This Agreement is made as of the date set forth below between the State of Ohio, acting by and through the University, and the Design-Builder 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 (University):** |  | **«insert name»** |
| Owner’s Representative: |  | «insert name» |
| Address: |  | «insert street address»«insert city, state zip code» |
|  |  |  |
| **Contracting Authority:** |  | The University above |
| Project Manager: |  | «insert name» |
|  |  |  |
| **Design-Builder (“DB”):** |  | **«insert name»** |
| DB’s Principal Contact: |  | «insert name» |
| Address: |  | «insert street address»«insert city, state zip code» |

# - Scope of Work; Budget; SCHEDULE; EDGE Commitment

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

### The portion of the Work to be performed by the AOR is described in the **AOR Scope of Services Description** attached as **Exhibit A**.

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

## The **Preliminary Project Schedule** is attached as **Exhibit B**.

## The DB shall contract with EDGE-certified Business(es) for not less than «insert DB’s EDGE total commitment» percent of the DB’s total compensation excluding the DB’s Contingency (Preconstruction Stage Compensation plus the Contract Sum minus the DB’s Contingency).

*If the DB was awarded points for exceeding the published EDGE participation goal during the RFQ phase of the Best Value Selection process, include the following Section 1.5, otherwise delete it.*

## In addition to the EDGE commitment in **Section 1.4**, the DB shall contract with EDGE-certified Business(es) for not less than «insert DB’s EDGE Services commitment» percent of the DB’s Services compensation (Preconstruction Stage Compensation plus the Contract Sum minus Subcontracted Work, Self-performed Work, and the DB’s Contingency).

# - 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 Design-Services Fee, **(3)** Preconstruction Stage Personnel Costs, and **(4)** Preconstruction Stage Reimbursable Expenses. The University shall pay the Preconstruction Stage Compensation to the DB in exchange for the DB’s proper, timely, and complete performance of the Preconstruction Services.

## Preconstruction Fee. The DB’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 Design-Services Fee. The DB’s Preconstruction Stage Design-Services Fee shall not exceed $«insert fee amount», and shall be paid on an hourly basis according to the rates set forth in the **AOR’s Fee Schedule for Personnel** attached as **Exhibit C**, 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 Design Services Fee | $«insert fee amount» | 100% |

## Preconstruction Stage Personnel Costs. The DB’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 D**.

## Preconstruction Stage Reimbursable Expenses. The DB’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 E**.

# - 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 G**.

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

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

## The DB 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 F**.

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

*The standard Section 3.4.1 is immediately below and shall be used in this Agreement unless the University and DB 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 DB, 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 DB’s Contingency plus **(2)** an associated reduction of the DB’s Fee in an amount equal to «insert DB Fee percentage from Section 3.6 of this Agreement» percent of the amount by which the Contract Sum is reduced on account of return of the DB’s Contingency.

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

## The DB shall propose the amount of the DB’s Fee as a part of the proposed GMP Amendment; provided, however, that the DB’s Fee shall not exceed an amount equal to «insert DB Fee percentage» percent of the sum of the Cost of the Work plus DB’s Contingency plus Construction Stage Design-Services Fee, all as identified by the DB in the proposed GMP Amendment.

# - Key Personnel

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

# - Consultants

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

### Architect/Engineer of Record:

«insert firm name»

«insert firm address»

«insert firm address»

«insert consultant contact name, title»

### «insert discipline»:

«insert firm name»

«insert firm address»

«insert firm address»

«insert consultant contact name, title»

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

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

### If the DB 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 prequalification, selection, and engagement, and shall enter into a Subcontract with the DB.

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

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

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

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

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

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

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

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

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

# - General Provisions

## Escalation of Personnel Rates.

### The DB may adjust the rates set forth in **(1)** the **AOR’s Fee Schedule for Personnel** attached as **Exhibit B** in accordance with the AOR’s normal salary-review practices and **(2)** the **Personnel Costs Rate Schedule** attached as **Exhibit D** in accordance with the DB’s normal salary-review practices, but for both:

##### not before the date 1 year after the date of the Agreement,

##### not more than once in any 1-year period thereafter, and

##### not in excess of 5 percent per annual increase.

### No rate increase will **(1)** apply to any Work performed before the University receives written notice of the increase from the DB, or **(2)** result in an increase in a previously established fixed or not-to-exceed fee such as under **(a)** **Sections 2.3**, **2.4**, **3.2**, and **3.5** of this Agreement, **(b)** the 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 DB 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 University’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 University and the DB.

#### If the DB 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 DB 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 DB 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 DB shall immediately repay to the University any funds paid under this Contract.

### The DB hereby certifies that neither the DB nor any of the DB’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 DB, 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 DB 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 DB 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 DB 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 DB 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 DB changes the location(s) disclosed on the **Affirmation and Disclosure Form** (a page in its **Statement of Qualifications**), the DB must complete and submit a revised **Affirmation and Disclosure Form**.

### Pursuant to ORC Section 9.76(B), the DB 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, but are not limited to, this Agreement (including all of its exhibits), the GMP Documents, final Drawings, final Specifications, Addenda if any, **Contracting Definitions**, **General Conditions**, **Wage Rate Requirements**, Project Manual, and Modifications if any.

## This Agreement includes the following documents:

### **Supplementary Scope Statement (AOR)** attached as **Exhibit A**;

### **Preliminary Project Schedule** attached as **Exhibit B**;

### **AOR’s Fee Schedule for Personnel** attached as **Exhibit C**;

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

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

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

### **GMP Amendment** form attached as **Exhibit G**;

### **Minimum Stage Submission Requirements attached as Exhibit H;** and

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

**SIGNATURES**

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

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

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

|  |  |  |
| --- | --- | --- |
| **«INSERT DB’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**