

Document 00 52 23 - Agreement Form (K-12 School 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 President and Treasurer of the School District Board, and the Construction Manager in connection with the Project.

Project Number: SFC-180447.01 and SFC-180447.02
Project Name: Elida New Elementary
Site Address: 300 Pioneer Rd
 Lima, Allen

School District Board ("Owner"): Elida LSD
Owner's Representative: Joel Mengerink, Superintendent
Address: 4380 Sunnysdale Avenue
 Elida, Ohio 45807

Contracting Authority: The School District Board above in conjunction with the
Ohio Facilities Construction Commission
Project Manager: Jordan Zarnary
Address: 30 West Spring Street, 4th Floor
 Columbus, Ohio 43215

Construction Manager ("CM"): Peterson Construction Company
CM's Principal Contact: Donald Bergfeld
Address: 18817 SR 501 N P.O. Box 2058
 Wapakoneta, Ohio 45895-0558

Architect/Engineer ("A/E"): Garmann Miller
A/E's Principal Contact: Chris Monnin
Address: 38 S. Lincoln Drive
 PO Box 71
 Minster, Ohio 45865

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 \$30,867,101.60.

1.3 The Construction Budget is \$29,858,510.95.

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 \$164,070.00, (of which \$141,934.74 is co-funded and \$25,135.26 is locally funded initiatives) which is the sum of (1) the Preconstruction Fee, (2) Preconstruction Stage Personnel Costs, and (3) Preconstruction Stage Reimbursable Expenses. Compensation per building is set forth in the **Compensation Schedule** attached as **Exhibit G**. 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 \$5,500.00 (of which \$4,657.41 is co-funded and \$842.59 is locally funded initiatives) and is subject to the following allocation:

Project Stage/Task	Associated Fee	Portion of Total Fee
Program Verification	\$1,100	20%
Schematic Design	\$1,100	20%
Design Development	\$1,100	20%

Project Stage/Task	Associated Fee	Portion of Total Fee
Construction Documents	\$1,100	20%
GMP Proposal and Amendment	\$1,100	20%
Total Preconstruction Fee	\$5,500.00	100%

2.3 Preconstruction Stage Personnel Costs. The CM's Preconstruction Stage Personnel Costs shall not exceed **\$155,070.00**, (of which **\$131,313.52** is co-funded and **\$23,756.48** is locally funded initiatives) 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 **\$3,500.00**, (of which **\$2,963.81** is co-funded and **\$536.19** is locally funded initiatives) 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**. Compensation per building is set forth in the **Compensation Schedule** attached as **Exhibit G**.

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 **\$632,485.00** in the aggregate or the below-identified allocations on an individual basis:

Phase	Associated CM's Construction Stage Personnel Costs Cap
Elida New Elementary	\$610,425.00
Elida Elementary Demo	\$22,060.00

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 **\$301,250.00** in the aggregate or the below-identified allocations on an individual basis:

Phase	Associated General Conditions Costs Cap
Elida New Elementary	\$283,812.50
Elida Elementary Demo	\$17,437.50

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

3.4.1 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 **1.55** percent of the amount by which the Contract Sum is reduced on account of return of the CM's Contingency.

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 the below-indicated percentage of the associated Cost of the Work plus the CM's Contingency, both as identified by the CM in the proposed GMP Amendment:

Phase	CM's Fee percentage
Elida New Elementary	1.55%
Elida Elementary Demo	1.55%

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 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 1.1 percent. The Contracting Authority is not obligated to offer or enter into a Construction Manager Adviser contract with the CM for the Project.

ARTICLE 4 - KEY PERSONNEL

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

- 4.1.1** Glen Renner, Project Manager;
- 4.1.2** Ann Rethman, Lead Scheduling Engineer;
- 4.1.3** Donald Bergfeld, Lead Estimator;
- 4.1.4** Doug Van Sossan, General 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.

ARTICLE 5 - CONSULTANTS

5.1 The CM's Consultants for the Project are:

5.1.1 Project Engineering, Coordination, and Scheduling:

Rethman Design, Inc.
4877 State Route 705
Fort Loramie, Ohio 45845

Ann Rethman, Engineering Services/Scheduling

5.1.2 Construction Cost Consultants:

Blundall Associates, Inc.
7223 Engle Road, Ste. 215
Fort Wayne, Indiana 46804

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 School District Board and Commission 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 Contracting Authority 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.

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 Treasurer of the School District first certifies that there is a balance in the School District's treasury or are in the process of collection to an appropriate fund, free from any previous encumbrance.

6.2.2 Subject to **Section 6.2.1**, the Contract shall become binding and effective upon execution by the School District Board and the CM, subject to approval of the Commission.

6.2.2.1 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.

6.2.2.2 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.

6.2.3 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 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.

6.3.5 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**, 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**;

7.2.5 Supplementary Conditions attached as **Exhibit E**;

7.2.6 Locally Funded Initiatives attached as **Exhibit F**; and

7.2.7 Compensation Schedule attached as **Exhibit G**.

SIGNATURES

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

PETERSON CONSTRUCTION, CO.

**STATE OF OHIO, BY AND THROUGH THE
SCHOOL DISTRICT BOARD**

Signature

Signature

Printed Name

Printed Name

School District Board President

Title

Date

Signature

Printed Name

School District Board Treasurer

TREASURER'S CERTIFICATION

IT IS HEREBY CERTIFIED that the moneys required to meet the obligations of the **Board of Education of the Elida Local School District** under the foregoing Agreement have been lawfully appropriated for such purposes and are in the treasury of the **Elida Local School District** or are in the process of collection to an appropriate fund, free from any previous encumbrance.

Purchase Order No.

Signature

Printed Name

School District Board Treasurer

APPROVAL OF THE OHIO FACILITIES CONSTRUCTION COMMISSION

David M. Williamson

Executive Director

END OF DOCUMENT