

AGREEMENT NO. _____
FOR
PROFESSIONAL DESIGN SERVICES

This Agreement for Professional Design Services (this "Agreement"), made as of _____ by and between The University of Toledo (the "Owner") whose contact person shall be the Project Administrator designated below or successor and _____ (the "Associate") whose contact person and address are set forth below.

WHEREAS, The Owner is operating under Chapters 123 and 153 of the Ohio Revised Code and it is the intention of the Owner, in the exercise of its powers as set forth in Sections 153.65 through 153.71, both inclusive, of the Ohio Revised Code to obtain professional design services on behalf of the University named below for the following project (the "Project"):

Project Name: _____
Project Number: _____

Owner

Agency: The University of Toledo
Contact: _____
Address: Facilities & Construction MS 216, Toledo, OH 43606-3390
Phone #: (419) _____
Fax #: (419) _____
E-Mail Address: _____

Associate

Associate: _____
Contact: _____
Address: _____
Phone #: _____
Fax #: _____
E-Mail Address: _____

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

WHEREAS, unless adjusted as provided herein, all fees and reimbursable expenses payable to the Associate under this Agreement will not exceed \$_____; and

WHEREAS, the Associate desires, and is capable and licensed, to provide professional design services for the Project.

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

ARTICLE I. RESPONSIBILITIES OF ASSOCIATE

1.1 Associate's Service

1.1.1 Scope of Services; Applicable Law. The Associate shall provide professional design services, including without limitation services customarily furnished in accordance with generally accepted architectural or engineering services, for the Project in accordance with the terms of this Agreement. The Associate shall provide such services in accordance with the applicable Sections of the Ohio Revised Code and any applicable state rules and regulations, any applicable federal and local statutes, ordinances, rules and regulations, the applicable Announcement issued pursuant to Section 153.67 of the Ohio Revised Code (the "Announcement"), the Associate's Technical Proposal for the Project (the "Technical Proposal") and the Owner's Standards of Design, if any.

1.1.2 Construction Budget. The total amount available for the construction of the Project is \$_____ (the "Construction Budget"). The Owner shall provide written notice to the Associate of any change in the Construction Budget. It is recognized that the Associate and the Owner do not have control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Associate cannot and does not warrant or represent that bids or negotiated prices will not vary from the Construction Budget or from any estimate of cost or evaluation prepared by or agreed to by the Associate.

1.1.3 Timeliness; Standard of Care. The Associate shall perform the Associate's services in accordance with professional standards of skill, care and diligence in a timely manner in accordance with the Project Schedule and so that the Project shall be completed as expeditiously and economically as possible within the Construction Budget and in the best interests of the Owner.

1.1.4 Design Schedule. Within thirty (30) days after the execution hereof, the Associate shall submit for approval by the Owner a Design Schedule for the performance of the Associate's services which shall include allowances for reasonable periods of time required for the review and approval of items by the Owner and for approvals of governmental authorities having jurisdiction over the Project. Unless the Owner notifies the Associate of objections to the Design Schedule within thirty (30) days of receipt thereof, the Owner shall be deemed to have approved the Design Schedule. The Associate shall coordinate the Design Schedule with the Project Schedule. The Design Schedule, when approved by the Owner, shall not be exceeded by the Associate without notice and adjustment of the Design Schedule approved by the Owner.

1.1.5 Personnel. The identities of the principal persons, and the extent of their participation in performing the Associate's services set forth as in the Technical Proposal, shall not be altered without the written consent of the Owner.

1.1.6 Non-Discrimination. The Associate represents that the Associate is in compliance with all applicable equal employment opportunity requirements under law, if required by Section 153.59 of the Ohio Revised Code or any other applicable state or federal law.

1.1.7 Consultants. The Associate may provide services through one or more consultants employed by the Associate (the "Consultants"), provided, however, the Associate shall remain responsible to the Owner for all duties and obligations of the Associate under this Agreement. Unless waived or otherwise modified in writing by the Owner upon written request of the Associate, no Consultant shall be retained upon terms inconsistent with this Agreement. The identity of any Consultant, and the extent of such Consultant's participation in performing the Associate's services set forth as in the Technical Proposal, shall not be altered without the consent of the Owner.

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

1.1.9 Ethics. The Associate represents that it is familiar with all applicable ethics law requirements, including without limitation Sections 102.04 and 3517.13 of the Ohio Revised Code, and certifies that it is in compliance with such requirements.

1.1.10 Ohio Services. Unless otherwise authorized by the Owner, the Associate's services shall be performed within the State.

1.1.11 Limitation of Authority. The Associate shall not have any authority to bind the Owner for the payment of any costs or expenses without the express written approval of the Owner. The Associate shall have authority to act on behalf of the Owner only to the extent provided herein or in the Standard Conditions of Contract for Construction (the "Standard Conditions"). The Associate's authority to act on behalf of the Owner shall be modified only by an amendment in accordance with Subparagraph 9.5.2.

1.1.12 Approval or Disapproval of Associate's Work. The Owner shall have the right to reasonably disapprove any portion of the Associate's work on the Project, including, without limitation, any design work or documents or Drawings prepared by the Associate. In the event that any Phase of the Associate's work is disapproved by the Owner, the Associate shall proceed, when requested by the Owner, with revisions to the work, documents or Drawings prepared or performed for that Phase to attempt to satisfy the objections. The Associate acknowledges that any review or approval by the Owner of any work, documents or Drawings prepared or performed by the Associate pursuant to this Agreement shall not relieve the Associate of the Associate's responsibility to properly and timely perform such work and prepare such documents and Drawings.

1.1.13. Edge Business Development Program Participation. The Associate shall support the Encouraging Diversity Growth and Equity (EDGE) Business Development Program, (ref. Section 123.152 of the Ohio Revised Code, enacted by Am. H.B. 95, 125th General Assembly), by seeking and maintaining to the extent reasonable and appropriate, participation by properly certified EDGE Business Enterprise businesses for the project and within the Associate's agreement for the project.

1.1.13.1 Upon the Owner's request, the Associate shall provide its policy(ies) regarding its support of EDGE, and the procedures the Associate has used in good faith to obtain or

attempted to obtain the EDGE-certified business participation goal percentage approved by the Owner and indicated in the Request for Qualifications or the Request for Proposal, or both. In the absence of the Owner's request for the policy(ies) and procedures, the Associate shall provide them as a part of its response to the Owner's Request for Fee Proposal and they also shall become a part of this Agreement by attachment or by reference.

1.1.13.2 The Associate shall document and certify the actual percentage of the Associate's final fee, inclusive of all Basic Services, Additional Services, and Reimbursable Expenses, that it paid to certified EDGE Business Enterprises. The Associate shall submit such documentation and certification with its request for final payment and at other intervals as may be required by the Owner.

ARTICLE II. SCOPE OF ASSOCIATE'S BASIC SERVICE

2.1 General

2.1.1 Basic Services to be provided by the Associate shall consist of the six (6) phases set forth in Paragraphs 2.1 through 2.7, both inclusive, and include, without limitation, normal architectural, civil, structural, mechanical, electrical, and landscape design and engineering services for the Project, any necessary signage and graphics and any services necessary to comply with the Percent for Arts Program under R.C. § 3379.10.

2.2 Predesign Phase (Program Validation)

2.2.1 Program of Requirements. The Associate shall provide a preliminary evaluation of the Owner's Program of Requirements, schedule and budget requirements, including the Construction Budget, each in terms of the other and in terms of the Technical Proposal.

2.2.2 Approved Program of Requirements and Revisions. The Associate shall prepare, date and sign a revised Program of Requirements, obtain the Owner's approval thereof and signature thereon. If any changes or adjustments to the Approved Program of Requirements are desired at any time after the Approved Program of Requirements has been delivered to the Owner, the Associate shall prepare a written amendment to the Approved Program of Requirements describing the changes or adjustments and obtain the Owner's approval and signature thereon. The Approved Program of Requirements, as amended from time to time, shall determine the Scope of the Project.

2.3 Schematic Design Phase (Preliminary Drawings)

2.3.1 Review and Consultation. The Associate shall provide any necessary further evaluation or refinement of the Approved Program of Requirements and the schedule and budget requirements, shall identify and analyze requirements of governmental authorities having jurisdiction to approve design of the Project and participate in consultations with such authorities and shall, for renovation or remodeling, investigate existing conditions and verify the accuracy of information provided by the Owner about existing conditions, as reasonably necessary and practical.

2.3.2 Recommendations and Costs. The Associate shall review site use and improvements and alternative approaches to selection of materials, building systems and equipment with the Owner. The Associate shall provide recommendations on construction feasibility, availability of materials and labor, time requirements for construction and factors related to the cost of the Project including costs of alternative designs or materials, preliminary budgets and possible economies.

2.3.3 Preliminary Life Cycle Analysis. In accordance with Section 123.011 of the Ohio Revised Code and Rule 123:4 of the Ohio Administrative Code, the Associate shall prepare and submit three (3) copies of alternative design concepts for a Preliminary Life Cycle Analysis to the Owner unless a different number is provided in the Technical Proposal or by the Owner in writing.

2.3.4 Schematic Design Documents. Based upon the current Approved Program of Requirements and the schedule and budget requirements, the Associate shall prepare Schematic Design Documents consisting of architectural drawings and other documents illustrating the scale of the Project and of the relationship of components of the Project to one another and of the Project to surrounding properties. Upon completion of the Schematic Design Phase for each phase of the Project, the Associate shall provide three (3) copies of the Schematic Design Documents to the Owner for review and written approval unless a different number is provided in the Technical Proposal or by the Owner in writing. The Associate shall revise the Schematic Design Documents to incorporate comments from the Owner. The Associate shall also submit one (1) copy of the Schematic Design Documents to the State Security Coordinator (Department of Public Safety, 1970 West Broad Street, Columbus, Ohio 43223) for review and written comment. The Associate shall revise the Schematic Design Documents to incorporate the comments from the Owner and the comments from the State Security Coordinator, which have been reviewed and approved by the Owner.

2.3.5 Preliminary Cost and Schedule Estimates. Upon completion of the Schematic Design Phase for each phase of the Project or appropriate portion thereof, the Associate shall prepare and submit a Statement of Probable Construction Cost based on current area volume and other unit costs and a Preliminary Project Schedule, which shall incorporate the Design Schedule, for approval of the Owner. The Associate shall review any difference between the Construction Budget and the Statement of Probable Construction Cost, identify reasons for any difference and recommend means to eliminate the difference, if necessary. The Associate and the Owner shall agree upon the means to eliminate any difference between the Construction Budget and the Statement of Probable Construction Cost, and the Associate shall prepare a report describing the agreed upon means.

2.3.6 Submittal to Owner. The Associate shall complete a Design Review Acceptance form, attach a copy of the Preliminary Project Schedule, the Statement of Probable Construction Cost and any report prepared pursuant to Subparagraph 2.3.5 to the form, obtain the Owner's approval of the form and attachments and signature on the form.

2.4 Design Development Phase (Basic Drawings)

2.4.1 Life Cycle Analysis. In accordance with Section 123.011 of the Ohio Revised Code and Rule 123:4 of the Ohio Administrative Code, the Associate shall prepare and

submit three (3) copies of a Life Cycle Cost Analysis to the Owner unless a different number is provided in the Technical Proposal or by the Owner in writing.

2.4.2 Design Development Documents. Based on the approved Schematic Design Documents, the current Approved Program of Requirements, the approved Statement of Probable Construction Cost and the approved Preliminary Project Schedule, the Associate shall prepare Design Development Documents consisting of drawings, outline specifications and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials, and such other essential elements as may be appropriate. Upon completion of the Design Development Phase for each phase of the Project, the Associate shall provide three (3) copies of the Design Development Documents to the Owner for review and written approval unless a different number is provided in the Technical Proposal or by the Owner in writing. The Associate shall revise the Design Development Documents to incorporate comments from the Owner.

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

2.4.4 Design Review Acceptance. The Associate shall complete a Design Review Acceptance form, attach a copy of the Project Schedule, the Detailed Estimate of Construction Cost and any report prepared pursuant to Subparagraph 2.4.3 to the form, and obtain the Owner's approval of the form and attachments.

2.5 Construction Documents Phase (Construction Drawings and Specifications)

2.5.1 Drawings and Specifications. Based on the current, approved Design Development Documents, approved Detailed Estimate of Construction Cost and approved Project Schedule and any further revisions to the Approved Program of Requirements, the Associate shall prepare, for approval by the Owner, Drawings and Specifications setting forth in detail the requirements for the construction of the Project. With the consent of the

Owner, the Associate shall include Alternates in the Contract Documents. The Drawings and Specifications shall encourage competition, shall provide for construction by multiple prime contractors and shall be reasonably complete and unambiguous and in accordance with all applicable codes, ordinances, statutes, laws, regulations, except to the extent stated otherwise in writing by the Associate for necessary variances and waivers at the time of submission thereof by the Associate to the Owner for approval and to any Contractor for bidding or negotiation, as applicable. In preparing the Drawings and Specifications, the Associate shall consider general market conditions. The Associate shall not amend the Standard Conditions except by Special Conditions approved by the Owner. From time to time, the Associate shall make any necessary revisions to the Drawings and Specifications. Upon completion of design for each phase of the Project, the Associate shall provide three (3) copies of the Drawings and Specifications to the Owner for review and approval. The Associate shall revise the Drawings and Specifications to incorporate comments from the Owner.

2.5.2 Revisions to Cost Estimate and Project Schedule. The Associate shall inform the Owner of the need for any changes in Project requirements or in construction materials, systems or equipment as the Drawings and Specifications are developed and of the need for any adjustments in the Detailed Estimate of Construction Cost and the Project Schedule. Upon approval of the Owner of any such changes or adjustments, the Associate shall prepare a revised Detailed Estimate of Construction Cost or a revised Project Schedule, as applicable, incorporating such changes or adjustments. The Associate shall complete a Design Review Acceptance form, attach a copy of the revised Detailed Estimate of Construction Cost or the revised Project Schedule, as applicable and obtain the Owner's signature thereon.

2.5.3 Bidding Documents. The Associate shall prepare all documents necessary for bidding of Contracts, including without limitation bidding information and instructions, estimates of cost, Notices to Bidders, Bid Forms and Special Conditions.

2.5.4 Government Approvals. The Associate shall submit to the Division of Code Compliance of the Department of Commerce of the State (the "Division"), such sets of the Drawings and Specifications as the Division may require for approval, together with any necessary completed applications and all required fees. The Associate shall secure any necessary National Pollution Discharge Elimination System Storm Water General Permit by submitting a notice of intent application form to the Ohio Environmental Protection Agency at least forty-five (45) days prior to the commencement of the Construction Phase, shall prepare and certify a storm water pollution prevention plan to provide sediment and erosion controls at the Project and shall prepare and process the required notice of termination prior to Contract Completion. In addition, the Associate shall assist the Owner, including without limitation, by provision of technical criteria, provision of written descriptions and design data and consultations with appropriate officials in connection with filing of documents required for the approval of governmental authorities having jurisdiction over the Project.

2.5.5 Additional Filings. Upon Department of Commerce/Division of Construction Compliance's approval of the Construction Document Drawings and Specifications, the Associate shall obtain three (3) sets of corrected copies of the Drawings and Specifications

bearing approval stamps of the Division. The Associate shall distribute such corrected copies as follows:

- (a) One set to the Owner,
- (b) One set to the Lead Contractor or Construction Manager when determined,
- (c) One set retained by the Associate.

In addition, the Associate shall file any Drawings and Specifications necessary for the approval of any other governmental authority which has jurisdiction over the Project.

2.6 Bidding and Award Phase (Bidding Assistance and Recommendation)

2.6.1 Obtaining Bids. The Associate shall render interpretations and clarifications of the Contract Documents in Addenda.

2.6.2 Prebid Conferences. The Associate shall conduct prebid conferences with prospective Bidders to familiarize Bidders with the Contract Documents, any special requirements of the Contract Documents, and equal employment opportunity, prevailing wage, EDGE Program, Drug Free Workplace Program, and any requirements, as necessary. The Associate shall respond to all questions at prebid conference(s) by issuing one or more written Addendum which may include minutes of the prebid conference(s).

2.6.3 Bid Packages. The Associate shall obtain all necessary prevailing wage determinations and shall include them in packages of the Contract Documents. The Associate shall assemble the Contract Documents into appropriate packages and shall distribute the packages to prospective Bidders, the Owner and other appropriate persons, including without limitation any applicable local or regional plan room organizations.

2.6.4 Bid Review. The Associate shall review all bids received for responsiveness, participate in investigating the responsibility of Bidders and deliver a written recommendation to the Owner about the award of, or rejection of, any bid or bids for each Contract for the Project in accordance with applicable law. In making the recommendation, the Associate shall evaluate all applicable Alternates referenced in the Contract Documents.

2.6.5 Bid Substitutions. Substitutions contained in the bid of any Bidder shall not be considered by the Associate in recommending the award of any Contract.

2.6.6 Preaward Conferences. The Associate shall conduct pre-award conferences with apparently successful Bidders and shall gather documentation for contract execution from such Bidders. Upon the failure of a Bidder to provide such documentation in a timely manner, the Associate shall assist the Owner in considering whether an extension of time for submitting such documentation is appropriate.

2.6.7 Subcontractor and Material Supplier Review. The Associate, based upon review of the Contract Documents, any past experience and reasonable inquiry, shall participate in investigating any Subcontractor or Material Supplier proposed by any Contractor and recommend approval or disapproval in accordance with the Standard Conditions.

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

2.6.9 Further Revisions to Cost Estimate and Project Schedule. If necessary, the Associate shall inform the Owner of the need for any adjustments in the Detailed Estimate of Construction Cost and the Project Schedule. Upon approval of the Owner of any such adjustments, the Associate shall prepare a revised Detailed Estimate of Construction Cost or a revised Project Schedule, as applicable, incorporating such adjustments and obtain the Owner's signature thereon.

2.6.10 Conformed Construction Documents Required. During the entire phase, the Associate shall incorporate all Addenda information into the Construction Documents; and, between date that the Owner issues a Notice of Intent to Award for the first construction contract for the project and the effective date of the first construction contract Notice to Proceed, the Associate shall provide updated construction documents that conform in every regard to the documents originally issued for bidding purposes plus all of the information in all project addenda (e.g., Conformed Construction Documents) and issue the Conformed Construction Documents to the successful bidder(s) upon award of their respective contracts.

2.6.10.1 The Contractor(s) shall remain responsible to provide all labor, materials and services required by the Conformed Construction Documents.

2.7 Construction Phase (Administration of Construction)

2.7.1 Duration; Extent, Access. The Construction Phase will commence with the award of a Contract for the Project to a Contractor and will terminate upon Final Acceptance of the Project by the Owner. The Associate shall provide its services during the Construction Phase in accordance with the Standard Conditions as in effect as of the date of this Agreement. The Associate shall at all times have access to the Project whenever any Work is in preparation or in progress.

2.7.2 Interpretations. The Associate shall render interpretations necessary for the proper execution or progress of the Work on the Project. All interpretations shall be in writing, shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be delivered to the Owner and each applicable Contractor.

2.7.3 Investigation of Conditions for Renovation or Remodeling. For renovation and remodeling, the Associate shall, as portions of the Project become accessible and as reasonably necessary, investigate existing conditions and verify the accuracy of information provided by the Owner about existing conditions.

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

2.7.5 Progress. The Associate shall record the progress of the Project and provide written reports to the Owner on a monthly basis unless otherwise agreed in writing. Such reports shall include, without limitation, information on each Contractor's Work, as well as completion status on the entire Project, showing percentages of completion. This Subparagraph shall not, and shall not be deemed to, require the Associate to undertake any of the Contractor's Responsibilities as set forth in Subparagraph 2.7.17.

2.7.6 Construction Schedule. The Associate shall review and approve for conformance with the Contract Documents the Construction Schedule, provide a copy of the Construction Schedule and schedule of submittals to the Owner and incorporate the Construction Schedule and schedule of submittals into the Project Schedule. The Associate shall periodically inform the Owner of the need to update the Project Schedule as required to show current conditions, including without limitation, to conform to the Construction Schedule, as updated from time to time. If such conditions indicate that milestone completion dates shown on the Project Schedule may not be met, the Associate shall recommend corrective action to the Owner and carry out the directions of the Owner so that the milestone completion dates may be met, unless the Owner agrees in writing to revise the milestone completion dates. Whenever the Project Schedule is revised or updated as provided in this Subparagraph, the Associate shall prepare a revised Project Schedule and obtain the Owner's signature thereon.

2.7.7 Meetings. The Associate shall schedule, conduct and participate in preconstruction, progress, quality control and special meetings with the Owner, appropriate Consultants, the Contractors and any other parties involved in the Project to discuss such matters as procedures, progress, problems and scheduling. The Associate shall prepare and distribute minutes of all such meetings to the Owner, the Contractors and any other parties involved. The Associate shall participate in partnering meetings with the Owner, appropriate Consultants, the Contractors and other parties involved in the Project.

2.7.8 Tests; Inspections. The Associate shall advise and consult with the Owner during the Construction Phase as to the need for any special testing, inspections or approval of Work on the Project. The Associate shall notify the appropriate Contractor in writing to order any necessary special testing, inspections or approval of Work on the Project, or the Associate may make the arrangements for same. The Associate shall report to the Owner any failure of the Contractor to provide such testing, inspections or approval within thirty (30) days of the notice to the Contractor. The Associate must arrange for reimbursement from the Contractor in case the Contractor is ultimately responsible to pay the costs of such testing, inspections or approval as provided in the Standard Conditions. If the Contractor is not ultimately responsible to pay such costs, the Associate shall be reimbursed for such costs in accordance with Section 5.2.

2.7.9 Submittal Review. As provided in the Standard Conditions, the Associate shall review and approve or take other appropriate action upon Contractor submittals such as Shop Drawings, Product Data and Samples, for conformity with the Contract Documents and shall review drawings, calculations and designs required of Contractors and provided with such submittals (except calculations and designs of manufacturers of original equipment and systems to be installed in the Project and except calculations and designs which the Contract Documents expressly make the sole responsibility of one or more Contractors, Subcontractors, Material Suppliers or other persons).

2.7.10 Bulletins; Certain Change Orders. The Associate shall prepare Bulletins and other necessary documentation seeking Proposals from Contractors for potential and proposed changes in the Work. The Associate shall keep a log of all Requests for Information, Field Work Orders, Bulletins, Contractor Proposals and Change Orders. The Associate shall prepare Bulletins, Field Work Orders, Change Orders, and any necessary Drawings, Specifications and other documents and supporting data for Change Orders which result from an error or omission of the Associate or a Consultant as shown by the Change Order form or which relate to the addition of an Alternate to the Work of one or more Contractors or the settlement of a dispute with one or more Contractors as shown by the Change Order form.

2.7.11 Project Costs. The Associate shall monitor Project cost accounting records on Work performed by Contractors under unit costs, actual costs for labor and materials, or other appropriate basis and afford the Owner access to these records at all times.

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

2.7.13 Partial Occupancy. The Associate shall assist the Owner in determining dates of Partial Occupancy of the Work or portions thereof designated by the Owner and shall assist in obtaining any necessary certificate from any applicable government authority. The Associate shall prepare lists of incomplete or unsatisfactory Work and schedules for the completion or correction thereof for each Contract.

2.7.14 Contract Closeout. Upon receipt of a Contractor's Punch List, the Associate shall provide written notice to the Owner that the Work is ready for Final Inspection, notify the Contractor of acceptance or rejection of the request for Final Inspection, conduct the Final Inspection, prepare an Associate's Punch List, if applicable, and prepare and process a Certificate of Contract Completion in accordance with the Standard Conditions. Upon Contract Completion, the Associate shall receive, review for conformity with the requirements of the Contract Documents and transmit to the Owner any affidavits and turn over to the Owner any keys, manuals and the originals of any guarantees, warranties, releases, bonds and waivers.

2.7.15 Contractor Claims. The Associate shall review Contractor claims for equitable adjustment, and shall deliver a written recommendation to the Owner about each claim and attend any dispute resolution meetings convened by the Owner related to each claim.

2.7.16 Record Drawings. Based on marked-up prints, drawings or data provided by the Contractors, the Associate shall furnish to the Owner one (1) set of Record Drawings in the form of reproducible Drawings correctly marked to show the Project as completed in the form of mylar tracings, one (1) set of all other Contract Documents showing the Project as completed in the form of paper documents and one (1) set of all Contract Documents showing the Project as completed on a computer medium approved by the Owner. The Record Drawings, to the best of the Associate's knowledge based upon the As-Built Drawings delivered to the Associate by the Contractors and the Associate's observations during the progress of the Project, shall detail the actual construction of the Project and contain such annotations by the Associate as may be necessary for someone unfamiliar with the Project to understand the changes that were made to the original Drawings.

2.7.17 Contractor Responsibilities. The Associate shall not be responsible for and shall not have control or charge of construction means, methods, techniques, sequences, procedures or scheduling used by a Contractor to comply with the Contractor's obligations under its Contract for the Project or for safety precautions and programs in connection with the Work on the Project. The Associate shall not be responsible for or have control or charge over the acts or omissions of Contractors or Subcontractors or any of their agents or employees, or any other persons performing any Work on the Project. The Associate shall be responsible for failure to give notice to the Owner of defective work as set forth in Section 2.7.4.

ARTICLE III. ADDITIONAL SERVICES

3.1 General

3.1.1 The following services are not included in Basic Services and shall be provided only if identified in the Technical Proposal and approved by in writing by the Owner. The following services shall be paid for as provided in this Agreement in addition to the compensation for Basic Services; provided, however, the Associate shall not be compensated for any of the following services made necessary by the act or omission of the Associate or any Consultant to the Associate. Unless waived by the Owner in writing, authorization to provide Additional Services must be obtained prior to providing the Additional Services.

3.1.2 Specialized Services. Providing specialized design and engineering services, including but not limited to services for acoustical analysis or design, computer services, communication consultant services, design or specification of unusual or large volumes of fixtures, furnishings and equipment.

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

3.1.4 Change Orders. Preparing Drawings, Specifications and other documents and supporting data in connection with Change Orders beyond those services to be provided as Basic Services pursuant to Subparagraph 2.7.10.

3.1.5 Partnering and Scheduling Consultant. Serving as a partnering or construction scheduling consultant or providing such consulting services.

3.1.6 Perspectives, Models, Renderings. Preparing professional perspectives, models or renderings which are not otherwise useful or necessary to the Associate in the provision of Basic Services hereunder at the written request of the Owner.

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

3.1.8 Special Studies. Providing planning, site evaluations, environmental studies, or comparative studies of prospective sites, and preparing special surveys, studies and submissions required for approval of governmental authorities or others having jurisdiction over the Project.

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

3.1.10 Investigation of Conditions for New Construction. Providing services for new construction to investigate existing conditions or facilities or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the Owner.

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

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

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

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

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

3.1.16 Additional Documents. Preparing more than the sets of Contract Documents required as Basic Services pursuant to Subparagraphs 2.5.1, 2.6.3 and 2.6.8.

3.2 Special Inspections Required by Ohio Building Code.

3.2.1 The Special Inspections indicated in Chapter 1704 of the Ohio Building Code, 2005 edition and later as modified by proper authority, are not included as Basic Services; however, the Associate shall provide the Special Inspections and be paid for such as Additional Services in the event such Special Inspections are required as a condition of the Plans Approval issued by the Building Authority having jurisdiction for the project.

3.2.2 The Associate shall include in its Proposal the name or names of the Consultants it intends to use for all Special Inspections that would be reasonably anticipated for the project and shall provide a Schedule of Fees for Typical Services for each Consultant. The Associate may include a negotiated markup for the Consultant services used.

3.2.3 The Associate shall employ a Consultant properly licensed to perform the required Special Inspections and all related testing services. The Consultant shall provide to the Owner at the address requested, one copy, issued concurrently, of all reports and recommendations provided to or for the Associate and the Building Official.

3.2.4 The Associate shall not be compensated for any such services made necessary by the act or omission of the Associate or any Consultant of the Associate.

3.3 Quality Assurance (QA) Testing.

3.3.1 The following services are not included as Basic Services, however, the Associate shall provide such Services when so incorporated as a part of the Associate's Proposal attached and made a part of this Agreement.

3.3.2 Such services shall be paid under the Agreement as Additional Services as specified in Section 5.32; however, the Associate shall not be compensated for any services made necessary by the act or omission of the Associate or any Consultant of the Associate. The Associate shall include in its Proposal the name or names of the Consultants it intends to use for all Special Inspections and all Quality Assurance Testing that would be reasonably anticipated for the project and shall provide a Schedule of Fees for Typical Services for each Consultant. The Associate may include a negotiated markup for the Consultant services used.

3.3.3 The Associate shall employ a Consultant properly licensed to provide the required testing and inspections and all related services. The Consultant shall provide to the Owner

at the address requested, one copy, issued concurrently, of all reports and recommendations provided to or for the Associate.

3.3.4 Examples of QA Testing and Reporting.

3.3.4.1 Geotechnical Analysis. Sampling and analysis of soils and hydrologies, and subsequent reporting and recommendations, upon which architectural and engineering designs may be based. Applicable to Construction Phase observation, testing, and reporting of soils conditions, including testing for types and quality of fill material and its installation, compaction, soil density testing, caisson borings inspections, cut and fill monitoring, etc.

3.3.4.2 Environmental Testing and Analysis. Sample and analysis of existing conditions or materials for any of a variety of environmental materials, including hazardous materials and suspected hazardous materials, and subsequent reporting.

3.3.4.3 Concrete. Test for general quality, such as: slump, air entrainment, cylinder test, core test, Swiss hammer.

3.3.4.4 Masonry. Includes such testing as prism tests, mortar cube, grout tests, water infiltration.

3.3.4.5 Structural Steel, Reinforcing Steel, Welding, Bolts and Connections. Includes any testing and reporting of any type of steel, including those listed above.

3.3.4.6 HVAC Systems and Controls. Includes testing and balancing of any or all HVAC components including controls systems.

3.3.4.7 Plumbing and Piping. Includes testing and water, waste, and vent piping and process piping and associated reporting.

3.3.4.8 Air and Water Testing and Balancing. Includes testing and balancing of various pneumatic and hydronic piping and associated reporting.

3.3.4.9 Other (i.e., Medical Gases testing, Lead Shielding, etc.)

ARTICLE IV. RESPONSIBILITIES OF THE OWNER

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

4.2 Instructions to Contractors. All instructions of the Owner to Contractors shall be through, or in consultation with, the Associate.

4.3 Owner's Requirements. The Owner shall provide full information regarding its requirements for the Project including without limitation the Program of Requirements, design and construction standards and work rules which shall set forth the Owner's use,

design, time and financial objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, time constraints imposed by fiscal and budgetary considerations, special equipment and systems and site requirements.

4.4 Owner's Representative. The Owner shall designate an Owner's Representative, i.e. a person authorized to act on the Owner's behalf with respect to the Project to the extent provided in the Contract Documents.

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

4.6 Notice to Associate. If the Owner observes or otherwise becomes aware of any Defective Work or other fault or defect in the Project, prompt notice thereof shall be given to the Associate.

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

ARTICLE V. COMPENSATION

5.1 Direct Personnel Expense. Direct Personnel Expense shall mean the portion of direct salaries and wages of all personnel of the Associate or any Consultants, as applicable, including professional, technical, management, administrative and clerical employees, and principals engaged on the Project related to their time devoted to the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto such as employment taxes and other statutory employee benefits, social security contributions, insurance, sick leave, holidays, vacations, pensions, profit sharing and similar benefits related to their time devoted to the Project.

5.2 Reimbursable Expenses

5.2.1 Definition. Reimbursable Expenses means actual expenditures incurred by the Associate or its Consultants in the interest of the Project approved by the Owner for reproduction of Construction Documents for distribution to Bidders, building permits, soil or other testing or special inspections and, if requested by the Owner, Project Professional Liability Insurance and reformatting Project Record Submittals to a computer medium different than a computer medium used by the Associate. No other expenditures shall be Reimbursable Expenses unless so provided in an amendment in accordance with Subparagraph 9.5.2.

5.2.2 Limits. The Associate shall use its best efforts to minimize Reimbursable Expenses. In all events, total Reimbursable Expenses shall not exceed \$_____, without the written approval of the Owner and an amendment in accordance with Subparagraph 9.5.2. Reimbursable Expenses for the following items shall not exceed the respective amounts:

<u>Item</u>	<u>Amount</u>
_____	\$ _____

5.3 Basis of Compensation

5.3.1 Basic Fee. For Basic Services provided by the Associate and all Consultants, the Owner shall pay the Associate a Basic Fee in accordance with Paragraph 5.4 hereof in the amount of \$_____. A change in the Basic Fee may be made only by an amendment in accordance with Subparagraph 9.5.2.

5.3.2 Additional Fees. The Owner shall pay the Associate the respective Additional Fees for the following Additional Services:

<u>Additional Service</u>	<u>Additional Fee</u>
_____	\$ _____

For other Additional Services provided by the Associate and any Consultants in accordance with Article III, the Owner shall pay the Associate Additional Fees in an amount negotiated to the mutual reasonable satisfaction of the Owner and the Associate, but in all events, such Additional Fees shall not exceed two and one-half (2.5) times the Direct Personnel Expense incurred by the Associate and any applicable Consultant in providing those Additional Services. Except for the Additional Services and Additional Fees listed above, Additional Services and any Additional Fees may be approved only by an amendment in accordance with Subparagraph 9.5.2. The Associate, with the prior written consent of the Owner, may provide Additional Services through one or more Consultants.

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

5.4 Method and Terms of Payment

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

Predesign Phase	\$ _____	5%
Schematic Design Phase	\$ _____	15%
Design Development Phase	\$ _____	15%
Construction Documents Phase	\$ _____	30%
Bidding and Award Phase	\$ _____	5%-7%
Construction Phase	\$ _____	25%
Project Closeout	\$ _____	3%-5%

The Bidding and Negotiation Phase or the Project Closeout Phase shall include approximately 2% of the fee and identified in the Associates Fee Proposal for preparation of the conformed construction documents prepared by the Associate in the Bidding and Negotiation Phase (refer to Article 2.6).

Any balance of the final 5% of the Basic Fee shall be paid upon Project Closeout as follows: one-half after preparation of all Punch-Lists and one-half after completion of all Punch-List items to the reasonable satisfaction of the Owner and receipt of Project Record Submittals by the Owner as provided in this Agreement. The Owner may waive the withholding of any final balance or part thereof, if Associate has performed to the reasonable satisfaction of the Owner. Payment of the last twenty percent (20%) of the Basic Fee for the Predesign Phase, the Schematic Design Phase, the Design Development Phase, the Construction Documents Phase, and the Bidding or Negotiation Phase shall be made only after all documents and Drawings required for the respective Phase have been submitted to the Owner, as applicable, in form and substance reasonably satisfactory to the Owner. The Basic Fee, including without limitation the final 5% thereof, shall be subject to all setoffs in favor of the Owner for claims against the Associate. Payments for Basic Services shall be based upon a properly completed Associate's Pay Request and shall be made within the applicable time limits provided by Section 126.30 of the Ohio Revised Code.

5.4.2 Additional Fees, Reimbursable Expenses. Payments of Additional Fees for Additional Services in accordance with Article III and Subparagraph 5.3.2 and for Reimbursable Expenses as set forth in Paragraph 5.2 shall be made monthly based upon services performed or expenses incurred, as applicable, and as shown by a properly completed Associate's Pay Request.

5.4.3 Payments by Associate. Within ten (10) business days of receipt of payment made pursuant to this Agreement, the Associate shall pay all portions thereof due to Consultants and to persons who provided items the expenses of which are Reimbursable Expenses.

5.4.4 Compensation for Extension of Project Time. If the Associate notifies the Owner not less than thirty (30) days prior to the time for completion of the Project set by the Project Schedule approved pursuant to Subparagraph 2.4.4, that such time for completion

is reasonably expected to be exceeded by more than ten percent (10%) through no fault of the Associate, the compensation, if any, for Basic Services to be rendered during such extended period shall be negotiated to the mutual reasonable satisfaction of the Owner and the Associate. If, as a result of such negotiation, the Owner agrees that the Associate shall be paid additional compensation, an amendment to that effect shall be executed in accordance with Subparagraph 9.5.2 before the Associate renders any services made necessary by such extension of the time of completion, unless otherwise agreed in writing by the Associate and the Owner.

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

ARTICLE VI. INSURANCE AND INDEMNIFICATION

6.1 Insurance

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

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

6.1.2 Project Professional Liability Insurance. For all Projects with a Construction Budget of \$5,000,000 or more, the Associate shall, in consultation with the Owner, obtain proposals for project specific professional liability insurance to cover the Associate, any Consultants and Construction Manager ("Project Professional Liability Insurance") in an amount of not less than \$2,000,000. The term of coverage of such insurance will include the design period, the construction period and a period of no less than two (2) years after the Contract Completion.

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

6.1.4 Certificates. The Associate shall provide the Owner with certificates of insurance evidencing the required coverages and amounts, including without limitation any certificates of renewal of insurance. The certificates of insurance shall contain a provision that the policy or policies will not be canceled without thirty (30) days' prior written notice to the Owner.

6.2 Indemnification

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

6.2.2 Intellectual Property Indemnification. To the fullest extent permitted by law, the Associate shall and does agree to indemnify and hold harmless the Owner and their members, officers, employees and representatives from and against all claims, damages,

losses, liens, causes of action, suits, judgements and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, which result from any claimed infringement of any copyright, patent or other intangible property right caused by the Associate, anyone directly or indirectly employed by the Associate or anyone for whose acts the Associate is legally liable. The Associate shall not be required to indemnify and hold harmless such persons for such matters when the claimed infringement occurs in materials provided by the Owner.

ARTICLE VII. DISPUTE RESOLUTION PROVISIONS

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

7.2 Notice and Filing of Requests. Any request by the Associate for additional fees or expenses shall be made in writing to the Owner and filed prior to payment of the final 5% of the Basic Fee. Failure of the Associate to timely make such a request shall constitute a waiver by the Associate of any request for such fees and expenses.

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

7.4 Meeting with Project Administrator. If the Associate files a written request with the Owner pursuant to Paragraph 7.2, the Owner shall, within thirty (30) days of receipt of the request, schedule a meeting in an effort to resolve the request and render a decision on the request promptly thereafter or render a decision on the request without a meeting, unless a mutual agreement is made to extend such time limit. The meeting shall be attended by persons expressly and fully authorized to resolve the request on behalf of the Associate.

7.5 Performance. The Associate shall proceed with the Associate's performance of this Agreement during any dispute resolution process, unless otherwise agreed by the Associate and the Owner in writing. The Owner shall continue to make payment, in accordance with this Agreement, of any amounts not in dispute pending final resolution of any dispute in accordance with this Paragraph.

ARTICLE VIII. TERMINATION AND REMEDIES

8.1 Termination of Agreement

8.1.1 Means of Termination. This Agreement may be terminated by either party upon seven (7) days written notice should the other party fail to perform in accordance with the

terms of this Agreement; provided, however, the Associate shall not terminate this Agreement for non-payment if the Owner initiates the payment process within ten (10) days of receipt of the Associate's written notice to terminate. This Agreement may be terminated by the Owner without cause upon fifteen (15) days written notice to the Associate. This Agreement may be terminated at any time upon the mutual consent of the Owner and the Associate.

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

8.1.3 Associate's Remedies Upon Termination by Owner for Cause. In the event of a termination which is due to the failure of the Associate to perform in accordance with the terms of this Agreement, the Associate shall be compensated only for Basic Services performed and paid for prior to the termination date in accordance with the percentages set forth in Subparagraph 5.4.1, together with Additional Services completely performed prior to the termination date. In such event, the Associate shall be reimbursed only for Reimbursable Expenses incurred prior to the date of the notice of termination, unless the Owner consents in writing to the payment of Reimbursable Expenses incurred after that date.

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

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

8.2 Remedies

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

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

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

ARTICLE IX. MISCELLANEOUS PROVISIONS

9.1 Ownership and Use of Documents

9.1.1 Property of Owner. Drawings, Specifications and other documents prepared by, or with the cooperation of, the Associate or any Consultant pursuant to this Agreement are the property of the Owner whether or not the Project for which they are prepared is commenced or completed. The Associate or Consultant, as applicable, may retain copies, including reproducible copies of such Drawings, Specifications and other documents for information and reference. Such Drawings, Specifications or other documents may be used by the Owner or others employed by the Owner for reference in any completion, correction, remodeling, renovation, reconstruction, alteration, modification of or addition to the Project, without compensation to the Associate or Consultant. Unless the Project is a prototype, such Drawings, Specifications or other documents shall not be used by the Owner, or be given or sold by the Owner to be used by others, on other projects except by agreement in writing and with agreed upon appropriate compensation to the Associate or Consultant, as applicable. If an event occurs for which the Associate or Consultant may be liable, the Owner shall notify the Associate or Consultant of such event as soon as practical after such event and shall provide access to the Project to the Associate or Consultant and their representatives. This Subparagraph shall survive termination of this Agreement.

9.1.2 Associate's Intellectual Property. All inventions, patents, design patents and computer programs acquired or developed by the Associate in connection with or relation to the Project shall remain the property of the Associate and shall be protected by the Owner from use by others except by agreement in writing with appropriate and agreed upon compensation to the Associate.

9.2 Public Relations. Prior to completion of the Project, any public relations or publicity about the Project shall be solely within the control and with the consent of the Owner.

9.3 Records. The records of all of the Associate's Direct Personnel Costs, Reimbursable Expenses and payments to Consultants pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the Owner at all times and shall be maintained for seven (7) years after Final Acceptance of the Project. All other records kept by the Associate related to the Project shall be available to the

Owner at all times and shall be maintained for six (6) years after Final Acceptance of the Project Owner.

9.4 Successors and Assigns. The Owner and the Associate each bind themselves, their successors, assigns and legal representatives, to the other party to this Agreement and to the successors, assigns and legal representatives of the other party with respect to all terms of this Agreement. The Associate shall not assign, or transfer any right, title or interest in this Agreement without the prior written consent of the Owner.

9.5 Extent of Agreement

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

9.5.2 Amendments. This Agreement may be amended only by an amendment signed by both the Associate and the Owner.

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

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

9.5.5 Precedence. If there are any inconsistencies between the provisions of the Contract Documents and the provisions of the Announcement, the Technical Proposal or this Agreement, the provisions of the Contract Documents shall prevail.

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

9.6 Governing Law

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

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

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

Intending to be legally bound, the Associate, acting herein by and through the person signing this Agreement on its behalf as a duly authorized agent, hereby assigns, sells, conveys and transfers to the Owner any and all right, title and interest in and to any and all claims and causes of action which the Associate may now have or hereafter acquire under the antitrust laws of the United States of America or the State, PROVIDED that the claims or causes of action relate to the particular goods, products, commodities, intangibles, or services purchased, procured, or acquired by, or rendered to, the Owner pursuant to this Agreement, and EXCEPT as to any claims or causes of action which result from antitrust violations commencing after the price is established under this Agreement and which are not passed on to the Owner by any means. In addition, the Associate warrants and represents that it will require any and all of its Consultants and suppliers to assign any and all federal and State antitrust claims and causes of action to the Owner, subject to the proviso and exception stated above. The provisions of this Subparagraph shall become effective at the time the Owner executes its concurrence to this Agreement without further acknowledgement by any of the parties.

9.8 Notices

9.8.1 Addresses. All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be given if delivered in person to the individual or to a member of the company or organization for whom the notice is intended, or if delivered at or mailed by registered or certified mail, postage prepaid, to the appropriate following address:

If to the Owner:

The University of Toledo
Mail Stop 216—Facilities & Construction
Toledo, OH 43606-3390

If to the Associate:

9.8.2 Facsimiles. For convenience of communication only, notices, certificates, requests or other communications hereunder of fewer than ten (10) pages, except requests for payment, may be sent by facsimile transmission to the Owner at (419) _____ and to the Associate at _____. Notices, certificates, requests or other communications sent by

facsimile transmission shall not be deemed to be given unless a counterpart is received or mailed in accordance with Subparagraph 9.8.1. Requests for payment may be sent to the Owner by facsimile transmission only upon specific direction from the Owner.

9.8.3 Emergencies. In the event of an emergency involving the Project, including, without limitation, a fatality, serious injury, fire, collapse, flood, utility or power loss to occupied facilities, explosion, or environmental damage, the Associate shall immediately notify the Owner by telephone.

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

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

9.10 O.R.C. 9.24 Warranty. Associate warrants that it is not subject to an “unresolved” finding for recovery under O.R.C. 9.24. If the warranty is deemed to be false, the Agreement is void *ab initio* and the Associate must immediately repay to the Owner any funds paid under this Agreement.

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

Associate

Date: _____ By: _____

Name: _____

Title: _____

Associate's Federal TIN: _____

Owner

Date: _____ By: _____

Charles L. Lehnert
Vice President for Facilities & Construction

Date: _____ By: _____

Scott L. Scarborough
Senior Vice President for Finance & Administration
(Required for amounts over \$500,000)

ATTORNEY GENERAL'S APPROVAL

This Agreement has been reviewed and approved pursuant to Section 153.01 of the Ohio Revised Code.

Attorney General of Ohio

Date: _____ By: _____

Assistant Attorney General