

**Document 00 52 23 - Agreement Form (CM at Risk Contract)**  
**State of Ohio Standard Requirements**  
**for Public Facility Construction**



This Agreement is made as of the date set forth below between the City of Fremont, acting by and through the Contracting Authority, and the Construction Manager in connection with the Project.

**Project Number:**  
**Project Name:** Fremont WPCC 2012  
**Site Address:** City of Fremont WPCC

**Owner:** City of Fremont Ohio  
**Owner's Representative:** Jim Ellis, Mayor  
**Address:** 323 South Front Street  
Fremont, OH 43420

**Contracting Authority:** Safety Service Director  
**Project Manager:** Jeff Lamson  
**Address:** 323 South Front Street  
Fremont, OH 43420

**Construction Manager ("CM"):** MWH Constructors, Inc.  
**CM's Principal Contact:** Richard Lewis  
**Address:** 370 Interlocken Blvd., Ste. 300  
Broomfield, CO 80021

**Architect/Engineer ("A/E"):** MWH Americas, Inc.  
**A/E's Principal Contact:** Mr. Thomas Unger  
**Address:** 1300 E. 9<sup>th</sup> Street, Ste. 1100  
Cleveland, OH 44114

## **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 Construction Budget is **\$57,000,000.00**.

1.3 The CM shall contract with EDGE-certified Business Enterprise(s) for the portion of the Contract described below:

1.3.1 during the Preconstruction Stage, no less than **five (5)** percent of Preconstruction Stage Compensation; and

1.3.2 during the Construction Stage, no less than **five (5)** percent of the Contract Sum established in the GMP Amendment.

## **ARTICLE 2 - PRECONSTRUCTION STAGE COMPENSATION**

2.1 The Preconstruction Stage Compensation is **\$168,400.00 Firm Fixed Price**, which is the sum of (1) the 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 **\$15,200.00** and the Preconstruction Compensation is **\$168,400.00** which is subject to the following allocation:

<b>Phase/Task</b>	<b>Associated Fee</b>	<b>Portion of Total Fee</b>
Organizational Meeting	\$11,300.00	6.7%
Program Verification Stage	\$5,500.00	3.3%
Schematic Design Stage	\$106,800.00	63.4%
Design Development Stage	\$17,000.00	10.1%
GMP Proposal and Amendment	\$20,000.00	11.9%
Construction Documents Stage	\$7,800.00	4.6%
<b>Total Preconstruction Compensation</b>	<b>\$168,400.00</b>	<b>100%</b>

**2.3 Preconstruction Stage Personnel Costs.** The CM's Preconstruction Stage Personnel Costs shall be a fixed price of \$132,100.00. Payments shall be made in accordance with the above schedule. Any additional services 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 be a fixed price of \$21,100.00.

### **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 a **GMP Amendment** or series of GMP Amendments, 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 **\$5,581,579.00**, exclusive of CM Contingency.

**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 an amount equal to **1.5 percent** 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 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 Contingency as part of the proposed GMP Amendment; provided, however, that the CM Contingency shall equal an amount between two (2) and five (5) percent of the Cost of the Work identified by the CM in the proposed GMP Amendment, depending on the completion of the design and the definition and complexity of the scope of work. Any unused portion of the CM Contingency may be applied to another GMP Amendment even though the CM Contingency exceeds 5% of the Cost of Work for that GMP Amendment so long as the total CM Contingency does not exceed 5% of the sum of the Cost of the Work for all the GMP Amendments.

**3.4.1 Shared-Savings Change Order.** 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) 50% of the funds then remaining in the CM's Contingency plus (2) an associated reduction of the CM's Fee.

**3.5** The CM's Fee as a part of each proposed GMP Amendment shall be **three (3) percent** of the sum of the Cost of the Work plus the CM's Contingency, both as 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 **two percent (2%)** of the GMP. The Contracting Authority is not obligated to offer or enter into a construction-manager/agent 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** Brian Canzoneri, Project Manager;

**4.1.2** Matt Wolfe, Lead Scheduling Engineer;

**4.1.3** Jason Rozgony, Lead Estimator;

**4.1.4** Ed Richardson, General Superintendent.

#### **ARTICLE 5 - CONSULTANTS**

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

**5.1.1** To be determined on a GMP by GMP basis:

**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 Ohio Revised Code ("ORC") Section 153.50, 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 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.

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 5 percent per annual increase.

6.1.2 No rate increase will (1) apply to any Work performed before the Owner and the 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 2.3** and **3.2** 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.

### 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 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 The CM represents and warrants that it has not provided any material assistance, as that term is defined in ORC 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.

### 6.4 Enhancements

6.4.1 The Owner may add the enhancements set forth in Exhibit E - Optional Enhancements on the terms and conditions mutually agreed to in the applicable GMP.

## ARTICLE 7 - ENUMERATION OF DOCUMENTS

7.1 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, the final Drawings, the final Specifications, Addenda if any, Contracting Definitions, General Conditions, supplementary conditions if any, 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 **Exhibit B – Not Used**;

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 **Optional Enhancements** as described in **Exhibit E**

7.3 The GMP Documents include the GMP Amendment (including all of its exhibits) signed by the Owner, Contracting Authority, and CM.

**SIGNATURES**

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

Approved as to form:

\_\_\_\_\_

**MWH CONSTRUCTORS, INC.**

**CITY OF FREMONT, OHIO**

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

**END OF DOCUMENT**

**Exhibit A**  
**Personnel Costs Rate Schedule**  
**2012**

Actual Salary time a Multiplier of 2.75

The **CM's Construction Stage Personnel Cost** cap in Article 3.2 of the Agreement is based on the following assumptions and clarifications:

**Assumptions & Clarifications**

1. Total Project cost limitation is \$57,000,000.
2. The Project will consist of 3 GMP Amendments as follows:
  - GMP-1 Site Preparation,
  - GMP-2 Liquids, and
  - GMP-3 Solids.
3. Notice to Proceed for GMP-1 will be on or before March 1, 2013. This is predicated on receipt of the 30% design by November 30, 2012, and the duration for GMP 1 will be 3 months.
4. Notice to Proceed for GMP-2 will be on or before June 1, 2013. This is predicated on receipt of the 60% design by March 1, 2013, and the duration for GMP 2 will be 19 months.
5. Overall project schedule is based on issuance of the 100% design by July 1, 2013.
6. Notice to Proceed for GMP-3 will be on or before January 1, 2015. This is predicated on the duration of GMP-3 being 12 months
7. Construction of the Autothermal Thermophilic Aerobic Digestion Facility, Storage Nitrification De-Nitrification Reactor, Biofilter, and Temporary Aerobic Digesters cannot proceed until the Liquids facility is commissioned. The construction schedule is based on Commissioning & Start Up of the Liquids facility by March 17, 2015.
8. Commissioning & Start Up services are being provided by others. Labor costs associated with Commissioning & Start Up are not included. Labor is priced to bring the facility to mechanical completion.
9. The new Autothermal Thermophilic Aerobic Digestion facility, Storage Nitrification De-Nitrification Reactor, Biofilter, and Temporary Aerobic Digesters will be constructed in existing structures. The proposed schedule does not include any concrete repair that may be required for the existing structures.
10. Labor contingency not included, will be included in each GMP.

**Exhibit B**  
**NOT USED**



**Exhibit C**  
**General Conditions Costs**

General Conditions Costs include only the CM's costs to provide the General Conditions Work for the following Site-related items for:

- telephone,
- telephone charges,
- facsimile,
- telegrams,
- postage,
- photos,
- photocopying,
- hand tools,
- simple scaffolds (one level high),
- tool breakage,
- tool repairs,
- tool replacement,
- tool blades,
- tool bits, and
- pre-approved travel, lodging, and parking costs, and
- bond premiums

## Exhibit D

### Example GMP Amendment Form

The State of Ohio, acting by and through the Contracting Authority, and the CM enter into this Amendment as of the date set forth below to amend the Contract they entered into as of the date set forth below in connection with the Project known as:

**Project Number:** «insert number»  
**Project Name:** «insert name»

**Contracting Authority:** «insert name»

**Construction Manager ("CM"):** «insert name»

### ARTICLE 1 - CONTRACT SUM AND RELATED ITEMS

1.1 The Contract Sum is \$«insert amount», which is the sum of the estimated Cost of the Work, plus the CM's Contingency, plus the CM's Fee as follows:

1.1.1 The estimated Cost of the Work is \$«insert amount», which includes all Allowances (if any) and Unit Prices (if any) defined through this Amendment, and is the sum of:

1.1.1.1 CM's Construction Stage Personnel Costs in the amount of \$«insert amount», which amount shall not exceed \$«insert CM's Construction Stage Personnel Costs cap from the Agreement»;

1.1.1.2 General Conditions Costs in the amount of \$«insert amount», which shall not exceed «insert General Conditions Costs percentage from the Agreement» percent of the Cost of the Work;

1.1.1.3 all Work the CM proposes to provide through Subcontractors in the amount of \$«insert amount»;

1.1.1.4 all Work the CM proposes to self-perform directly or through a CM Affiliated Entity in the amount of \$«insert amount», which amount does not include any costs accounted for under the CM's Construction Stage Personnel Costs or General Conditions Costs.

1.1.2 The CM's Contingency in the amount of \$«insert amount», which shall not exceed «insert CM Contingency percentage from the Agreement» percent of the above-identified Cost of the Work.

1.1.3 The CM's Fee in the amount of \$«insert amount», which shall not exceed «insert CM Fee percentage from the Agreement» percent of the sum of the above-identified Cost of the Work plus the above-identified CM's Contingency.

### ARTICLE 2 - CONTRACT TIMES

2.1 The Contract Times are the periods of time established in the following table for the achievement of the associated Milestones:

Construction Stage Milestone	Contract Time
«insert description of interim milestone – add more rows if	«insert number of

necessary – delete of none»	calendar days» days
Final Acceptance of all Work	«insert number of calendar days» days

### ARTICLE 3 - LIST OF EXHIBITS

#### 3.1 This Amendment is based upon the following documents:

##### 3.1.1 Basis Documents attached at GMP Exhibit A;

*(This exhibit includes a complete list of all of the Drawings, Specifications, and other documents, upon which the CM relied to prepare this Amendment.)*

##### 3.1.2 Assumptions and Clarifications attached at GMP Exhibit B;

*(This exhibit includes a complete list of the assumptions and clarifications made by the CM in the preparation of this Amendment, which list is intended to clarify the information contained in the Basis Documents, but is not intended to otherwise modify the Contract.)*

##### 3.1.3 Project Estimate attached at GMP Exhibit C;

*(This exhibit includes a detailed estimate of the Cost of the Work which (1) allocates the cost of each of item of the Work to labor and materials/equipment organized by trade categories and (2) does not contain a lump-sum estimate for any item other than the CM's Fee and the CM's Contingency. This exhibit is informational only. It is included to provide a tool to evaluate, analyze, and discuss the proposed Contract Sum.)*

##### 3.1.4 Project Schedule attached at GMP Exhibit D;

##### 3.1.5 Construction Progress Schedule attached at GMP Exhibit E;

##### 3.1.6 Staffing Plan attached at GMP Exhibit F;

*(This exhibit includes the CMs detailed plan for staffing the Project during the Construction Stage and an outline of the qualifications and experience of the CM's proposed project manager and proposed superintendent, including references, unless the CM previously submitted that information and the CM's project manager and superintendent were approved.)*

##### 3.1.7 Subcontractor Work Scopes attached at GMP Exhibit G;

*(This exhibit includes a detailed scope-of-Work description for each anticipated Subcontract.)*

##### 3.1.8 Scope of CM's Self-Performed Work attached at GMP Exhibit H;

*(This exhibit includes a detailed scope-of-Work description for all trade Work the CM proposes to perform itself or through a CM Affiliated Entity if the requirements in the Contract are met; otherwise this scope of Work will be performed by a Subcontractor.)*

##### 3.1.9 Schedule of Allowances attached at GMP Exhibit I (if applicable);

*(This exhibit includes a complete list and detailed description of all Allowance Items with related measurement and payment terms.)*

##### 3.1.10 Schedule of Unit Prices attached at GMP Exhibit J (if applicable);

*(This exhibit includes a complete list and detailed description of all Unit Price items with related measurement and payment terms.)*

##### 3.1.11 Schedule of Alternates attached at GMP Exhibit K (if applicable); and

*(This exhibit includes a complete list and detailed description of all Alternates with*

*related measurement and payment terms.)*

**3.1.12 Schedule of Incentives attached at GMP Exhibit L (if applicable).**

*(This exhibit includes a detailed description of all performance incentives/bonuses applicable to the Work including related measurement/entitlement and payment terms.)*

**SIGNATURES**

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

«INSERT CM'S NAME»

STATE OF OHIO

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

OWNER'S CONCURRENCE

«INSERT OWNER'S NAME»

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Title*

**END OF DOCUMENT**

**Exhibit E**  
**Optional Enhancements Available for Owner Selection**

These Optional Enhancements are not included in the Agreement at this time and the terms and conditions and price for these Optional Enhancements have not been determined.

Process Guarantee/Review

MWH Constructors as Commissioning and Startup (C&SU) Agent

*ActiveManuals*<sup>TM</sup>

Extended Operations

Extended Warranty

Public Relations Efforts