

State of Ohio Subcontract Form
State of Ohio Standard Requirements
for Public Facility Construction



This Agreement is made as of the date set forth below between the Design-Builder and the Subcontractor in connection with the Project.

Project Number: KSU-«insert number»
Project Name: «insert name»
Site Address: Kent State University «at Campus» Campus, in «County» County
«insert building name»
«insert street address»
«insert city, Ohio ZIP Code»

Design-Builder ("DB"): «insert name»
Design-Builder's Principal Contact: «insert name»
Address: «insert street address»
«insert city, state zip code»

Subcontractor: «insert name»
Subcontractor's Principal Contact: «insert name»
Address: «insert street address»
«insert city, state zip code»

Public Authority: Kent State University Office of the University Architect
Public Authority Contact: «insert name»
Address: Suite 101 Harbourt Hall, 615 Loop Road, P. O. Box 5190
Kent, Ohio 44242-0001

ARTICLE 1 - NATURE OF SUBCONTRACT

1.1 The Subcontractor shall perform the entire Subcontract Work as specified in **Exhibit «insert A, B, C, or D and also document below in Article 6.13»** and described in the Contract Documents for the Project:

ARTICLE 2 - COMPENSATION

2.1 The DB agrees to pay for the performance of this Subcontract, subject to additions and deductions as provided in the Contract Documents, the Subcontract Sum of **«insert Subcontract Sum (\$N.NN)»**, comprised of the following:

«insert Subcontract Sum component»\$«insert amount»
«insert Subcontract Sum component»\$«insert amount»
«insert Subcontract Sum component»\$«insert amount»
«insert Subcontract Sum component»\$«insert amount»

ARTICLE 3 - TIME OF PERFORMANCE

3.1 Time is of the essence. The Subcontractor shall diligently prosecute and complete all Subcontract Work in accordance with the construction progress schedule agreed between the parties.

ARTICLE 4 - CONTRACT DOCUMENTS

4.1 To the extent that the contract between the Public Authority and the DB applies to the Subcontract Work:

4.1.1 The DB and the Subcontractor agree to be mutually bound by the terms of the Contract Documents;

4.1.2 The DB assumes toward the Subcontractor the rights, remedies, obligations, and responsibilities that the Public Authority has and assumes toward the DB;

4.1.3 The Subcontractor assumes toward the DB the rights, remedies, obligations, and responsibilities that the DB assumes toward the Public Authority; and

4.1.4 The Subcontractor agrees to perform its portion of the Work in accordance with the Contract Documents.

4.2 The Subcontract and any modifications, amendments, or alterations thereto shall be governed, construed, and enforced by and under the laws of the State of Ohio.

4.3 If any term or provision of the Subcontract, or the application thereof to any Person or circumstance, is finally determined, to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the Subcontract or the application of such term or provision to other Persons or circumstances, shall not be affected thereby, and each term and provision of the Subcontract shall be valid and enforced to the fullest extent permitted by law.

4.4 The Subcontract shall be binding on the DB and Subcontractor, their successors and assigns, in respect to all respective covenants and obligations contained in the Contract Documents, but the Subcontractor may not assign the Subcontract without the prior written consent of the DB and the Public Authority.

ARTICLE 5 - EFFECTIVENESS

5.1 The Subcontract shall become binding and effective upon execution by the DB.

5.2 This Subcontract has been executed in several counterparts, each of which shall constitute a complete original Subcontract, which may be introduced in evidence or used for any other purpose without production of any other counterparts.

5.3 Any signatory may deliver a copy of its counterpart signature page to this Subcontract via fax or e-mail. Each signatory shall be entitled to rely upon a signature of any other signatory delivered in such a manner as if such signature were an original.

ARTICLE 6 - REPRESENTATIONS

6.1 Contingent Assignment. The DB's contingent assignment of this Subcontract to the Public Authority, as provided in the Contract, is effective after termination of the DB by the Public Authority and the Public Authority's acceptance of the assignment in writing to the Subcontractor. The Subcontractor consents to the assignment and shall be bound at the same price and terms as in the Subcontract to the Public Authority. Unless the Public Authority takes assignment of the Subcontract, the Subcontractor will not have any contractual rights against the Public Authority.

6.2 Intended Third-Party Beneficiary. The Public Authority is an intended third party beneficiary of the Subcontract, entitled to enforce any rights thereunder for its benefit.

6.3 Insurance. The Subcontractor shall maintain insurance in accordance with the Contract Documents. **Exhibit «insert A, B, C, or D and also document below in Article 6.13»** sets forth the minimum limits of liability for the insurance required in the Contract Documents.

6.4 Right to Audit. The Subcontractor agrees that the Public Authority or any agents designated by the Public Authority have access to and the right to audit and the right to copy at the Public Authority's cost all of the

Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work for a period of not less than 3 years following completion of the Work consistent with Ohio Revised Code ("ORC") Section 149.43 with regard to the Public Authority's obligation to maintain confidentiality of trade secrets.

6.5 Indemnity. To the fullest extent permitted by law, the Subcontractor shall indemnify, defend, and hold harmless the Public Authority, the DB, their consultants and employees from all claims and expenses for bodily injury and property damage other than to the Work itself that may arise from the performance of the Subcontract Work, including reasonable attorneys' fees, costs and expenses, but only to the extent caused by the negligent acts or omissions of the Subcontractor or a person or entity for whom the Subcontractor may be liable. This Subcontract does not require a Subcontractor to waive its immunity under the Workers Compensation laws of Ohio from claims brought against the Subcontractor by the Subcontractor's employees.

6.6 Prompt Pay. The DB shall at a minimum make payments to the Subcontractor in accordance with Applicable Law, including ORC Section 4113.61. Progress payments to the Subcontractor for satisfactory performance of Subcontract Work shall be made no later than 10 days after receipt by the DB of payment from the Public Authority for Subcontract Work.

6.7 Retainage. Subcontractor retainage shall be at a rate equal to the percentage retained from the DB's payment by the Public Authority for the Subcontract Work, unless a lesser percentage is otherwise specified.

6.7.1 Labor Payments.

6.7.1.1 Partial payments to the Subcontractor for labor performed shall be made at the rate of 92 percent of the amount invoiced through the Subcontractor's request for payment that shows the Work of the Subcontractor is 50 percent complete.

6.7.1.2 After the Work of the Subcontractor is 50 percent complete, as evidenced by payments of at least 50 percent of the total amount due under the Subcontract, no additional funds shall be retained from payments for labor.

6.7.2 Material Payments.

6.7.2.1 The DB shall pay the Subcontractor at the rate of 100 percent of the scheduled value for materials incorporated into the Project.

6.7.2.2 The DB shall pay the Subcontractor at the rate of 92 percent of the invoice cost, not to exceed the scheduled value, for materials delivered to the Site, or other off-site storage location approved by the A/E, provided the Subcontractor provides the following information with its request for payment:

- .1 a list of the fabricated materials consigned to the Project, giving the place of storage, together with copies of invoices, in order to verify quantity and cost; and
- .2 a certification of materials stored off-site, prepared by the Subcontractor and signed by the A/E to evidence that the materials are in conformity with the Specifications and have been tagged with the Project name and number for delivery to the Project. The Subcontractor shall reimburse the A/E, through the DB, for all costs incurred to visit a storage site, other than the areas adjacent to the Project.
- .3 The DB shall pay the balance of the scheduled value when the materials are incorporated into and become a part of the Project.

6.8 Warranty. The Subcontractor fully warrants, for the benefit of the Public Authority, that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents and free from defective workmanship or materials.

6.9 Non Waiver of Lien Rights or Payment Bond Rights. This Subcontract shall not prohibit a Subcontractor from exercising its rights under ORC Chapter 1311 or under any DB-provided payment bond.

6.10 **Non-Discrimination.** The Subcontractor agrees to fully comply with Applicable Law regarding equal opportunity, including ORC Section 153.59 and, to the extent applicable, all Executive Orders issued by the Governor of the state of Ohio.

6.11 **Dispute Resolution.** The supplemental conditions to this Subcontract shall provide for a dispute resolution process comparable to the Contract's dispute resolution process in terms of timing, notice, substantiation, and informal dispute resolution efforts. The dispute resolution process provided in the supplemental conditions shall result in prompt access to the ultimate dispute resolution mechanism selected by the parties.

6.12 In the event that any supplemental conditions or other Subcontract terms conflict with the **State of Ohio Subcontract Form**, the **State of Ohio Subcontract Form** takes precedence and this Subcontract shall be read and enforced to include the provisions of the **State of Ohio Subcontract Form**.

6.13 The following exhibits are attached to and are a part of this Subcontract:

6.13.1 Exhibit A: «insert title of this Exhibit and attach to the Subcontract Form»

6.13.1 Exhibit B: «insert title of this Exhibit and attach to the Subcontract Form»

6.13.2 Exhibit C: «insert title of this Exhibit and attach to the Subcontract Form»

6.13.3 Exhibit D: «insert title of this Exhibit and attach to the Subcontract Form»

SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Subcontract Form.

SUBCONTRACTOR

DESIGN-BUILDER

«INSERT SUBCONTRACTOR'S NAME»

«INSERT DESIGN-BUILDER'S NAME»

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Attach all Exhibits to this Subcontract Form, including the Subcontractor's Certificate of Insurance and Ohio Bureau of Workers' Compensation Certificate on the next pages, as applicable.