This Agreement is made as of the date set forth below between the State of Ohio, acting by and through the College, 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 county» County |
|  |  |  |
| **Owner (“College”):** |  | **«insert name»** |
| Owner’s Representative: |  | «insert name» |
| Address: |  | «insert street address»  «insert city, state zip code» |
|  |  |  |
| **Contracting Authority:** |  | The College above |
| Project Manager: |  | «insert name» |
|  |  |  |
| **Construction Manager (“CM”):** |  | **«insert name»** |
| CM’s Principal Contact: |  | «insert name» |
| Address: |  | «insert street address»  «insert city, state zip code» |
|  |  |  |
| **Architect/Engineer (“A/E”):** |  | **«insert name»** |
| A/E’s Principal Contact: |  | «insert name» |
| Address: |  | «insert street address»  «insert city, state zip code» |

# - Scope of Work; Construction Budget

## The CM shall perform and provide all of the Work described in the Contract.

## The Total Compensation Budget is $«insert Total Compensation Budget amount».

## The Construction Budget is $«insert Construction Budget amount».

# - Preconstruction Stage Compensation

## The Preconstruction Stage Compensation is **$«insert Preconstruction Stage Compensation amount»**, which is the sum of the **(1)** Preconstruction Fee, **(2)** Preconstruction Stage Personnel Costs, and **(3)** Preconstruction Stage Reimbursable Expenses. The College shall pay the Preconstruction Stage Compensation to the CM in exchange for the CM’s proper, timely, and complete performance of the Preconstruction Services.

## Preconstruction Fee. The CM’s Preconstruction Fee is $«insert fee amount» and is subject to the following allocation:

|  |  |  |
| --- | --- | --- |
| **Project Stage/Task** | **Associated Fee** | **Portion of Total Fee** |
| Program Verification | $«insert fee amount» | «insert percentage»% |
| Schematic Design | $«insert fee amount» | «insert percentage»% |
| Design Development | $«insert fee amount» | «insert percentage»% |
| Construction Documents | $«insert fee amount» | «insert percentage»% |
| GMP Proposal and Amendment | $«insert fee amount» | «insert percentage»% |
| Total Preconstruction Fee | $«insert fee amount» | 100% |

## Preconstruction Stage Personnel Costs. The CM’s Preconstruction Stage Personnel Costs shall not exceed $«insert Preconstruction Stage Personnel Costs cap», and shall be paid on an hourly basis according to the rates set forth in the **Personnel Costs Rate Schedule** attached as **Exhibit A**.

## Preconstruction Stage Reimbursable Expenses. The CM’s Preconstruction Stage Reimbursable Expenses shall not exceed $«insert Preconstruction Stage Reimbursable Expenses cap», and shall be paid according to the **Preconstruction Stage Reimbursable Expenses Schedule** attached as **Exhibit B**.

# - Construction Stage Compensation

## As described in the General Conditions, the parties will establish the Contract Sum, Contract Times, Milestones, and other commercial terms relevant to the Construction Stage through at least one **GMP Amendment**, the form of which is attached as **Exhibit D**.

## The CM shall propose the amount of the CM’s Construction Stage Personnel Costs portion of the Cost of the Work as a part of the proposed GMP Amendment; provided, however, that the CM’s Construction Stage Personnel Costs shall not exceed $«insert CM’s Construction Stage Personnel Costs cap».

### The CM’s Construction Stage Personnel Costs shall be based upon the rates set forth in the **Personnel Costs Rate Schedule** attached as **Exhibit A**.

## The CM shall propose the amount of the General Conditions Costs portion of the Cost of the Work as a part of the proposed GMP Amendment; provided, however, that the General Conditions Costs shall not exceed $«insert General Conditions Costs cap».

### A detailed description of the items of Work included in the General Conditions Costs portion of the Cost of the Work is set forth in the **General Conditions Costs Description** attached as **Exhibit C**.

## The CM shall propose the amount of the CM’s Contingency as a part of the proposed GMP Amendment; provided, however, that the CM’s Contingency shall not exceed an amount equal to «insert CM Contingency percentage» percent of the Cost of the Work identified by the CM in the proposed GMP Amendment.

*The standard Section 3.4.1 is immediately below and shall be used in this Agreement unless the College and CM agree otherwise, in which case it should be revised to the agreed percentage.*

### Shared-Savings Change Order. Unless otherwise provided in the GMP Amendment, no more than 30 days before final payment to the CM, the parties shall execute a Change Order to reduce the Contract Sum by an amount equal to **(1)** 100 percent of the funds then remaining in the CM’s Contingency plus **(2)** an associated reduction of the CM’s Fee in an amount equal to «insert CM Fee percentage from Section 3.5 of this Agreement» percent of the amount by which the Contract Sum is reduced on account of return of the CM’s Contingency.

## The CM shall propose the amount of the CM’s Fee as a part of the proposed GMP Amendment; provided, however, that the CM’s Fee shall not exceed an amount equal to «insert CM Fee percentage» percent of the Cost of the Work plus the CM’s Contingency, both as identified by the CM in the proposed GMP Amendment.

## If the parties cannot agree on a Contract Sum, the College may terminate the Contract for convenience. If the College thereafter decides to pursue the Project using the Multiple-Prime Contract with Construction Manager Adviser project-delivery method and to enter into a related construction-management agreement with the CM, the CM’s Fee under that contract shall not exceed «insert CM Adviser Fee percentage» percent. The College is not obligated to offer or enter into a Construction Manager Adviser contract with the CM for the Project.

# - Key Personnel

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

### «insert name», Project Manager;

### «insert name», Lead Scheduling Engineer;

### «insert name», Lead Estimator;

### «insert name», General Superintendent.

*Edit the above list as appropriate for the Project.*

## The CM’s key personnel are authorized to act on the CM’s behalf with respect to the Project and all matters concerning the Project.

# - Consultants

## The CM’s Consultants for the Project are:

### «insert discipline»:

«insert firm name»

«insert firm address»

«insert firm address»

«insert consultant contact name, title»

«insert consultant contact name, title»

«insert consultant contact name, title»

### «insert discipline»:

«insert firm name»

«insert firm address»

«insert firm address»

«insert consultant contact name, title»

«insert consultant contact name, title»

«insert consultant contact name, title»

*Edit the above list as appropriate for the Project.*

## The CM may provide a portion of the Work through one or more Consultants, provided, however, the CM will remain responsible for all duties and obligations of the CM under the Contract.

### If the CM engages a Design-Assist Firm, that entity **(1)** will be considered a Consultant under the Contract during the Preconstruction Stage and **(2)** before that entity performs any Work during the Construction Stage, it shall be subject to all Applicable Law and Contract provisions concerning the prequalification, bidding, selection, and engagement of Subcontractors and shall enter into a Subcontract with the CM.

## By appropriate written agreement, the CM shall require each Consultant, to the extent of the Consultant’s portion of the Work, to be bound to the CM by the terms of the Contract, and to assume toward the CM all of the obligations and responsibilities which the CM assumes toward the College.

### The CM shall not retain any Consultant on terms inconsistent with the Contract.

### All agreements between the CM and a Consultant shall identify the College as the agreement’s intended third-party beneficiary.

### The College’s receipt and approval of a copy of the agreement between the CM and a Consultant is a condition precedent to the College’s obligation to pay the CM on account of the Consultant’s services.

## The College has no obligation to pay or see to the payment of money to any Consultant except as otherwise required under Applicable Law.

## The CM shall obtain the College’s written approval before engaging any Consultant not named above. The CM shall not employ any Consultant against whom the College has a reasonable objection. The College’s approval or disapproval of any Consultant, however, will not relieve the CM of the CM’s full responsibility for the performance of the Work.

## The CM shall not remove any Consultant from the Project or reduce the extent of any Consultant’s participation in the Work without the College’s prior written consent. The CM shall not permit any Consultant to replace any previously identified team member except with the College’s prior written consent unless the Consultant ceases to employ that person. On notice from the College, the CM shall immediately and permanently remove from the Project any Consultant or person under a Consultant’s control whose performance is not satisfactory to the College.

## The College may communicate with any Consultant either through the CM or directly with the Consultant, but the College may not modify the contract between the CM and any Consultant.

## The CM hereby assigns to the College each Consultant’s agreement provided that the assignment is effective only after the College terminates the Contract and only for those agreements which the College accepts by notifying the Consultant and CM in writing. The College may re-assign accepted agreements.

# - General Provisions

## Escalation of Personnel Cost Rates.

### The CM may adjust the rates set forth in the **Personnel Costs Rate Schedule** attached as **Exhibit A** in accordance with the CM’s normal salary-review practices, but **(1)** not before the date one year after the date of the Agreement, **(2)** not more than once in any one-year period thereafter, and **(3)** not in excess of five percent per annual increase.

### No rate increase will **(1)**apply to any Work performed before the College receives written notice of the increase from the CM, or **(2)**result in an increase in a previously established fixed or not-to-exceed fee such as under **(a)** **Sections 2.3** and **3.2** of this Agreement, **(b)** a GMP Amendment, or **(c)** as the parties may agree upon from time to time in connection with all or any part of the Work.

## Effectiveness.

### 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 College’s appropriation not already encumbered to pay existing obligations.

### Subject to **Section 6.2.1**, the Contract shall become binding and effective upon execution by the College and CM.

#### 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, Performance Bond, and Payment Bond shall be binding on and apply to all joint venturers jointly and severally.

#### 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, the Performance Bond, and the Payment Bond shall be binding on and apply to the limited liability company and to all of its members jointly and severally.

### 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.

## Representations.

### 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 Contract is void, and the CM shall immediately repay to the College any funds paid under this Contract.

### 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.

### 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.

### The CM affirms to have read and understands Executive Order 2019-12D and shall abide by those requirements in the performance of this Contract. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the 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 Contract.

### 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.

### 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**.

### 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 Contract.

# - Enumeration of Documents

## The Contract Documents constitute the substance of the Contract, and include this Agreement, the GMP Documents, final Drawings, final Specifications, Addenda if any, **Contracting Definitions**, **General Conditions**, Project Manual, and Modifications if any.

## This Agreement includes the following documents:

### **Personnel Costs Rate Schedule** attached as **Exhibit A**;

### **Preconstruction Stage Reimbursable Expenses Schedule** attached as **Exhibit B**;

### **General Conditions Costs Description** attached as **Exhibit C**;

### **GMP Amendment** form attached as **Exhibit D**; and

### **Supplementary Conditions** attached as **Exhibit E** *(if applicable)*.

**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 |

**SIGNATURES**

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

|  |  |  |
| --- | --- | --- |
| **«INSERT CM’S NAME»** |  | **OWNER** |
|  |  |  |
|  |  |  |
| *Signature* |  | *Signature* |
|  |  |  |
| *Printed Name* |  | *Printed Name* |
|  |  |  |
| *Title* |  | *Title* |
|  |  |  |
|  |  | *Date* |

*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»** |  | **OWNER** |
| by «insert Joint Venturer/Member’s name» |  |  |
|  |  |  |
|  |  |  |
| *Signature* |  | *Signature* |
|  |  |  |
| *Printed Name* |  | *Printed Name* |
|  |  |  |
| *Title* |  | *Title* |
|  |  |  |
| by «insert Joint Venturer/Member’s name» |  |  |
|  |  |
|  |  | *Date* |
|  |  |  |
| *Signature* |  |  |
|  |  |  |
| *Printed Name* |  |  |
|  |  |  |
| *Title* |  |  |

**END OF DOCUMENT**