

# Document 00 52 23 - Agreement Form (CM at Risk Project)

## State of Ohio Standard Requirements 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:** DNR-230070  
**Project Name:** FY23-24 Statewide Cabins Improvements  
**Site Address:** Various,  
 Various, Ohio Various  
 County

**Owner:** Ohio Department of Natural Resources  
**Owner's Representative:** Samantha Cothorn  
**Address:** 2045 Morse Road  
 Columbus, Ohio 43229

**Contracting Authority:** Ohio Facilities Construction Commission  
**Project Manager:** Michael Bielenberg  
**Address:** 30 West Spring Street, 4th Floor  
 Columbus, Ohio 43215

**Construction Manager ("CM"):** 2K General Company  
**CM's Principal Contact:** Clayton Morgan  
**Address:** 19 Gruber Street, Building B,  
 Delaware, Ohio 43015

**Architect/Engineer ("A/E"):** Schorr Architects, Inc.  
**A/E's Principal Contact:** Sara Herridge  
**Address:** 230 Bradenton Avenue  
 Dublin, Ohio 43017

### Article 1 - SCOPE OF WORK; CONSTRUCTION BUDGET; EDGE COMMITMENT

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

**1.2** The Total Compensation Budget is \$15,824,879.31

**1.3** The Construction Budget (Cost of Work) is \$15,057,082.08

**1.4** The CM shall contract with EDGE-certified Business(es) for not less than 5 percent of the CM's total compensation excluding the CM's Contingency (Preconstruction Stage Compensation plus the Contract Sum minus the CM's Contingency).

### Article 2 - PRECONSTRUCTION STAGE COMPENSATION

**2.1** The Preconstruction Stage Compensation is **\$82,700.00**, which is the sum of the **(1)** Preconstruction Fee, **(2)** Preconstruction Stage Personnel Costs, and **(3)** Preconstruction Stage Reimbursable Expenses. The Owner shall pay the Preconstruction Stage Compensation to the CM in exchange for the CM's proper, timely, and complete performance of the Preconstruction Services.

**2.2** Preconstruction Fee. The CM's Preconstruction Fee is \$0.00 and is subject to the following allocation:

Project Stage/Task	Associated Fee	Portion of Total Fee
Program Verification	\$0.00	0%
Schematic Design	\$0.00	0%
Design Development	\$0.00	0%
Construction Documents	\$0.00	0%

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Project Stage/Task	Associated Fee	Portion of Total Fee
GMP Proposal and Amendment	\$0.00	0%%
Total Preconstruction Fee	\$0.00	100%

**2.3 Preconstruction Stage Personnel Costs.** The CM's Preconstruction Stage Personnel Costs shall not exceed **\$81,700.00**, and shall be paid on an hourly basis according to the rates set forth in the **Personnel Costs Rate Schedule** attached as **Exhibit A**.

**2.4 Preconstruction Stage Reimbursable Expenses.** The CM's Preconstruction Stage Reimbursable Expenses shall not exceed **\$1,000.00**, and shall be paid according to the **Preconstruction Stage Reimbursable Expenses Schedule** attached as **Exhibit B**.

### Article 3 - CONSTRUCTION STAGE COMPENSATION

**3.1** 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**.

**3.2** 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 **\$823,520.00**.

**3.2.1** 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**.

**3.3** 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 **\$204,620.00**.

**3.3.1** 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**.

**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 **2.00** percent of the Cost of the Work identified by the CM in the proposed GMP Amendment.

**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 **2.50** percent of the Cost of the Work plus the CM's Contingency, both as identified by the CM in the proposed GMP Amendment.

### Article 4 - KEY PERSONNEL

**4.1** The CM's key personnel for the Project are:

**4.1.1** Kirk Swinehart, Project Manager;

**4.1.2** Bill Morgan, Project Executive;

**4.1.3** Isaiah Walls, Project Engineer;

**4.1.4** Chris Miggo, Project Estimator;

**4.1.5** Kris Koons, Safety Lead;

**4.1.6** Brad Garee, Site Superintendent;

**4.1.7** Dave Brownlee, Site Superintendent;

**4.1.8** William Piar, Site Superintendent;

**4.1.9** Jim McClary, Site Superintendent;

**4.1.10** Tim Morris, Site Superintendent.

**4.2** 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.

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## Article 5 - CONSULTANTS

**5.1** The CM's Consultants for the Project are:

**5.1.1** No consultants until GMP Phase:

**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, 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.

**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 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 Owner as the agreement's intended third-party beneficiaries.

**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** Escalation of Personnel Cost Rates.

**6.1.1** 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.

**6.1.2** No rate increase will **(1)** apply to any Work performed before the Owner and Contracting Authority receive 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** 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.

**6.2** Effectiveness.

**6.2.1** 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.

**6.2.2** Subject to **Section 6.2.1**, the Contract shall become binding and effective upon execution by the Contracting Authority, the Owner, and the CM.

**6.2.3** 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.

**6.2.3.1** 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.

**6.2.4** 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.

### **6.3 Representations.**

**6.3.1** 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 Contract is void, and the CM shall immediately repay to the Owner any funds paid under this Contract.

**6.3.2** 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.

**6.3.3** 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.

**6.3.4** 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.

**6.3.5** 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.

**6.3.6** 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**.

**6.3.7** 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 Contract.

## **Article 7 - ENUMERATION OF DOCUMENTS**

**7.1** 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, Wage Rate Requirements, Project Manual, and Modifications** if any.

**7.2** This Agreement includes the following documents:

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

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

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

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

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

## FY23-24 Statewide Cabins Improvements

## SIGNATURES

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

**2K General Company**

STATE OF OHIO

- DocuSigned by:

Clayton Morgan

3/10/2023

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Clayton Morgan

Signature

*Signature*

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Printed Name

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*Printed Name*

CFO

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*Title*

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*Title*

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*Date*

### OWNER'S CONCURRENCE

by Ohio Department of Natural Resources

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*Signature*

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*Printed Name*

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*Title*

**END OF DOCUMENT**