

Construction Manager Agreement Form

State of Ohio Professional Services Agreements for Public Facility Construction

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

Project Number: <<insert project number>>
Project Name: <<insert project name>>
 Site Address: <<insert street address>>
 <<insert city, state zip code>>
 <<insert city, county>> County

Owner: <<insert name>>
 Owner's Representative: <<insert name>>
 Address: <<insert street address>>
 <<insert city, state zip code>>

Contracting Authority: <<insert name>>
 Project Manager: <<insert name>>
 Address: <<insert street address>>
 <<insert city, state zip code>>

Construction Manager ("CM"): <<insert name>>
 CM's Principal Contact: <<insert name>>
 Address: <<insert street address>>
 <<insert city, state zip code>>

ARTICLE 1 - SCOPE OF WORK; CONSTRUCTION BUDGET; EDGE COMMITMENT

1.1 The CM shall perform and provide all of the Services described in the Agreement.

1.1.1 The project delivery method for this Project shall be Multiple-Prime Contracts with a Construction Manager acting as the adviser to the Owner. The CM shall not hold the Contracts or Subcontracts.

1.1.2 During the Construction Stage, the CM and appropriate Consultants shall be present at the Site not less than <<insert number of on-Site hours per week during Construction Stage>> hours per week (excluding travel time to and from the Site) whenever any Work is in preparation or progress, unless otherwise expressly provided in writing by the Contracting Authority.

1.2 The Construction Budget is \$<<insert Construction Budget amount>>.

Two-Year Colleges may delete Section 1.3 below. Otherwise, enter the percentage.

1.3 The CM shall contract with EDGE-certified Business Enterprise(s) for not less than <<insert CM's EDGE commitment>> percent of the CM's total compensation.

ARTICLE 2 - COMPENSATION

2.1 The total compensation for the CM's Services is \$<<insert total compensation amount>>, which includes the sum of (1) the Basic Fee, (2) Direct Personnel Expense, and (3) Reimbursable Expenses. The Owner shall pay the total compensation amount to the CM in exchange for the CM's proper, timely, and complete performance of the Services.

2.2 Basic Fee.

2.2.1 For Basic Services provided by the CM and all Consultants in accordance with the **CM Adviser Scope of Services** attached as **Exhibit B**, the Owner shall pay the CM the Basic Fee of \$<<insert amount of Basic Fee>>, which shall not be exceeded without the prior written approval of the Contracting Authority and the Owner and an amendment to this Agreement. The Basic Fee is subject to the following allocation:

| Project Stage/Task | Associated Fee | Portion of Basic Fee |
|----------------------|-------------------------|------------------------|
| Program Verification | \$<<insert fee amount>> | <<insert percentage>>% |

| Project Stage/Task | Associated Fee | Portion of Basic Fee |
|------------------------|------------------------------|----------------------|
| Schematic Design | \$«insert fee amount» | «insert percentage»% |
| Design Development | \$«insert fee amount» | «insert percentage»% |
| Construction Documents | \$«insert fee amount» | «insert percentage»% |
| Bidding and Award | \$«insert fee amount» | «insert percentage»% |
| Construction | \$«insert fee amount» | «insert percentage»% |
| Closeout Deliverables | \$«insert fee amount» | 5% |
| Total Basic Fee | \$«insert fee amount» | 100% |

Any balance of the final 5 percent of the Basic Fee shall be paid by the Owner at Closeout as follows; one-half after review of all Punch-Lists by the CM and one-half after completion of all Punch-List items to the reasonable satisfaction of the Contracting Authority and the Owner and delivery of Project Record Submittals to the A/E.

2.3 Direct Personnel Expense.

2.3.1 Direct Personnel Expense for the CM’s employees and all Consultants for such hours of their time as are devoted to performing Basic Services to the Project shall be determined in accordance with the CM’s Staffing Plan. Direct Personnel Expense shall be evidenced by time records certified by the CM.

2.3.2 The CM shall use all reasonable means to minimize Direct Personnel Expense. In all events, the Owner shall pay the CM Direct Personnel Expense of \$«insert amount of Direct Personnel Expense», which shall not be exceeded without the prior written approval of the Contracting Authority and the Owner and an amendment to this Agreement.

2.4 Reimbursable Expenses.

2.4.1 For Reimbursable Expenses incurred by the CM and all Consultants, the Owner shall pay the CM up to \$«insert amount of Reimbursable Expenses», which shall not be exceeded without the prior written approval of the Contracting Authority and the Owner and an amendment to this Agreement. No CM or Consultant mark-up shall be permitted on Reimbursable Expenses. Reimbursable Expenses are subject to the following allocation:

| Description | NTE/LS* | Associated Amount |
|------------------------------------|----------|------------------------------|
| «insert description» | «NTE/LS» | \$«insert fee amount» |
| «insert description» | «NTE/LS» | \$«insert fee amount» |
| «insert description» | «NTE/LS» | \$«insert fee amount» |
| «insert description» | «NTE/LS» | \$«insert fee amount» |
| «insert description» | «NTE/LS» | \$«insert fee amount» |
| «insert description» | «NTE/LS» | \$«insert fee amount» |
| «insert description» | «NTE/LS» | \$«insert fee amount» |
| «insert description» | «NTE/LS» | \$«insert fee amount» |
| Total Reimbursable Expenses | | \$«insert fee amount» |

* NTE = Not to Exceed Amount / LS = Lump Sum

ARTICLE 3 - KEY PERSONNEL

3.1 The CM’s key personnel for the Project are:

- 3.1.1** «insert name», Project Manager;
- 3.1.2** «insert name», Lead Scheduling Engineer;
- 3.1.3** «insert name», Lead Estimator;
- 3.1.4** «insert name», General Superintendent.

Edit the above list as appropriate for the project.

3.2 The identities of the CM’s key personnel, and the extent of their participation in performing the CM’s services as identified above, shall not be altered without the Contracting Authority’s prior written consent.

3.3 The CM shall dismiss from the Project any individual employed by the CM or Consultant who the Contracting Authority finds, in its sole discretion, to be incompetent, guilty of misconduct, or detrimental to the Project.

ARTICLE 4 - CONSULTANTS

4.1 The CM’s Consultants for the Project are:

4.1.1 «insert discipline»:

«insert firm name»
«insert firm address»
«insert firm address»

«insert consultant contact name, title»
«insert consultant contact name, title»

4.1.2 «insert discipline»:

«insert firm name»
«insert firm address»
«insert firm address»

«insert consultant contact name, title»
«insert consultant contact name, title»

Edit the above list as appropriate for the project.

ARTICLE 5 - GENERAL PROVISIONS

5.1 Effectiveness.

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

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

5.1.3 Subject to **Section 5.1.1**, the Agreement shall become binding and effective upon execution by the Contracting Authority, Owner, and CM.

5.1.3.1 If the CM is a joint venture, (1) each individual joint venturer shall (a) sign the Agreement in its own name and (b) be a party to the Contract, and (2) the Contract shall be binding on and apply to all joint venturers jointly and severally.

5.1.3.2 If the CM is a limited liability company, which the Contracting Authority reasonably believes to be a special purpose or similar entity, the Contracting Authority may in its discretion require the limited liability company and each member of the limited liability company to (1) sign the Agreement in its own name and (2) be a party to the Contract. In that case, the Contract shall be binding on and apply to the limited liability company and to all of its members jointly and severally.

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

5.2 Representations.

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

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

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

5.2.4 The CM affirms to have read and understands Executive Order ~~2011-12K~~2019-12D and shall abide by those requirements in the performance of this Agreement. Notwithstanding any other terms of this Agreement, the State reserves the right to recover any funds paid for services the CM performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in this Agreement.

5.2.5 The CM affirms to have read and understands Executive Order 2022-02D regarding the prohibition of purchases from or investment in a Russian institution or company and shall abide by those requirements in the performance of this Contract. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid to the CM for purchases or investments in a Russian institution or company in violation of this paragraph. The provisions of this paragraph will expire when the applicable Executive Order is no longer effective.

5.2.6 During the performance of this Contract, if the CM changes the location(s) disclosed on the **Affirmation and Disclosure Form** (a page in its **Statement of Qualifications**), the CM must complete and submit a revised **Affirmation and Disclosure Form**.

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

ARTICLE 6 - ENUMERATION OF DOCUMENTS

6.1 This Agreement includes the following documents:

6.1.1 **CM Adviser Standard Terms and Conditions** attached as **Exhibit A**;

6.1.2 **CM Adviser Scope of Services** attached as **Exhibit B**;

6.1.3 **Minimum Stage Submission Requirements** attached as **Exhibit C**;

6.1.4 **Contracting Definitions** attached as **Exhibit D**; and

6.1.5 **CM Adviser Special Terms and Conditions** attached as **Exhibit E**.

The following Treasurer’s Certification is required on all Contracts for Projects by and for 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 this Agreement 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

Chief Financial Officer

Institutions of Higher Education may revise "State of Ohio" to "Owner" in the upper right block below.
 If the Project is locally administered, delete the "Owner's Concurrence" signature in the lower left block and the associated rows of the table below.

SIGNATURES

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

«INSERT CM'S NAME»

STATE OF OHIO

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

OWNER'S CONCURRENCE

by «insert Owner's name»

Signature

Printed Name

Title

~~*Purchase Order No.*~~

If the CM is a corporation, partnership, sole proprietorship, or limited liability company, use the table above. If the CM is a joint venture or special purpose entity, use the table below. Then delete the unused table and this note.

«INSERT CM'S NAME»

STATE OF OHIO

by «insert Joint Venturer/Member's name»

by «insert Contracting Authority's name»

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

by «insert Joint Venturer/Member's name»

OWNER'S CONCURRENCE
by «insert Owner's name»

Signature

Signature

Printed Name

Printed Name

Title

Title

Purchase Order No.

END OF DOCUMENT