

# Architect/Engineer Agreement Form

## State of Ohio Professional Services Agreements for Public Facility Construction

### Ohio Department of Natural Resources – Engineering Track

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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 Architect/Engineer in connection with the Project.

<b>Project Number:</b>	<b>DNR-230066</b>
<b>Project Name:</b>	<b>Statewide Dam Rehabilitation FY23/24</b>
<b>Site Locations:</b>	
Site 1:	DNR-230073 Kirkersville Feeder Canal, Licking County
Site 2:	DNR-230077 Broken Aro Slurry Pond No. 1 Dam, Coshocton County
<b>Owner's Representative Site 1:</b>	<b>James Hilovsky</b>
<b>Owner's Representative Site 2:</b>	<b>Bart Ridgill</b>
<b>Address:</b>	2045 Morse Road, E-3 Columbus, OH 43229
<b>Contracting Authority:</b>	<b>Ohio Department of Natural Resources, Division of Engineering</b>
<b>Project Manager Site 1:</b>	<b>James Hilovsky</b>
<b>Project Manager Site 2:</b>	<b>Bart Ridgill</b>
<b>Address:</b>	2045 Morse Road, E-3 Columbus, OH 43229
<b>Architect/Engineer ("A/E"):</b>	<b>S&amp;ME, Inc.</b>
A/E's Principal Contact:	Michael G. Rowland
Address:	6190 Enterprise Court Dublin, OH 43016

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

**1.1** The A/E shall perform and provide all the Services described in the Agreement.

**1.1.1** The project delivery method for this Project shall be General Contractor.

**1.1.2** During the Construction Stage, the A/E and appropriate Consultants shall be present at the Site not less than 40 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:

DNR-230073 Kirkersville Feeder Canal: \$1,250,000.00

DNR-230077 Broken Aro Slurry Pond No. 1 Dam: \$1,000,000.00

**1.3** The A/E shall contract with EDGE-certified Business Enterprise(s) for not less than 15 percent of the A/E's total compensation.

## ARTICLE 2 - COMPENSATION

**2.1** The total compensation for the A/E's Services is **\$366,735.00**, which includes the sum of **(1)** the Basic Fee, **(2)** Additional Services Fees, and **(3)** Reimbursable Expenses. The Owner shall pay the total compensation amount to the A/E in exchange for the A/E's proper, timely, and complete performance of the Services.

**2.2** Basic Fee.

**2.2.1** For Basic Services provided by the A/E and all Consultants in accordance with the **A/E Scope of Services** attached as **Exhibit B**, the Owner shall pay the A/E the Basic Fee of **\$243,797.00**, which shall not be exceeded without

the prior written approval of the Contracting Authority and 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
<b>DNR-230073 Kirkersville Feeder Canal</b>		
Study and Report Verification	\$49,347.00	20.2%
Preliminary Design Stage	\$26,545.00	10.9%
50% Design Stage	\$34,833.00	14.3%
Combined 90% & 100% Documents	\$15,590.00	6.4%
Bidding and Award	\$9,004.00	3.7%
Construction	\$24,727.00	10.1%
Closeout Deliverables	\$6,394.00	2.6%
<b>DNR-230077 Broken Aro Slurry Pond No. 1 Dam</b>		
Study and Report Verification	\$56,437.00	23.1%
Preliminary Design Stage	\$20,920.00	8.6%
<b>Total Basic Fee</b>	<b>\$243,797.00</b>	<b>100%</b>

### 2.3 Additional Services Fees.

**2.3.1** For Additional Services provided by the A/E and all Consultants, the Owner shall pay the A/E Additional Services Fees of up to **\$120,938.00**, which shall not be exceeded without the prior written approval of the Contracting Authority and Owner, and an amendment to this Agreement. For Additional Services performed by a Consultant, Additional Services Fees shall be based on the Consultant's associated invoices to the A/E and may include an A/E mark-up of 0 percent. Additional Services Fees are subject to the following allocation:

Description of Additional Services	NTE/LS*	Associated Fee
<b>DNR-230073 Kirkersville Feeder Canal</b>		
Bloody Run Conditional Survey	LS	\$10,278.00
Bloody Run Repair Alternatives	LS	\$18,020.00
Topographic Mapping - Bloody Run Weir	LS	\$10,024.00
Topographic Mapping - Canal south of I-70	LS	\$17,224.00
Wetland Delineation	LS	\$8,905.00
Environmental Permitting	NTE	\$18,770.00
Construction Testing	NTE	\$5,000.00
<b>DNR-230066 Broken Aro Slurry Pond No. 1 Dam</b>		
Topographic Survey and Bathymetric Survey	NTE	\$14,892.00
Natural Resources Assessment - Surface Waters	NTE	\$17,825.00
<b>Total Additional Services Fees</b>		<b>\$120,938.00</b>

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

### 2.4 Reimbursable Expenses.

**2.4.1** For Reimbursable Expenses incurred by the A/E and all Consultants, the Owner shall pay the A/E up to **\$2,000.00**, which shall not be exceeded without the prior written approval of the Contracting Authority and Owner, and an amendment to this Agreement. No A/E or Consultant mark-up shall be permitted on Reimbursable Expenses. Reimbursable Expenses are subject to the following allocation:

Description	NTE/LS*	Associated Amount
<b>DNR-230073 Kirkersville Feeder Canal</b>		
Permits	NTE	\$2,000.00
<b>Total Reimbursable Expenses</b>		<b>\$2,000.00</b>

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

### ARTICLE 3 - KEY PERSONNEL

**3.1** The A/E's key personnel for the Project are:

- 3.1.1** Michael Rowland, P.E., Senior Management Lead;
- 3.1.2** Stephen Loskota, P.E., Project Management Lead;
- 3.1.3** Stephen Loskota, P.E., Project Design Lead – Civil Engineering.
- 3.1.4** Daniel Tobergte, P.E., Geotechnical Engineering
- 3.1.5** Joshua Bell, P.E. Hydrologic & Hydraulic Engineering
- 3.1.6** Stephen Loskota, Mechanical Engineering
- 3.1.7** David Swoap, P.E. Structural Engineering
- 3.1.8** Stephen Loskota, P.E., Construction Contract Administrator.

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

**3.3** The A/E shall dismiss from the Project any individual employed by the A/E 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 A/E's Consultants for the Project are:

**4.1.1** Construction Testing:

DHDC  
2390 Advanced Business Center Drive  
Columbus, OH 43228

Michael Sminchak, Senior Project Manager

**4.1.1** Surveying:

Smart Services  
88 W. Church Street  
Newark, OH 43055

Brian Smart, Vice President

**4.1.1** Environmental Services:

Coldwater Consulting, LLC  
46 West Columbus Street, PO Box 146  
Galena, OH43021

Denise Marmer, Senior Environmental Specialist

### ARTICLE 5 - GENERAL PROVISIONS

**5.1** Effectiveness.

**5.1.1** It is expressly understood by the A/E 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 A/E 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, A/E, and Ohio Attorney General.

**5.1.3.1** If the A/E 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 A/E 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 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 A/E 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 A/E shall immediately repay to the Owner any funds paid under this Agreement.

**5.2.2** The A/E hereby certifies that neither the A/E nor any of the A/E'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 A/E, 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 A/E affirms to have read and understands Executive Order 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 A/E 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 A/E 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 Agreement. Notwithstanding any other terms of this Agreement, the State reserves the right to recover any funds paid to the A/E 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 Agreement, if the A/E changes the location(s) disclosed on the **Affirmation and Disclosure Form** (a page in its **Statement of Qualifications**), the A/E must complete and submit a revised **Affirmation and Disclosure Form**.

**5.2.7** Pursuant to ORC Section 9.76(B), the A/E 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 A/E Standard Terms and Conditions** attached as **Exhibit A**;

**6.1.2 A/E 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**;

**6.1.5 A/E Special Terms and Conditions** attached as **Exhibit E**; and

**6.1.6 Project Description** attached as **Exhibit F**.

**SIGNATURES**

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

**S&ME, Inc.****STATE OF OHIO**  
**Ohio Department of Natural Resources**

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*Signature*

Christopher Yohe

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*Printed Name*

Vice President

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*Title*

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*Signature*

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*Printed Name*

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*Title*

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*Date***OHIO ATTORNEY GENERAL**

Approval as to Form

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*Signature*

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*Printed Name*

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*Title*

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*Date***END OF DOCUMENT**