Document 00 52 23 - Agreement (CM At Risk)
State of Ohio Standard Requirements for Public Facility Construction

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

Project Number:	**«insert number»**
Project Name:	**«insert name»**
Site Address:	«insert street address» «insert city, state zip code»
Owner:	**«insert name»**
Owner's Representative:	«insert name»
Address:	«insert street address» «insert city, state zip code»
Contracting Authority:	**Ohio Department of Administrative Services** **State Architect's Office**
Project Manager:	«insert name»
Address:	4200 Surface Road Columbus, OH 43228-1395
Construction Manager ("CM"):	**«insert name»**
CM's Principal Contact:	«insert name»
Address:	«insert street address» «insert city, state zip code»
CM's Federal Tax ID Number:	«insert number»
Architect/Engineer ("A/E"):	**«insert name»**
A/E's Principal Contact:	«insert name»
Address:	«insert street address» «insert city, state zip code»

Article 1 Scope of Work

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

Article 2 Preconstruction Stage Compensation

2.1 In exchange for the CM's proper, timely, and complete performance of the Preconstruction Stage Services, the Owner shall pay the CM the sum of **(1)** the Preconstruction Fee, **(2)** Personnel Costs, and **(3)** Reimbursable Expenses.

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

Phase/Task	Associated Fee	Portion of Total Fee
Organizational Meeting Task	$«insert fee amount»	«insert percentage»%
Program Stage	$«insert fee amount»	«insert percentage»%
Schematic Design Stage	$«insert fee amount»	«insert percentage»%
Design Development Stage	$«insert fee amount»	«insert percentage»%
GMP Proposal Stage	$«insert fee amount»	«insert percentage»%
Construction Documents Stage	$«insert fee amount»	«insert percentage»%
Total Preconstruction Fee	$«insert fee amount»	100%

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2.3 Personnel Costs. The CM's Personnel Costs shall not exceed $«insert fee amount», and shall be paid on an hourly basis according to the rates set forth in the **Fee Schedule** attached as **Exhibit A**.

2.4 Reimbursable Expenses. The CM's Reimbursable Expenses shall not exceed $«insert fee amount», and shall be paid according to the **Preconstruction Services Reimbursable Expenses Schedule** attached as **Exhibit B**.

Article 3 Components of Construction Stage Compensation

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

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

3.3 The CM shall propose the amount of the General Conditions portion of the Cost of the Work as a part of the proposed GMP Amendment; provided, however, that the General Conditions shall not exceed an amount equal to **«insert General Conditions percentage»%** of the Cost of the Work identified by the CM in the proposed GMP Amendment.

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

3.4 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»%** of the Cost of the Work identified by the CM in the proposed GMP Amendment.

3.4.1 **Shared-Savings Change Order.** Before final payment to the CM, the parties shall execute a Change Order to reduce the Contract Sum by an amount equal to **(1)** **«insert Owner's percentage share of savings – if no sharing should be 100%»** of the funds then remaining in the CM's Contingency plus **(2)** an associated reduction of the CM's Fee.

3.5 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»%** of the sum of the Cost of the Work plus the CM's Contingency identified by the CM in the proposed GMP Amendment.

3.6 If the parties cannot agree on a Contract Sum, the Contracting Authority may terminate the Contract for Convenience. If the Contracting Authority thereafter decides to pursue the Project using the construction-manager/agent project-delivery system and to enter into a related construction-management agreement with the CM, the CM's fee under that contract shall not exceed **«insert CMa fee = (CM Fee percentage x estimated Cost of Work) – At-Risk Fee from CM's proposal»**. The Contracting Authority is not obligated to offer or enter into a construction-manager/agent contract with the CM for the Project.

Article 4 CM's Key Personnel

4.1 The Key Personnel for the Project are:

4.1.1 «insert name», Project Manager;

4.1.2 «insert name», Lead Scheduling Engineer;

4.1.3 «insert name», Lead Estimator;

4.1.4 «insert name», General Superintendent.

«add additional lines as necessary»

Article 5 CM's Consultants

5.1 The CM's Consultants are:

5.1.1 «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»

5.1.2 «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»

«add as necessary»

5.2 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.

5.2.1 If the CM engages a "design-assist firm" as described under O.R.C. Section 153.50, that entity **(1)** will be considered a Consultant under the Contract during preconstruction 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.

5.3 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 Contracting Authority and the Owner.

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

5.3.2 All agreements between the CM and a Consultant shall identify the Contracting Authority and the Owner as the agreement's intended third-party beneficiaries.

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5.3.3 The Contracting Authority's receipt and approval of a copy of the agreement between the CM and a Consultant is a condition precedent to the Owner's obligation to pay the CM on account of the Consultant's services.

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

5.5 The CM shall obtain the Contracting Authority's written approval before engaging any Consultant not named above. The CM shall not employ any Consultant against whom the Contracting Authority has a reasonable objection. The Contracting Authority'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.

5.6 The CM shall not remove any Consultant from the Project or reduce the extent of any Consultant's participation in the Work without the Contracting Authority's prior written consent. The CM shall not permit any Consultant to replace any previously identified team member except with the Contracting Authority's prior written consent unless the Consultant ceases to employ that person. On notice from the Contracting Authority, 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 Contracting Authority.

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

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

Article 6 General Provisions

6.1 Effectiveness

6.1.1 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.

6.1.2 The Contract shall become binding and effective upon execution by the Contracting Authority.

6.1.3 This Agreement has been 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.

6.2 Representations

6.2.1 The CM represents and warrants that it is not subject to an unresolved finding for recovery under Ohio Revised Code ("O.R.C.") Section 9.24. If this representation and warranty is found to be false, the Contract is void, and the CM shall immediately repay to the Owner any funds paid under this Contract.

6.2.2 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 O.R.C. Section 3517.13.

6.2.3 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.

6.2.4 The CM affirms to have read and understands Executive Order 2011-12K 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.

6.2.5 The CM represents and warrants that it has not provided any material assistance, as that term is defined in O.R.C. Section 2909.33(C), to an organization that is identified by, and included on, the United States Department of State Terrorist Exclusion List and that it has truthfully answered "no" to every question on the "Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization ("DMA")." The CM further represents and warrants that it has either (1) registered with the Ohio Business Gateway ("OBG") to file for DMA pre-certification or (2) has provided or shall provide its DMA to the Contracting Authority prior to execution of this Agreement. If these representations and warranties are found to be false, the Contract is void and the CM shall immediately repay to the Owner any funds paid under this Contract.

Article 7 Enumeration of Documents

7.1 This Agreement includes the following documents:

7.1.1 **Fee Schedule** attached as **Exhibit A**;

7.1.2 **Preconstruction Services Reimbursable Expenses Schedule** attached as **Exhibit B**;

7.1.3 **General Conditions Description** attached as **Exhibit C; and**

7.1.4 **GMP Amendment** form attached as **Exhibit D.**

STATE OF OHIO
DEPT. OF ADMINISTRATIVE SERVICES

_____
Signature

_____
Printed Name

_____
Title

«INSERT CM'S NAME»

_____
Signature

_____
Printed Name

_____
Title

OWNER'S CONCURRENCE

«INSERT OWNER'S NAME»

_____
Signature

_____
Printed Name

_____

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Title

END OF DOCUMENT

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