholesale replacement should the units fail or otherwise become non-maintainable. The Owner shall make the final determination if an item is not specifically listed in the Contract, but is under the provisions of the Service Agreement.

   a. Heating System
      Boilers, furnaces, water heaters, boiler burners, pumps, heating coils, steam traps, water strainers, unit heaters, duct heaters, heat exchangers, humidifiers, etc.

   b. Cooling System
      Air conditioning compressor(s), air cooled condensers, cooling tower fans, pumps, water chillers, cooling coils, etc.

   c. Air Handling System
      Fans, motors, air grills, plenums, registers, air filters, dampers, induction units, mixing boxes, fan coil units, etc.

d. Temperature Control System
All new, revised and existing building automation system hardware and software components, thermostats, pressure controls, relays, limits, valve operators, damper motors, humidity controls, step switches, time clocks, contactors, controllers, capacity controls, safety controls, recorders, control panels, gauges and air compressors (for pneumatic control systems). The building automation system service includes all software, software licenses and software updates necessary for the operation of the system during the term of the Agreement

e. Miscellaneous Equipment
Exhaust fans, manual valves, float valves, direct expansion valves, thermometers, gauges, magnetic starters, manual motor starters, pump and fan motor drives, belts, electrical wiring from motor starter to their respective motor, check valves, refrigerant piping and piping insulation, refrigerant.

B. Equipment Not Included.

1. Maintenance services, including repair labor and parts replacement, for portions of the systems and equipment that are non-moving and not normally maintained are not required nor included as part of this specification.

2. Excluded items shall be considered as:
foundations, structural supports, domestic water lines, drains, oil lines, gas lines, piping, oil storage tanks, air handling duct work, unit cabinets, boiler trim and refractory material, cooling tower structures, etc.

3. This specification covers the equipment and systems as listed herein, and in the event a system is altered, modified, changed or if any equipment is added, or not included in this specification, then that portion shall be added or deleted and shall be maintained in accordance with this specification.

C. Services Included.

1. The Contractor shall be responsible for scheduling of the preventative maintenance; and task functions to be performed on each scheduled call by calendar periods; and operating hours as pertinent to each task. Master records shall be maintained in the Owner's Facilities Management office and such schedules will be adhered to.

2. The Contractor shall have in his or her possession the manufacturer's specified maintenance and repair procedures and complete parts lists for all equipment to be maintained.

3. As Services are scheduled, the Contractor shall issue, to the mechanic on the job, the necessary and appropriate manufacturer's recommended maintenance procedures and a listing of any special lubricants, tools, etc., that are required for proper maintenance of the apparatus concerned.

4. The Contractor shall indicate to the Owner as part of the Contractor's RFP Proposal, the method by which the Contractor will proceed with Parts 1, 2, and 3, all subject to the Owner's prior written approval.

5. When performing Services under this Services Agreement, the Contractor shall report to the Owner daily. One individual shall be responsible for reporting the number of workers performing Services under this Service Agreement on a daily basis and for completion and submission of reports.

    a. After each service call, a service report shall be left with the Owner, detailing the Services performed.

6. Throughout the term of this Service Agreement, the Contractor shall record in a neat and legible manner all pertinent data relevant to each item of equipment included in this program to provide a comprehensive history for the specific equipment or system.

7. This data or historical information shall be maintained on Preventive Maintenance Log Sheets provided by the Contractor. The Contractor shall keep a separate binder for each mechanical equipment area for all the equipment located in that area. The binders shall be maintained in the Owner's Facilities Management office.

8. The type of data and information recorded shall include, but is not limited to, the following:

    (1) Type of maintenance (preventive or emergency repair)
    (2) Date of service
    (3) Description of Services performed
    (4) Resultant effect in operating condition, if any
    (5) Proposed follow-up, if any
    (6) Name of repairman
    (7) Time involved for emergency repair work
    (8) List any parts, name and number, installed

9. The Contractor service reports shall be signed by the Owner's Facilities Management personnel at the Site.

10. A copy of the service report shall be forwarded to the Owner with the Preventive Maintenance Quarterly Reports.

11. The Contractor shall submit quarterly reports. The reports shall be broken down summarizing the Services performed in each building or area.

12. The quarterly reports shall be sent to the Owner's Facilities Management office.

13. The general services listed below shall apply to the systems and equipment as shown on the EQUIPMENT LIST and as described in the section entitled EQUIPMENT MAINTENANCE SERVICE.

    a. Examine each piece of equipment and device to see that it is functioning properly and is in good operational condition.

    b. Clean all components of dust, old lubricants, etc., to allow the equipment to function as designed.

    c. Paint all equipment as needed to prevent and protect against corrosion and deterioration.

    d. Lubricate all equipment where needed to permit bearings, gears, and all contact wearing points to operate freely and without undue wear.

e. Adjust all linkages, motors, drives, etc., that have drifted from the initial design settings and positions.

f. Calibrate all sensing, monitoring, output, safety, and read-out devices for proper ranges, settings, and optimum efficiencies.

g. Repair the equipment and/or devices by the addition of replacement parts, should the above maintenance not be adequate.

h. Replace all equipment and/or devices should the above repairs not be adequate. Replacement equipment shall be of like kind and of same manufacturer as existing, unless approved in writing by the Owner.

i. Test and cycle all equipment as a system after it has been cleaned, lubricated, adjusted, and calibrated to assure that it is in proper operating condition and performing at optimum efficiency.

D. Chillers

1. All chillers shall have the following services provided:

a. Eddy current test of evaporator and condenser tubes, shall be performed once for each unit during the second year of contract period and/or as requested by the College.

b. Two (2) oil analysis per compressor per year. These should be performed at mid-season and at shutdown with a formal report as follow up.

c. Condenser tubes to be brushed annually. Head removal and replacement (with new head gaskets) to be performed.

d. Evaporator tubes to be brushed a minimum of one (1) time during the second year of the agreement. Head removal and replacement (with new gaskets) to be performed.

e. Leak test all chillers; repair all refrigerant leaks. The refrigerant charge of each chiller is to be checked and adjusted as required. Change all refrigeration filters.

f. Log all equipment, noting the general condition of the equipment, operating temperature, pressures, voltages and amperages, noises and vibrations on the preventative maintenance report and in the equipment log book.

g. Lubricate and adjust equipment oil levels as required including the purge system.

h. Motor electrical insulation and wiring insulation between the motor and starter on all compressors (except fractional H.P. motors) will be checked in the second year of the contract and/or as requested by the Owner. A report provided to the Owner. Meg OHM readings are to be considered a part of this function.

i. Starters associated with equipment are to be inspected as required.

E. Parts Replacement

1. All parts, components, or devices for the mechanical systems as listed above that are worn or are not in proper operational conditions shall be repaired, and/or replaced with new parts, components, or devices.

2. When equipment or parts are replaced in their entirety, and a newer design of this device is available and is functionally equivalent and compatible, the device of the newer design shall be used as the replacement.

3. All repair and replacement parts, components, and devices for the mechanical systems and equipment as listed shall be supplied by the Contractor and shall be included in the cost of the service program.

4. All miscellaneous parts and supplies necessary to maintain the mechanical systems and equipment shall be supplied by the Contractor and shall be included in the cost of the service program (belts, valve packings, lubricants, tools, paints, refrigerant, test instruments, meters, etc.).

5. The Contractor shall not be made responsible for repairs or replacements necessitated by reason of negligence or misuse of the equipment by others, or by reason of any other cause beyond the control of the Contractor, except ordinary wear and tear.

6. The Contractor shall be available, at no additional charge, for consultation, minor design and equipment changes, or modifications to automatic temperature control, and mechanical systems. The Contractor shall be expected to recommend energy saving modifications, and low cost/no cost modifications and operating procedure changes to the Owner.

   If additional engineering services are required for major equipment replacement or project design, they shall be charged at the quoted hourly rate, or as agreed in writing by the Owner.

7. The Contractor shall provide and maintain a parts box which shall be located in the [Insert Location]. Critical, unique, or frequently used parts and supplies shall be stocked within this box. This equipment shall remain the property of the Contractor until used and/or installed in the mechanical system.

F. Additional Services

1. The Contractor shall not be responsible for vandalism of equipment and controls.

2. For other additional services that apply to this equipment maintenance section, refer to the following sections:

   a. MAINTENANCE PROCEDURES AND RECORDS

   b. PREVENTIVE MAINTENANCE AND EMERGENCY SERVICE

9. WATER TREATMENT SERVICE

A. Equipment Included.

1. Hot water system, chilled water system (open or closed), cooling towers, chilled water system, condenser water system, and chilled and hot water circulating pumps.

B. Services Included.

1. The Contractor shall provide the necessary labor and chemicals to properly maintain all water within the heating and cooling circulating system to control freeze-up, metal corrosion, scale formation, biological fouling, or contaminated discharge.

2. Meet all existing and anticipated pollution controls standards. The chemical treatment used must be approved by the Owner in writing.

3. The Contractor shall provide the necessary parts, labor, and materials to test and maintain the proper treatment level.

4. For open cooling tower systems, an automatic monitoring system shall be used to provide continuous water analysis. This equipment shall be programmed on a real time basis, to analyze the quality of the circulating water and automatically adjust the chemical treatment feed rates and bleed intervals based on the level to total dissolved solids, and without effect from variances in water temperature. The controller shall incorporate emergency fail-safe features, which shall result in a visual alarm during emergency conditions that may result from high concentration conditions.

5. All necessary control panels, bleed valves, injection pumps, associated piping and fittings, and all labor to install this monitoring equipment shall be supplied by the Contractor and shall be included in the cost of the service program.

6. The Contractor shall provide all labor to take test samples, adjust feed rates, change settings, drain and flush systems, service automatic monitoring equipment, manually inject chemicals (for closed systems), and provide a detailed water analysis and service report after performing those services monthly to the Owner.

7. The Contractor shall provide and maintain the freeze protection of propylene glycol installed in the following chilled water systems:

   Building
   [Insert Project Locations]
   [Insert Project Locations]

   a. The Contractor shall be responsible for maintaining freeze protection within plus or minus 3 □ of the 0□F protection

   b. It is the Owner's opinion that the installation of glycol to prevent freeze-up and associated damage which has been, and shall remain, the Contractor's responsibility will reduce the Contractor's risk and maintenance cost over the term of this Service Agreement.

C. Additional Services.

1. For other additional services that apply to this water treatment service section, refer to the following sections:

   a. MAINTENANCE PROCEDURES AND RECORDS

   b. PREVENTIVE MAINTENANCE AND EMERGENCY SERVICE

10. AIR FILTER SERVICE

A. Equipment Included.

1. Air Filtration System: Pre-filters, frame filters, pouch filters, fan coil filters, and automatic roll-type filters.

B. Services Included.

1. Filter frames shall be of the reusable type and shall be of a permanent rigid construction that shall permit the insertion of media pads, and may also allow the use of optional pads with different efficiencies, if needed.

2. Filter frames shall be sized to fill the entire cross section of the units to prevent blow-by and eliminate filter spacers in the system.

3. Filter media (frame or roll type systems) shall be of fiberglass or polyester material, with an average resistance range between 70% and 80%. (Except where higher rating by the OEM).

   A filter schedule is included with this specification to serve as a guide only. The Contractor shall be responsible for all filters, listed or not.

4. The Contractor shall provide and change all air filters during the months of August, December and April.

5. The Contractor shall advise the Owner in writing of when the filter service has been completed.

6. Inspection and Payment for Filter Services: Filter services shall be billed for when completed. Accompanying each bill shall be the notification of color or marking of filter medium installed. The Owner shall random sample not less than forty (40) filters to determine the extent filters may or may not have been changed and adjust billing proportionally. Contractor will be given ten (10) days to do his or her own inspection and cure all deficiencies to collect balance of payment (less a $200 inspection charge) pending a reinspection of different sampling showing 100% compliance. If second sampling still shows non-compliance payment will be adjusted accordingly.

C. Additional Services

1. For other additional services that apply to this air filter service section refer to the following sections:

   a. MAINTENANCE PROCEDURES AND RECORDS

   b. PREVENTIVE MAINTENANCE AND EMERGENCY SERVICE

11. MAKE-UP WATER SYSTEM AND BACK FLOW PROTECTION DEVICES

A. The maintenance of all make-up and supply water systems shall begin at the outlet port of the shut-off valves at the cold water main. All connections shall be in accordance with the latest Ohio Building Code requirements. The maintenance of all valves and specialties is included although the pipe and fittings are not included.

B. The Contractor shall also include the maintenance and required testing of all back flow protection devices for hydronic heating and cooling piping. The test shall be performed annually by a mechanic certified for back flow protection device testing. The testing certification shall be posted near the device with a copy submitted to the school designate.

12. ENERGY CONSERVATION MEASURES

A. The Owner reserves the right to require the Contractor to reset room thermostats, boiler, chiller, and domestic hot water controls, and change outdoor reset temperature at any time, without additional compensation.

B. The Owner reserves the right to institute energy conservation methods on any or all systems covered by this Service Agreement. Before proceeding with such modifications, it shall be determined by mutual agreement between the Owner and the Contractor if such requests fall under the scope of this Service Agreement. If so, these services shall be completed at no additional cost to the Owner. If not part of this Service Agreement, charges for the cost of these services shall be negotiated between the Owner and the Contractor before the services are started, or the Owner may, at their option obtain bids for the services.

The Contractor shall also be responsible for cleaning or clearing the ductwork of any internal blockage caused by loose insulation, leaves, trash, etc.

All water filled coils shall be inspected once, during the second year of this Service Agreement, and cleaned as needed.

13. MAINTENANCE PROCEDURES AND RECORDS

A. The Contractor shall utilize computer generated preventive maintenance directions, which indicate task functions to be performed on each scheduled service call, as determined by calendar periods, operating hours, (run time), manufacturer's recommendations, and historical data bank, as pertinent to each task.

B. As Services are due, the Contractor shall issue, to his or her mechanic on the job, the necessary and appropriate recommended maintenance procedures and a listing of any special lubricants, tools, etc., that are required for proper maintenance of the apparatus concerned.

C. The Contractor's administration system shall provide for continuous updating of maintenance procedures and frequencies. Breakdown experience and frequency shall determine the on-site material inventory level and preventive maintenance frequencies.

D. Annually through the course of the service program, the Contractor shall review the system's performance and provide written recommendations in regards to improvements to the mechanical system that shall improve performance, conserve energy and minimize utility and maintenance expenditures. The annual report shall be submitted by January 15. The report shall include budget figures.

14. PREVENTIVE MAINTENANCE AND EMERGENCY SERVICE CALLS

A. The Contractor shall schedule and perform the preventive maintenance services on no less than a monthly basis.

1. After each service call, a service report shall be left with the Owner, detailing the Services provided.

B. The Contractor shall provide emergency service on an as required basis. Emergency service shall be considered as calls in addition to the scheduled preventive maintenance calls.

1. All labor, overtime, travel costs, parts, supplies, and any other expenses incurred and expended on such a call shall be provided by the Contractor and shall be included in the cost of the service program.

2. Emergency service shall be provided within four (4) hours after notification by the Owner. This service, included under this contract, will continue on a 24-hour day, 7-day-a-week basis at no cost to the Owner until the repair is complete. An exception to this requirement of continuing service will be determined by the Owner on an individual basis when the required repair parts are not available for immediate delivery. All delays must be substantiated in writing to the Owner.

   The Owner shall be notified in writing of all “shut-downs” in excess of 48 hours.

3. Emergency service response system shall be a professionally manned telephone answering service. Automatic telephone answering/recording machines or home telephone numbers are not acceptable.

4. All non-emergency service calls to be scheduled within twenty-four (24) hours and completed within two (2) weeks.

15. SERVICE PERFORMANCE GUARANTEES

A. Performance Review

1. The Owner may review, at any time, the Services provided and reports submitted, to verify that the preventive maintenance is, in fact, being properly and adequately performed. Any lack of maintenance service, complaints, or deficiencies in the performance of the services shall be submitted to the Contractor in writing for correction.

2. For problems or deficiencies of significant importance or of a continual nature, a time period of compliance shall be established after discussion and mutual agreement. Failure of the Contractor to correct the deficiencies within the time period agreed upon shall constitute cause of termination of this Service Agreement and/or withholding of payment. The Owner shall complete the deficiencies in accordance with this Service Agreement.

16. SPECIAL CONDITIONS

A. The Contractor’s responsibility for injury to persons or property that may be caused by, or arise through the maintenance, service, functioning, or use of the system, shall be limited to injury caused directly by the Contractor’s negligence in performing the obligations as set forth in this specification. The Contractor shall not be made liable for consequential or speculative damages.

B. The Contractor shall not be made liable for any loss, delay, injury, or damage, whether direct or consequential, that may be caused by conditions beyond the Contractor's direct control including, but not limited to, acts of government, strikes, lockouts, fire, explosion, theft, riot, civil commotion, war, malicious mischief, flood and other acts of God.

C. The Contractor shall not be required to make safety tests or install new attachments or additional controls or equipment as recommended or directed by an insurance company, laboratory, or governmental authority.

D. Access to all devices to be serviced shall be provided for the Contractor. The Contractor shall not be held responsible for equipment malfunction or damage, should access to equipment, or the inability to start and stop primary equipment incidental to the operation of the mechanical system, be denied or not provided.

17. TECHNICAL AND BUSINESS PROSPECTUS

A. Not Used

18. RFP PROPOSAL EVALUATION

A. Each Contractor, by the submission of an RFP Proposal, assents to each and every term and condition set forth in this specification and agrees to be bound thereby.

B. Any RFP Proposal which is incomplete, conditional, or obscure, or which contains irregularities of any kind, may be cause for rejection.

C. The right is reserved to accept or reject any or all RFP Proposals, to consider the competency and responsibility of all Offerors, and to use any information deemed necessary to establish the ability of any Offeror to perform all conditions of the Service Agreement in order to avoid awarding a contract to a firm unable to produce the quality of service required and intended by this specification.

19. REVIEW OF SIGNIFICANT REPORTS REQUIRED (not all inclusive)

A. Service tickets each visit.

B. Monthly payroll reports in the same manner as those required by the State of Ohio on prevailing wage projects and outlined herein. Payrolls shall separately identify hours spent on additional work project by project.

C. Quarterly work summaries.

D. Annual system reviews and planning proposals.

CONTINUED

20. EQUIPMENT LIST *[The following serve as examples:]*

[Insert Location or Phase Numbers]

QTY.	SYSTEM COMPONENT(S)	MANUFACTURER	MODEL	LOCATION
	Chillers			
	Air compressor			
	Refrigerated air dryer			
	Circulating pumps CW			
	AHU			
	Hot water boilers			
	Domestic hot water heaters			
	Inline circulating pumps HW			
	Base mounted circulating pump HW			
	Unit ventilator HVAC units			
	Cooling Tower			
	Vertical inline pumps			
	Exhaust fans			
	Unit and cabinet heaters			
	DDC VAV boxes			
	Pneumatic VAV boxes			
	Tracer EMS			
	Variable frequency drives			
	Varitrac comfort manager			
	Water cooled package units			

[Insert Location or Phase Numbers]

QTY.	SYSTEM COMPONENT(S)	MANUFACTURER	MODEL	LOCATION
	Chiller			
	Chillers			
	Circulating pumps			
	Inline circulating pumps			
	Hot water boilers			
	Domestic hot water heater			
	AHU			
	Cooling tower			
	Air compressor			
	Exhaust fans			
	Refrigerated air dryer			
	Split HVAC units glycol cooled			
	Unit ventilator HVAC units			
	Pneumatic VAV boxes			
	Variable frequency drives			
	DDC VAV boxes			
	Trane EMS system			

[Insert Location or Phase Numbers]

QTY.	SYSTEM COMPONENT(S)	MANUFACTURER	MODEL	LOCATION
	Exhaust fans			
	Chiller			
	Chiller			
	Circulating pumps			
	Air compressor			
	Refrigerated air dryer			
	Inline circulating pumps			
	Hot water boilers			
	Domestic hot water heaters			
	AHU			
	Exhaust fans			
	Cooling tower			
	Unit and cabinet heaters			
	Tracer EMS			
	Pneumatic VAV boxes			
	Variable frequency drives			
	DDC VAV boxes			

[Insert Location or Phase Numbers]

QTY.	SYSTEM COMPONENT(S)	MANUFACTURER	MODEL	LOCATION
	Hot water boilers			
	Domestic hot water heater			
	Inline circulating pumps			
	Air compressor			
	Refrigerated air dryer			
	Gas fired unit heaters			
	Package HVAC units			
	Exhaust fans			
	Package HVAC unit			
	Package AC unit			
	Variable frequency drive			
	Trane UPCM			

[Insert Location or Phase Numbers]

QTY.	SYSTEM COMPONENT(S)	MANUFACTURER	MODEL	LOCATION
	AHU			
	AHU			
	AHU			
	Exhaust fans			
	Fan powered mixing boxes			
	Cabinet heaters			
	Cabinet heater			
	Circulating pumps			
	Circulating pump			
	Package chiller			
	Domestic hot water heaters			
	Air compressor			
	Refrigerated air dryer			
	Variable frequency drive			
	Tracer EMS			
	DDC VAV boxes			

[Insert Location or Phase Numbers]

QTY.	SYSTEM COMPONENT(S)	MANUFACTURER	MODEL	LOCATION
	AHU			
	Hot water boiler			
	Cabinet heater			
	Cabinet heater			
	Cabinet heater			
	Fan coil unit			
	Unit heaters			
	Inline circulating pumps			
	Inline circulating pump			
	Smoke exhaust fans			
	Exhaust fan			
	Exhaust fan			
	Exhaust fans			
	Kitchen supply air fan			
	Kitchen supply air fan			
	Kitchen exhaust fan			
	Kitchen exhaust fan			
	Variable frequency drive			
	Trane PCM			

[Insert Location or Phase Numbers]

QTY.	SYSTEM COMPONENT(S)	MANUFACTURER	MODEL	LOCATION
	Exhaust fans			
	Air handlers			
	Air compressor			
	Hot water tank			
	Tower pump 20 HP			
	Hot water pumps 15 HP			
	Chilled water pump 15 HP			
	Hot water boilers			
	Chiller			
	Cooling tower			
	Tracer EMS			
	Package A/C			
	DDC VAV boxes			

[Insert Location or Phase Numbers]

QTY.	SYSTEM COMPONENT(S)	MANUFACTURER	MODEL	LOCATION
	Air-cooled chiller			
	Gas-fired boilers			
	Fan coil units			
	Fan coil units			
	Tracer EMS			
	Exhaust fans			
	Chilled water pumps 3 HP			
	Hot water pumps 3 HP			

[Insert Location or Phase Numbers]

QTY.	SYSTEM COMPONENT(S)	MANUFACTURER	MODEL	LOCATION
	Gas unit heaters			

[Insert Location or Phase Numbers]

QTY.	SYSTEM COMPONENT(S)	MANUFACTURER	MODEL	LOCATION
	AHU			
	Air compressors			
	Refrigerated air dryers			
	Domestic hot water heaters			
	Inline circulating pumps			
	Unit heaters			
	Exhaust fans			
	DDC VAV boxes			
	Tracer Summit			
	Hot water circulating pumps			
	Variable frequency drives			

22. FILTER LIST

Project SFC-14N710
Energy Conservation Project
North Central State College
Mansfield, Richland County

ATTACHMENT 16 – LIGHTING SPECIFICATIONS

SECTION 26 50 00 - LIGHTING

PART 1 GENERAL

1.02 DESCRIPTION

A. Provide new luminaires, timer switches, occupancy sensors, LED exit lights and retrofit kits, lamps and ballasts as specified herein. Luminaires shall be complete with lamps, lampholders, ballasts, end caps, coupling plates, stems, chains, auxiliary supporting steel, suspension straps, trim and other components as necessary for a complete and finished installation.

B. Contractor's work shall include all labor, materials, tools, appliances and equipment necessary for and incidental to the delivery, installation and furnishing of all work described in paragraph A above.

1.03 REGULATORY AGENCIES

A. Contractor shall provide luminaires, timer switches, occupancy sensors, LED exit lights and retrofit kits, lamps and ballasts fabricated, wired and installed in compliance with current editions of all applicable city, state and national codes.

B. Contractor shall provide luminaires, lamps and ballasts listed and labeled by Underwriters Laboratories (UL) or ETL Testing Laboratories.

C. Contractor shall comply with applicable requirements of the National Electrical Manufacturers Association (NEMA) and the National Fire Protection Association (NFPA) NFPA 70 "National Electrical Code" (NEC), latest edition.

1.04 PRODUCT DELIVERY, STORAGE AND HANDLING

A. Luminaires, timer switches, occupancy sensors, LED exit lights and retrofit kits, lamps and ballasts shall be delivered to job site, factory-assembled and wired to the greatest extent practical, in strict accordance with approved shop drawings, certificates and catalog cuts, and shall be handled in a careful manner to avoid damage.

B. Exposed finishes shall be protected during manufacture, transport, storage and handling. Delivered materials shall be identical to approved shop drawings. Damaged materials shall be repaired and/or replaced as directed by the Engineer.

C. Luminaires, timer switches, occupancy sensors, LED exit lights and retrofit kits, lamps and ballasts shall be stored under cover, above the ground, in clean, dry areas, and shall be tagged and/or marked as to type and location.

PART 2 PRODUCTS

2.01 LUMINAIRES

A. Luminaires shall be listed by application, manufacturer, model, and shall be approved by the Engineer and Owner.

B. Luminaires shall be provided with lamps in the quantity, type and wattage specified and compatible with ballast.

C. Lamp installation/removal shall be easily accomplished for all luminaires without tools. Attachments shall be secure and achieved with captive, non-removable fasteners. Luminaires shall allow replacement of ballast without removal of the luminaire or need for special tools.

D. Marking:

1. All luminaires shall be clearly marked for operation of specific lamps and ballasts.

2. For maintenance purposes, the following lamp characteristics should be noted, as applicable, in the format "Use.....Lamps Only":

a. Lamp diameter code (T-8), tube configuration (twin, quad), base type and nominal wattage.
b. Start type (rapid start, instant start).
c. Correlated color temperature (CCT) and color rendering index (CRI).

3. All markings related to lamp type shall be clear and located to be readily visible to service personnel, but invisible from normal viewing angles when lamps are in place.

E. Materials and Fabrication:

1. Unless otherwise noted, use only completely concealed hardware. Latching luminaire doorframes shall be unobtrusive. Make luminaire free from light leaks by the inherent design of the body and frame. Bond gaskets, when used, to the luminaire metal. Use bottom relamping unless otherwise noted.

2. Construct luminaires with the minimum number of joints. Make unexposed joints by approved method such as welding, brazing, screwing or bolting. Soldered joints are not acceptable.

3. Provide housing for luminaires that make electrical components easily accessible and replaceable, without removing the luminaire body from its mounting.

F. Luminaire Wiring:

1. Provide wiring between lampholders and associated operating and starting equipment in compliance with UL 1570 and NEC.

2. A one-lamp ballast may be used if luminaires are separated by more than 4 feet or if the nearest luminaire is on another control circuit.

G. Lampholders and Supports:

1. Provide lampholders that are white and constructed of heat resistant plastic. Lampholders shall comply with UL 542 and ANSI C81.

2. Lampholders for 4'-0" lamps shall be of the "knife-edge" variety so long as "knife-edge" is available for the specific socket type. In all cases, the lampholder providing the tightest electrical connection shall be provided. Follow ballast manufacturer wiring instructions.

3. Rigidly and securely attach lampholders to the luminaire enclosure.

4. Provide lampholders suitable for specified lamps, and position the lamps in optically correct spacing and relationship to lenses, reflectors, filters and baffles.

H. Finishes: Unless otherwise specified, provide reflective surface with a white baked enamel finish with a minimum reflectance of 86%. Prior to painting, give all parts proper etched surface preparation to assure paint adherence and durability.

I. Lenses, Louvers and Trim:

1. All lenses and louvers shall be positively held within the doorframes so that hinging or other motion of the frame will not cause the diffusing element to drop out.

2. For recessed luminaires with trim that is removable or open for access to the interior of the luminaire, and serves as ceiling trim, provide trim that is positively held to the luminaire body by adjustable means that permit the trim to be drawn up to the ceiling as tight as necessary to insure complete contact of trim with ceiling surrounding the luminaire.

3. Unless otherwise specified, prismatic lenses shall meet the following requirements:

a. Lens shall be made of clear virgin acrylic of nominal 0.125" overall thickness.
b. Lens shall be composed of either 1/8" or 3/16" male or female prisms with non-curved prism faces. Female prisms shall have a maximum depth of 0.053" for 1/8" prisms and 0.80" for 3/16" prisms. Male prisms shall have a minimum unpenetrated thickness of 0.90" or thicker.
c. Lens shall be a minimum of 7.5 oz. per square foot and show no visible evidence of sagging in the installed position.
d. Lens shall be strain-free, uniform in appearance and destaticized.
e. Lens shall have minimum 80% visible transmittance.

2.02 BALLASTS

A. PHYSICAL CHARACTERISTICS

1. Fluorescent ballasts may be rapid start or instant start. Preheat ballasts are not allowed.

2. Fluorescent ballasts shall be electronic, with an operating frequency between 20 and 60 kHz. Ballasts operating at 60 Hz., such as electromagnetic or cathode-disconnect ballasts, are not allowed.

B. POWER QUALITY

1. All fluorescent ballasts shall have a power factor greater than or equal to 0.95. High intensity discharge (HID) shall be manufacturer's standard high power factor, constant wattage type.

2. All fluorescent ballasts unless otherwise specified, shall exhibit a total harmonic distortion (THD), as defined by ANSI as the ratio of the harmonic content to the root-mean-square (rms) value of the periodic current, of less than 20%. Low harmonic distortion ballasts, if required by the Owner, shall have a THD of less than 10%.

3. The lamp current crest factor (CCF), defined as the ratio of peak lamp current to rms lamp current, shall not exceed 1.7, in conformance with ANSI Standard C82.11.

C. ELECTRICAL DATA

1. The maximum input power used by different types of ballasts shall not exceed the following values:

	Number of Lamps			
Lamp Type	One	Two	Three	Four
F17T8	17	34	51	68
F32T8	32	64	96	128
F96T8	N/A	120	N/A	N/A

2. The acceptable range of electrode preheat voltages for fluorescent rapid start ballasts is as follows:

	Preheat Voltage (V)		Operating Voltage (V)	
Lamp Type	Min.	Max	Min	Max
F32T8	3.0	4.5	2.5	4.4

3. The Ballast Efficacy Factor (BEF), defined as the ratio of the ballast factor in percent to active power in watts, demonstrated by different types of ballasts shall exceed the following values:

	Number of Lamps			
Lamp Type	One	Two	Three	Four
F17T8	4.700	2.80	2.000	1.570
F32T8	2.800	1.400	0.933	0.700
F96T8	N/A	0.750	N/A	N/A

D. LIFE

The minimum acceptable rated life of all ballasts shall be 15 years.

E. TEMPERATURE RATING

1. The lowest acceptable maximum temperature rating shall be 104 degrees F. (40 deg. C.).

2. The highest acceptable minimum starting temperature for all ballasts used indoors shall be 60 degrees F. (16 deg. C).

F. WARRANTY

The minimum acceptable warranty period for all ballasts shall be five years from the date of purchase.

G. CERTIFICATION

All ballasts shall be listed by Underwriter's Laboratories (UL), meeting all applicable UL safety requirements such as the Class "P" standard for indoor ballasts.

H. SOUND RATING

All ballasts shall have a sound rating of "A".

2.03 LAMPS

A. T-8 LAMPS

1. Lamp shall be rated at nominal 17, 32, and 59 Watts for 2 ft., 4 ft., and 8 ft. lengths, respectively.

2. Lamps shall be nominal T-8, 1" diameter tubes.

3. Lamps shall only be operated on ballasts designed for T-8 lamps.

4. Initial rated lumen output shall be at least 1,325, 2,800, and 5,700 lumens for 2 ft., 4 ft., and 8 ft. lengths, respectively.

5. Rated lamp life shall be at least 15,000 and 20,000 hours, per IES LM 40-87 operating on an instant start or rapid start mode, respectively.

6. Lamp Lumen Depreciation (LLD) for 4 foot lengths, shall result in a mean lumen value of at least 2,520 lumens (90% of the initial lamp lumens) at 40% of rated life (6,000 hours in instant start mode or 8,000 hours in rapid start mode) and at least 2,350 lumens (84% of the initial lamp lumens) at 70% of rated life (10,500 hours in instant start mode or 14,000 hours in rapid start mode).

7. Mortality curves at 3 operating hours per start shall show that less than 15% of lamps are burned out at 70% of rated life (10,500 hours in instant start mode or 14,000 hours in rapid start mode).

8. Lamp phosphors shall be a composition which includes rare earth phosphors, with a correlated Color Rendering Index (CRI) of not less than 75 CRI (NEMA designation RE 735).

B. COMPACT FLUORESCENT LAMPS

1. Lamps shall fit existing fixtures without modification.

2. Lamps shall be screw-in, modular types with replaceable lamps.

2.04 OCCUPANCY SENSORS

A. Wall switch sensors shall be capable of detection of motion at desktop level up to the specified square footage. Sensor shall control lighting in sensed area only.

B. Wall switch sensors shall have a 180 degrees coverage capability maximum 300 square feet and 150 square feet for desktop activity, utilize advanced passive infrared (PIR) technology, can be set to operate as either Auto-ON or Manual-ON switches. With Auto-ON selected, the units will turn lighting on automatically upon occupancy detection. With Manual-ON, user must press the switch to turn lighting on. Then with either setting, lights turn off after the space is vacated and the time delay elapses. 1.0 mm hard poly IR 2 level lenses; 2 level lens for desktop detection, DIP switch adjustable unit sensitivity, tamper proof design, minimum 5 year warranty and UL and CUL listed.

C. Ceiling mount sensors shall utilize advanced omni-directional Doppler technology, advanced signal processing (ASP) circuitry which filters out moving air noise by checking for small cyclical changes found in turbulent air to help eliminate false ON problems, DIP switch override and output disable, digital DIP switch time delay 15 seconds to 30 minutes. Ceiling mount sensors shall provide a minor motion coverage range of 150 to 1300 square feet with an overall ½ step coverage range from 300 to 2000 square feet.

D. Occupancy sensors shall provide coverage of 100% of the controlled area.

E. All sensors shall be capable of operating normally with electronic ballast and PL lamp systems.

F. Coverage of sensors shall remain constant after sensitivity control has been set. No automatic reduction shall occur in coverage due to the cycling of air conditioner or heating fans.

G. All sensors shall have user adjustable controls for time delay and sensitivity. Minimum delay range shall be 30 seconds to 30 minutes.

H. In the event of failure, a bypass manual “override on” feature shall be provided on each sensor. When bypass is utilized, lighting shall remain on constantly or control shall divert to a wall switch until sensor is replaced. The override feature shall be designed for use by building maintenance personnel and shall not be readily achieved by building occupants.

I. Ultrasonic microphone receiver frequency shall be 25 kHz or greater and shall be temperature and humidity resistant.

J. All sensors shall provide an LED indication light to verify that motion is being detected and that the unit is working.

K. Sensors shall be suitable for NEC 725 Class 2 wiring and use plenum cable when required.

L. Specific low voltage wire surface routing shall be approved by the Engineer.

M. Control Units - For ease of mounting, installation and future service, control unit(s) shall be able to mount on external J boxes and be integrated self-contained unit consisting internally of loan switching control relay and transformer to provide low-voltage power to a minimum of two (2) sensors.

N. Relay Contacts shall have ratings of:

10A - 120 VAC Tungsten
20A - 120 VAC Ballast
20A - 277 VAC Ballast

O. Relay contacts shall be isolated.

P. Between sensors and controls units shall be three (3) conductors, 18 AWG, stranded UL Classified, PVC insulated or TEFLON jacketed cable approved for use in plenums.

Q. The minimum acceptable warranty period for all sensors and control units shall be five (5) years from the date of purchase.

PART 3 EXECUTION

3.01 INSTALLATION

A. Install new luminaires complete with lamps, equipment, materials, parts, attachments, devices, hardware, hangers, cables, supports, channels, frames and brackets as necessary to make a safe, complete and fully operative installation.

B. Install new lamps and ballasts in existing fixtures where required. Clean all existing reflectors, aperture plates, lenses, and louvers. To prevent static buildup on lenses and reflectors, clean with a manufacturer's recommended water-diluted solution of glass cleaner.

C. Install timer switches and occupancy sensors where required. It shall be the contractor's responsibility with the supplier's assistance to locate and aim sensors in the correct location required for complete and proper volumetric coverage within the range of coverage(s) of controlled areas. Rooms shall have one-hundred (100) percent coverage to completely cover the controlled area to accommodate all occupancy habits of single or multiple occupants at any location within the room(s). The contractor shall provide additional sensors if required to properly and completely cover the respective room. Proper judgment shall be exercised in executing the work so as to ensure the best possible installation in the available space and to overcome local difficulties due to space limitations or interference from structural components.

D. Ground non-current-carrying parts of electrical equipment in accordance with UL and NEC provisions.

3.02 DISPOSAL

A. All existing fluorescent lamps removed as part of the project shall be recycled. Contractor shall provide documentation of recycling upon request by the Engineer.

B. Leaking PCB - containing ballasts shall be disposed of as regulated hazardous substances in a Toxic Substance Control Act (TSCA) permitted incinerator or chemical landfill. If a landfill is chosen, PCB's shall be removed prior to disposal of the capacitor. Intact PCB containing ballasts also may be disposed of by incineration or at a chemical landfill.

C. Refer to the State of Ohio, Environmental Protection Agency (EPA) fact sheet dated April, 2002 on, "The Management of Fluorescent Lamps and PCB Ballasts in Ohio" for further guidance and regulations associated with the proper disposal of lamps and ballasts. Contact the EPA Division of Hazardous Waste Management at (614) 644-2917 or Office of Pollution Prevention at (614) 644-3469 for additional assistance.

3.03 FIELD QUALITY CONTROL

A. Upon completion of installation, luminaires, lamps and ballasts shall be in first class operating order and free from defects in condition and finish. At time of final inspection, all luminaires and equipment shall be clean, fully lamped, and be complete with required lenses or diffusers, reflectors, side panels, louvers or other components necessary for the function of the luminaires. Any reflectors, lenses, diffusers, side panels or other parts damaged prior to final inspection shall be replaced by Contractor prior to inspection.

B. Furnish stock or replacement lamps and ballasts amounting to 2% (but not less than one in each case) of each type and size lamp and ballast used. Deliver replacement stock as directed.

3.04 SUPPORTS

Provide necessary hardware with luminaires, such as stems, plates, plaster frames, hangers and similar items, for safe luminaire support.

3.05 O&M MANUALS

The Contractor shall assemble and submit, in bound 8.5" x 11" format, an Operation and Maintenance Manual including product technical documents and cut sheets; manufacturer and product representative contacts; and operating and calibration instructions for all systems included in the upgrade, including but not limited to lamps, ballasts and lighting control devices. After approval by the Engineer, this manual will be kept on site for reference use by facility maintenance personnel. Transfer of the document will include a thorough walk-through and demonstration of upgrade equipment by Contractor for facility personnel and the Engineer.